

## ADMINISTRATIVE PANEL DECISION

Teva Pharmaceuticals International GmbH v. 伍誉 (wu yu)  
Case No. DCO2022-0032

### 1. The Parties

Complainant is Teva Pharmaceuticals International GmbH, Switzerland, represented by SILKA AB, Sweden.

Respondent is 伍誉 (wu yu), China.

### 2. The Domain Name and Registrar

The disputed domain name <qvar.co> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

### 3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 18, 2022. On April 19, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 20, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to Complainant on April 20, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint in English on April 26, 2022.

On April 20, 2022, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. Complainant confirmed its request that English be the language of the proceeding on April 26, 2022. Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint together with the amendment to the 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 April 29, 2022. In accordance with the

Rules, paragraph 5, the due date for Response was May 19, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on May 20, 2022.

The Center appointed Yijun Tian as the sole panelist in this matter on May 24, 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**

##### **A. Complainant**

Complainant, Teva Pharmaceuticals International GmbH, is a company incorporated in Switzerland. Founded in 1935, Complainant is a Swiss subsidiary of Teva Pharmaceutical Industries Ltd, which is a leading global pharmaceutical company that delivers high-quality, patient-centric healthcare solutions used by millions of patients every day. Teva Pharmaceutical Industries Ltd was the world's largest generic medicines producer in 2018, leveraging a portfolio of more than 1,800 molecules to produce a wide range of generic products in nearly every therapeutic area. According to its 2021 annual report, it had sales of more than USD 15 billion and more than 37,000 employees internationally.

Complainant has exclusive rights in QVAR marks. Complainant is the exclusive owner of numerous QVAR marks worldwide, including an Israel trademark registration for QVAR registered on December 3, 1995 (Israel trademark registration number 92179); a German trademark registration for QVAR registered on December 16, 1999 (the German trademark registration number 2106112); and an International trademark registration for QVAR registered on February 17, 2011 (the International trademark registration number 1072323) (Annex 12 to the Complaint). Moreover, Complainant owns and operates domain names, which contain the QVAR mark in its entirety, such as <qvar.com>, registered in 2000, from which it operates its main corporate website.

##### **B. Respondent**

Respondent is 伍誉 (wu yu), China. The disputed domain name <qvar.co> was registered on August 1, 2021, long after the QVAR marks were registered. The disputed domain name resolves to a pay-per-click ("PPC") website in English related to inhalers, which is the method for administering Complainant's QVAR-branded prescription medicine,<sup>1</sup> with a hyperlink offering also the disputed domain name for sale with a minimum offer of USD 1,999.<sup>2</sup> Meanwhile, the disputed domain name seems to rotate to various websites.

#### **5. Parties' Contentions**

##### **A. Complainant**

Complainant contends that the disputed domain name is confusingly similar to Complainant's QVAR trademark. The disputed domain name reproduces in full Complainant's QVAR mark, with the sole addition of the country code Top-Level Domain ("ccTLD") identifier ".co", assigned to Colombia.

Complainant contends that Respondent does not have any rights or legitimate interests in the disputed domain name.

Complainant contends that Respondent has registered and used the disputed domain name in bad faith.

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<sup>1</sup> The disputed domain name points to "<http://ww38.qvar.co/>"

<sup>2</sup> "<https://sedo.com/search/details/?partnerid=&domain=qvar.co>"

Complainant requests that the disputed domain name be transferred to Complainant.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

### **6.1. Language of the Proceeding**

The language of the Registration Agreement for the disputed domain name <qvar.co> is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement. From the evidence presented on the record, no agreement appears to have been entered into between Complainant and Respondent to the effect that the language of the proceeding should be English. Complainant filed initially its Complaint in English, and has requested that English be the language of the proceeding for the following main reasons:

