

ADMINISTRATIVE PANEL DECISION

Laboratoires Thea v. 王先生 (Wang Xian Sheng)

Case No. D2022-0787

1. The Parties

Complainant is Laboratoires Thea, France, represented by AARPI Scan Avocats, France.

Respondent is 王先生 (Wang Xian Sheng), China.

2. The Domain Name and Registrar

The disputed domain name <thealab.net> (the “Domain Name”) is registered with Hongkong Domain Name Information Management Co., Limited (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on March 7, 2022. On March 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On March 25, 2022, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

On March 25, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On March 25, 2022, Complainant submitted a request that English be the language of the proceeding and filed an amended Complaint in English. Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent in English and Chinese of the Complaint, and the proceedings commenced on March 31, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 20, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on June 9, 2022.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on June 14, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

Complainant, LABORATOIRES THEA, a French company, is widely known under the names “THEA” and “LABORATOIRES THEA” as a European company recognized in the field of ophthalmology pharmaceuticals. Complainant has an international presence, with products available in more than 70 countries worldwide, through its subsidiaries, licensees and distributors.

Complainant is the owner of numerous registered trademarks, including the following with the THEA (or THÉA) mark and LABORATOIRES THEA (or LABORATOIRES THÉA) mark (the “THEA trademark”):

- French word mark n°94502704 for THEA filed on January 21, 1994 and registered for products in class 5;
- French figurative mark n°94503566 for LABORATOIRES THEA filed on January 27, 1994 and registered for products in class 5;
- French word mark n°3268573 for THEA filed on January 20, 2004 and registered for products and services in classes 3, 5, 10, 35, 41 and 44;
- French figurative mark n°3269443 for LABORATOIRES THÉA filed on January 23, 2004 and registered for products and services in classes 3, 5, 10, 35, 41 and 44;
- International word mark n°996576 for THEA registered on September 26, 2008 for products and services in classes 3, 5, 10, 35, 39, 41 and 44; and
- European Union figurative mark n°18102779 for THÉA filed on August 1, 2019 and registered on December 21, 2019 for products and services in classes 3, 5, 10, 35, 41 and 44.

Complainant also owns and has registered numerous domain names, with the terms “thea” and “lab”, among which are <thealab.tech> (registered in 2020), <thealabs.net> (registered in 2020) and <thealabs.com> (registered in 2018).

Respondent registered the Domain Name on April 16, 2021. At the time of filing of the Complaint, the Domain Name redirected to a webpage with adult content. At the time of the Decision, the Domain Name reverted to an inactive or error page.

5. Parties' Contentions

A. Complainant

Complainant contends that (i) the Domain Name is identical or confusingly similar to Complainant's trademarks; (ii) Respondent has no rights or legitimate interests in the Domain Name; and (iii) Respondent registered and is using the Domain Name in bad faith.

In particular, Complainant contends that it has trademark registrations for THEA and that Respondent registered and is using the Domain Name with the intention to confuse Internet users looking for *bona fide* and well-known THEA products and services.

Complainant notes that it has no affiliation with Respondent, nor authorized Respondent to register or use a domain name, which includes Complainant's trademarks, and that Respondent has no rights or legitimate interests in the registration and use of the Domain Name. Rather, Complainant contends that Respondent has acted in bad faith in acquiring and setting up the Domain Name, when Respondent clearly knew of Complainant's rights.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

6.1. Preliminary Procedural Issue – Language of the Proceeding

The Rules, in paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement between the respondent and the registrar in relation to the disputed domain name, the language of the proceeding shall be the language of the registration agreement, subject to the authority of the panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

Complainant submitted its Complaint in English. In its Complaint, email dated March 25, 2022 and amended Complaint, Complainant requested that the language of the proceeding be English. According to the information received from the Registrar, the language of the Registration Agreement for the Domain Name is Chinese.

Complainant contends that: Complainant is unable to communicate in Chinese, and the time and costs required for translation of the Complaint would unfairly burden Complainant and delay the proceedings and adjudication of this matter. Complainant also contends that: the Domain Name is registered in Latin characters rather than Chinese script and the word "thea" in the Domain Name is identical to Complainant's THEA trademark, while the term "lab" in the Domain name is short for the English term "laboratory" which is equivalent to the French term "laboratoire". Complainant also noted that the Registrar is located in Hong Kong, China, where one of the official languages is English. Complainant thus contends that for the above reasons, Respondent understands English.

In exercising its discretion to use a language other than that of the Registration Agreements for the Domain Name, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both Parties, taking into account all relevant circumstances of the case, including matters such as the Parties' ability to understand and use the proposed language, time, and costs.

The Panel accepts Complainant's submissions regarding the language of the proceeding. The Panel notes that the Center notified the Parties in Chinese and English of the language of the proceeding as well as notified Respondent in Chinese and English of the Complaint. Respondent chose not to comment on the language of the proceeding nor did Respondent choose to file a Response.

The Panel is also mindful of the need to ensure that the proceeding is conducted in a timely and cost-effective manner. Complainant may be unduly disadvantaged by having to translate the Complaint into Chinese and to conduct the proceeding in Chinese.

Having considered all the circumstances of this case, the Panel determines that English be the language of the proceeding.

6.2. Substantive Issues

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

(i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and

(ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and

(iii) the Domain Name was registered and is being used in bad faith.

Section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) states that failure to respond to the complainant’s contentions would not by itself mean that the complainant is deemed to have prevailed; a respondent’s default is not necessarily an admission that the complainant’s claims are true.

Thus, although in this case Respondent has failed to respond to the Complaint, the burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence. See, e.g., *The Knot, Inc. v. In Knot We Trust LTD*, WIPO Case No. [D2006-0340](#).

A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. Complainant provided evidence of its rights in the THEA trademarks, as noted above. Complainant has also submitted evidence, which supports that the THEA trademarks are widely known and a distinctive identifier of Complainant’s products and services. Complainant has therefore proven that it has the requisite rights in the THEA trademarks.

With Complainant’s rights in the THEA trademark established, the remaining question under the first element of the Policy is whether the Domain Name, typically disregarding the Top-Level Domain (“TLD”) in which it is registered (in this case, “.net”), is identical or confusingly similar to Complainant’s trademark. See, e.g., *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#).

Here, the Domain Name is confusingly similar to Complainant’s THEA trademarks. These trademarks, which are fanciful and inherently distinctive, are recognizable in the Domain Name. In particular, the Domain Name includes Complainant’s trademark THEA in its entirety, followed by the term “lab”. The addition of the term “lab” after the THEA trademark in the Domain Name does not prevent a finding of confusing similarity between the Domain Name and the THEA trademarks. In fact, such addition of the term “lab” affirms the confusing similarity as it is directly associated with the Complainant’s THEA and LABORATOIRES THEA trademarks, being an abbreviated form of the term “laboratories” being its French equivalent, “laboratoires” part of the latter trademark.

Thus, the Panel finds that Complainant has satisfied the first element of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make a *prima facie* showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with relevant evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

From the record in this case, it is evident that Respondent was, and is, aware of Complainant and its THEA trademarks, and does not have any rights or legitimate interests in the Domain Name. Complainant has confirmed that Respondent is not affiliated with Complainant, or otherwise authorized or licensed to use the THEA trademarks or to seek registration of any domain name incorporating the trademarks. Respondent is also not known to be associated with the THEA trademarks and there is no evidence showing that Respondent has been commonly known by the Domain Name.

In addition, Respondent has not used the Domain Name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. Rather, the evidence demonstrates that at the time of the filing of the Complaint, the Domain Name resolved to a page featuring adult or pornographic content, which

has no connection with the terms “thea lab”. At the time of the Decision, the Domain Name resolved to an error page. Such use does not constitute a *bona fide* offering of goods or services or a legitimate noncommercial or fair use and cannot under the circumstances confer on Respondent any rights or legitimate interests in the Domain Name. See, e.g., *Intesa Sanpaolo S.p.A. v. Charles Duke / Oneandone Private Registration*, WIPO Case No. [D2013-0875](#).