- (a) The disputed domain name is exclusively constituted of letters issued from the Latin alphabet, rather than Chinese script. This indicates that Respondent is able to understand the English language;
- (b) The disputed domain name resolves to either rotating number of third-party websites flagged as "suspicious" or "risky" by McAfee Web Advisor (Annex 6 to the Complaint), or resolves to a parking site with pay-per-click links ("PPC") in English language related to inhalers, which is the method for administering Complainant's QVAR prescription medicine, with a hyperlink offering the disputed domain name for sale (Annex 7 to the Complaint). Therefore, in view of this latter use, it can be concluded that the registrant of the disputed domain name is familiar with English language.
- (c) Complainant is located in Switzerland, whereas Complainant's representative is located in Sweden. Although they have no knowledge of Chinese language, they are able to communicate in English, which is the primary language for international relations.
- (d) In order to proceed in Chinese language, Complainant would have had to retain specialized translation services at a cost very likely to be higher than the overall costs of these proceedings. The use of Chinese in this case would therefore impose a burden on Complainant which must be deemed significant in view of the low costs of these proceedings.
- (e) A number of previous UDRP panels have accepted a language of proceeding request in similar circumstances and with the same Registrar (see examples provided as Annex 5 to the Complaint).

Respondent did not make any submissions with respect to the language of the proceeding and did not object to the use of English as the language of the proceeding.

Paragraph 11(a) of the Rules allows the Panel to determine the language of the proceeding having regard to all the circumstances. In particular, it is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding. In other words, it is important to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes (*Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. Ltd.*, WIPO Case No. [D2008-0293](#); *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#)). The language finally decided by the panel for the proceeding should not be prejudicial to either one of the parties in its abilities to articulate the arguments for the case (*Groupe Auchan v. xmxzl*, WIPO Case No. [DCC2006-0004](#)). WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") further states:

“Noting the aim of conducting the proceedings with due expedition, paragraph 10 of the UDRP Rules vests a panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case.

Against this background, panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios include (i) evidence showing that the respondent can understand the language of the complaint, (ii) the language/script of the domain name particularly where the same as that of the complainant’s mark, (iii) any content on the webpage under the disputed domain name, (iv) prior cases involving the respondent in a particular language, (v) prior correspondence between the parties, (vi) potential unfairness or unwarranted delay in ordering the complainant to translate the complaint, (vii) evidence of other respondent-controlled domain names registered, used, or corresponding to a particular language, (viii) in cases involving multiple domain names, the use of a particular language agreement for some (but not all) of the disputed domain names, (ix) currencies accepted on the webpage under the disputed domain name, or (x) other indicia tending to show that it would not be unfair to proceed in a language other than that of the registration agreement.” ([WIPO Overview 3.0](#), section 4.5.1; see also *L’Oreal S.A. v. MUNHYUNJA*, WIPO Case No. [D2003-0585](#)).

The Panel has taken into consideration the facts that Complainant is a company from Switzerland, and Complainant will be spared the burden of working in Chinese as the language of the proceeding. The Panel has also taken into consideration the fact that the disputed domain name includes Latin characters (“qvar”), and the sole addition of the ccTLD identifier comprising of the Latin characters “.co”, assigned to Colombia. (*Compagnie Gervais Danone v. Xiaole Zhang*, WIPO Case No. [D2008-1047](#)).

On the record, Respondent appears to be a Chinese resident and is thus presumably not a native English speaker. However, considering the following, the Panel has decided that English should be the language of the proceeding: (a) the disputed domain name includes Latin characters (“qvar”), rather than Chinese script; (b) the ccTLD of the disputed domain name is “.co”, which is ccTLD identifier assigned to Colombia; (c) the disputed domain name is resolved to an English website, which contains links labeled in English, such as “COPD Inhalers”, “COPD Treatment”, “Order Inhalers Online”, and “2022 Copyright. All Rights Reserved”; (d) the Center has notified Respondent of the proceeding in both Chinese and English, and Respondent has indicated no objection to Complainant’s request that English be the language of the proceeding; and (e) the Center informed the Parties, in English and Chinese, that it would accept a Response in either English or Chinese. The Panel would have accepted a response in Chinese but none was filed.

Accordingly, the Panel finds the choice of English as the language of the present proceeding is fair to both Parties and is not prejudicial to either one of the Parties in its ability to articulate the arguments for this case. Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that English shall be the language of the proceeding, and the decision will be rendered in English.

## **6.2. Substantial Issues**

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that the disputed domain name should be cancelled or transferred:

- (i) the disputed domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

On the basis of the evidence introduced by Complainant and in particular with regard to the content of the relevant provisions of the Policy (paragraphs 4(a)-(c)), the Panel concludes as follows:

## A. Identical or Confusingly Similar

The Panel finds that Complainant has rights in the QVAR marks acquired through registration. The QVAR marks have been registered internationally, such as in Israel (since 1995) and in Germany (since 1999).