Further, the nature of the Domain Name carries a risk of implied affiliation with Complainant (see [WIPO Overview 3.0](#), section 2.5.1).

Accordingly, Complainant has provided evidence supporting its *prima facie* claim that Respondent lacks any rights or legitimate interests in the Domain Name. Respondent has failed to produce countervailing evidence of any rights or legitimate interests in the Domain Name. Thus, the Panel concludes that Respondent does not have any rights or legitimate interests in the Domain Name and Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Respondent’s actions indicate that Respondent registered and is using the Domain Name in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a domain name registrant, namely:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.”

The Panel finds that Complainant provided ample evidence to show that registration and use of the THEA trademarks long predate the registration of the Domain Name. Complainant is also well established and known. Indeed, the record shows that Complainant’s THEA trademarks and related products and services are widely known and recognized. Therefore, Respondent was likely aware of the THEA trademarks when it registered the Domain Name, or knew or should have known that the Domain Name was confusingly similar to Complainant’s trademarks. See [WIPO Overview 3.0](#), section 3.2.2; see also *TTT Moneycorp Limited v. Privacy Gods / Privacy Gods Limited*, WIPO Case No. [D2016-1973](#).

The Panel therefore finds that Respondent’s awareness of Complainant’s trademark rights at the time of registration suggests bad faith. See *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. [D2001-1070](#); *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#).

Further, the registration of the Domain Name incorporating Complainant's THEA trademark in its entirety suggests Respondent's actual knowledge of Complainant's rights in the THEA trademarks at the time of registration of the Domain Name and its effort to opportunistically capitalize on the registration and use of the Domain Name. In addition, while the Domain Name includes Complainant's trademark THEA in its entirety, it is followed by the term "lab" which is short for the English term "laboratory" which is equivalent to the French term "laboratoire", directly associated with Complainant's THEA and LABORATOIRES THEA trademarks and business and directly evokes Complainant's activities in the field of ophthalmology pharmaceuticals as a result of its investments, research and development conducted in laboratories, further indicating Respondent's actual knowledge of Complainant and its trademarks, and that Respondent's registration of the Domain Name is in bad faith.

The Domain Name also differs from Complainant's official domain names at the Second-Level <thealabs.net>, and <thealabs.com>, by only omitting one letter "s", which is a further indicator of Respondent's bad faith.

Moreover, Respondent registered and is using the Domain Name to confuse and mislead consumers looking for *bona fide* and well-known THEA products and services of Complainant or authorized partners of Complainant. The use of the THEA mark as the dominant part of the Domain Name is intended to capture Internet traffic from Internet users who are looking for Complainant's products and services. Such use and association of the Domain Name to divert users to adult or pornographic content could result in causing confusion with Complainant's business and activities. It may confuse Internet users who are looking for Complainant's legitimate website and deceive Internet users into thinking that Respondent is somehow connected to Complainant, which is not the case.

The fact that at the time of the Decision the Domain Name is inactive and resolves to an error page does not prevent a finding of bad faith. From the inception of the UDRP, panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. See section 3.3 of the [WIPO Overview 3.0](#). In the present circumstances, considering the distinctiveness and reputation of the THEA trademarks, the failure of Respondent to submit a response or to provide any evidence of actual or contemplated good faith use, and the implausibility of any good faith use to which the Domain Name may be put, the Panel finds that the non-use of the Domain Name supports a finding of bad faith.

Accordingly, the Panel finds that Respondent has registered and is using the Domain Name in bad faith and Complainant succeeds under the third element of paragraph 4(a) of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name <thealab.net> be transferred to Complainant.

/Kimberley Chen Nobles/
Kimberley Chen Nobles
Sole Panelist
Date: June 27, 2022