The disputed domain name comprises the QVAR mark in its entirety. The disputed domain name only differs from Complainant's trademarks by the addition of the ccTLD ".co". In relation to the ccTLD, [WIPO Overview 3.0](#), section 1.11 states:

"The applicable Top Level Domain ('TLD') in a domain name (e.g., '.com', '.club', '.nyc') is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. [...] The practice of disregarding the TLD in determining identity or confusing similarity is applied irrespective of the particular TLD (including with regard to 'new gTLDs')."

Thus, the Panel finds that disregarding the ccTLD ".co", the disputed domain name is identical to the QVAR marks in which Complainant has rights.

The Panel therefore holds that the Complaint fulfils the first condition of paragraph 4(a) of the Policy.

## B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that Respondent has rights or legitimate interests in the disputed domain name:

- (i) before any notice to Respondent of the dispute, the use by Respondent of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) Respondent has been commonly known by the disputed domain name, even if Respondent has acquired no trademark or service mark rights; or
- (iii) Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish Complainant's trademarks.

The overall burden of proof on this element rests with Complainant. However, it is well established by previous UDRP panel decisions that once a complainant establishes a *prima facie* case that a respondent lacks rights or legitimate interests in a domain name, the burden of production shifts to respondent to rebut complainant's contentions. If respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. (*Danzas Holding AG, DHL Operations B.V. v. Ma Shikai*, WIPO Case No. [D2008-0441](#); [WIPO Overview 3.0](#), section 2.1 and cases cited therein).

The QVAR marks have been registered in Israel since December 1995 and internationally since February 2011, which precede Respondent's registration of the disputed domain name (in August 2021). According to the Complaint, Complainant is a Swiss subsidiary of Teva Pharmaceutical Industries Ltd, which is a leading global pharmaceutical company that delivers high-quality, patient-centric healthcare solutions used by millions of patients every day. Teva Pharmaceutical Industries Ltd was the world's largest generic medicines producer in 2018, leveraging a portfolio of more than 1,800 molecules to produce a wide range of generic products in nearly every therapeutic area. According to its 2021 annual report, it had sales of more than USD 15 billion and more than 37,000 employees internationally.

Moreover, Respondent is not an authorized dealer of QVAR branded products or services. Complainant has therefore established a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name and thereby shifted the burden to Respondent to produce evidence to rebut this presumption (*The Argento Wine Company Limited v. Argento Beijing Trading Company*, WIPO Case No. [D2009-0610](#); *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire*

*Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

Based on the following reasons the Panel finds that Respondent has no rights or legitimate interests in the disputed domain name:

(a) There has been no evidence adduced to show that Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services. Respondent has not provided evidence of a legitimate use of the disputed domain name or reasons to justify the choice of the term “qvar” in the disputed domain name and in their business operation. There has been no evidence to show that Complainant has licensed or otherwise permitted Respondent to use the QVAR marks or to apply for or use any domain name incorporating the QVAR marks.

(b) There has been no evidence adduced to show that Respondent has been commonly known by the disputed domain name. There has been no evidence adduced to show that Respondent has any registered trademark rights with respect to the disputed domain name. Respondent registered the disputed domain name in 2021, long after the QVAR marks became widely known. The disputed domain name is identical to the QVAR marks.

(c) There has been no evidence adduced to show that Respondent is making a legitimate noncommercial or fair use of the disputed domain name. By contrast, the disputed domain name resolves to a PPC website in English related to inhalers, which is the method for administering Complainant’s QVAR-branded prescription medicine,<sup>3</sup> with a hyperlink offering also the disputed domain name for sale with a minimum offer of USD 1,999.<sup>4</sup> It seems that Respondent is making profits through the Internet traffic attracted to the website under the disputed domain name. (See *BKS Bank AG v. Jianwei Guo*, WIPO Case No. [D2017-1041](#); *BASF SE v. Hong Fu Chen, Chen Hong Fu*, WIPO Case No. [D2017-2203](#).)

The Panel notes that Respondent has not produced any evidence to establish his/her rights or legitimate interests in the disputed domain name.

Accordingly, Complainant has established that Respondent has no rights or legitimate interests in the disputed domain name. The Panel therefore holds that the Complaint fulfils the second condition of paragraph 4(a) of the Policy.

### **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy sets out four circumstances, which, without limitation, shall be evidence of the registration and use of the disputed domain name in bad faith, namely:

(i) circumstances indicating that Respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to Complainant who is the owner of the trademark or service mark or to a competitor of Complainant, for valuable consideration in excess of Respondent’s documented out-of-pocket costs directly related to the disputed domain name; or

(ii) Respondent has registered the disputed 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 Respondent has engaged in a pattern of such conduct; or

(iii) Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or

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<sup>3</sup> The disputed domain name points to “<http://ww38.qvar.co/>”

<sup>4</sup> “<https://sedo.com/search/details/?partnerid=&domain=qvar.co>”

(iv) by using the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on the website or location.

The Panel concludes that the circumstances referred to in paragraph 4(b)(iv) of the Policy are applicable to the present case and upon the evidence of these circumstances and other relevant circumstances, it is adequate to conclude that Respondent has registered and used the disputed domain name in bad faith.

#### (a) Registration in Bad Faith

The Panel finds that Complainant has widespread reputation as a Swiss subsidiary of Teva Pharmaceutical Industries Ltd, which is a leading global pharmaceutical company that delivers high-quality, patient-centric healthcare solutions used by millions of patients every day. As introduced above, Teva Pharmaceutical Industries Ltd was the world's largest generic medicines producer in 2018, leveraging a portfolio of more than 1,800 molecules to produce a wide range of generic products in nearly every therapeutic area. According to its 2021 annual report, it had sales of more than USD 15 billion and more than 37,000 employees internationally. As mentioned above, QVAR marks are registered internationally, including in Israel (since 1995) and in Germany (since 1999).

Complainant registered the domain name <qvar.com> in 2000, from which it operates its main corporate website. It is not conceivable that Respondent would not have had actual notice of the QVAR marks at the time of the registration of the disputed domain name (in 2021). The Panel therefore finds that the QVAR mark is not one that a trader could legitimately adopt other than for the purpose of creating an impression of an association with Complainant (*The Argento Wine Company Limited v. Argento Beijing Trading Company, supra*).

Moreover, Respondent has chosen not to respond to Complainant's allegations. According to the UDRP decision in *The Argento Wine Company Limited v. Argento Beijing Trading Company, supra*, "the failure of the Respondent to respond to the Complaint further supports an inference of bad faith". See also *Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. [D2002-0787](#).

Thus, the Panel concludes that the disputed domain name was registered in bad faith.

#### (b) Use in Bad Faith

The Panel finds that the disputed domain name resolves to a PPC related to inhalers, which is the method for administering Complainant's QVAR-branded prescription medicine, with a hyperlink offering also the disputed domain name for sale with a minimum offer of USD 1,999. Thus, the Panel concludes that Respondent is currently using the confusingly similar disputed domain name with the intention to attract, for commercial gain, Internet users to Respondent's website.

Given the reputation of the QVAR marks, the Panel finds that the public is likely to be confused into thinking that the disputed domain name has a connection with Complainant, contrary to the fact. There is a strong likelihood of confusion as to the source, sponsorship, affiliation or endorsement of the website to which the disputed domain name resolves. In other words, Respondent has through the use of a confusingly similar disputed domain name created a likelihood of confusion with the QVAR marks. Moreover, as mentioned above, the disputed domain name resolves to a PPC website, which contains links for services that compete with Complainant (such as links of inhalers), and a link to the "www.sedo.com" offering the disputed domain name for sale with a minimum offer of USD 1,999. The Panel therefore concludes that the disputed domain name was registered and is being used by Respondent in bad faith. Such use of the disputed domain name is also disruptive in relation to the interests of Complainant.

In summary, Respondent, by choosing to register and use the disputed domain name, which is identical to the QVAR marks, intended to ride on the goodwill of this trademark in an attempt to exploit, for commercial gain, Internet users destined for Complainant. In the absence of evidence to the contrary and rebuttal from Respondent, the choice of the disputed domain name and the conduct of Respondent as far as the website to which the disputed domain name resolves is indicative of registration and use of the disputed domain name in bad faith.

The Panel therefore holds that the Complaint fulfils the third condition of paragraph 4(a) of the Policy.

## **7. Decision**

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <qvar.co> be transferred to Complainant.

*/Yijun Tian/*

**Yijun Tian**

Sole Panelist

Dated: June 16, 2022