

ADMINISTRATIVE PANEL DECISION

Beiersdorf AG and Beiersdorf Inc. v. 刘亚锋 (Liu Ya Feng)
Case No. D2024-0880

1. The Parties

The Complainants are Beiersdorf AG (the “First Complainant”), Germany; and Beiersdorf Inc. (the “Second Complainant”), United States of America (“United States”), internally represented.

The Respondent is 刘亚锋 (Liu Ya Feng), China.

2. The Domain Name and Registrar

The disputed domain name <byaquaphor.com> is registered with Jiangsu Bangning Science & technology Co. Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on February 28, 2024. On February 29, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 1, 2024, 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 (Respondent’s name is protected) and contact information in the Complaint. The Center sent an email communication to the Complainants on March 5, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amendment to the Complaint in English on March 5, 2024.

On March 5, 2024, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the disputed domain name is Chinese. On March 5, 2024, the Complainants requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainants’ submission.

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 the Respondent of the Complaint in English and in Chinese, and the proceedings commenced on March 11, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 31, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 2, 2024.

The Center appointed Jonathan Agmon as the sole panelist in this matter on April 10, 2024. 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

The First Complainant, Beiersdorf AG, is a German multinational company headquartered in Hamburg, Germany. Founded in 1882, the First Complainant manufactures various skincare related products under its various brands, such as Aquaphor, Nivea, Eucerin, and Coppertone.

The Second Complainant, Beiersdorf Inc., is a subsidiary of the First Complainant and developed the Aquaphor line of products in 1924. It is also the exclusive distributor of the Aquaphor brand.

The First Complainant owns numerous trademarks for AQUAPHOR, including the following:

- United States trademark registration no. 1737475 for AQUAPHOR, registered on December 1, 1992;
- China trademark registration no. 7264537 for AQUAPHOR, registered on October 21, 2010; and
- China trademark registration no. 27652553 for AQUAPHOR, registered on August 7, 2019.

The domain name <aquaphorus.com>, was registered by the First Complainant on May 3, 2015.

The First and Second Complainants shall heretofore be referred to as the Complainant.

The disputed domain name was registered on August 1, 2023, and resolves to a webpage purporting to offer the Complainant's AQUAPHOR goods for sale at discounted prices without any disclaimer disclosing the (lack of) relationship between the Parties.

5. Parties' Contentions

A. Complainants

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contend that:

- 1) The disputed domain name is identical or confusingly similar to the AQUAPHOR trademark in which the Complainant has rights. Given the long standing, global, and exclusive use of the AQUAPHOR trademark is associated and synonymous with a range of high-quality products produced by the Complainant. There is also significant goodwill associated with the AQUAPHOR trademark, and it is easily recognizable by its customers as a leading skin care brand in the world.
- 2) The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent registered the disputed domain name with the sole purpose of committing fraud, and misleading consumers into believing that the website at the disputed domain name is legitimately the Complainant and its affiliates, and/or an authorized reseller. The Respondent is impersonating the Complainant as evidenced by the

wholesale copying of the Complainant's privacy policy on the Respondent's webpage. The Respondent also misrepresented its contact information to reflect the Complainant's address, despite being located in China. This is evidence of the Respondent's intent to mislead Internet users into believing that the disputed domain name is legitimate. The Respondent is also creating a false impression that it is selling authentic AQUAPHOR products whilst engaging in the sale of unauthorized grey market and/or counterfeit AQUAPHOR products. The products offered for sale by the Respondent are at suspiciously low discounted rates, which is evidence of the lack of legitimate interests and rights of the Respondent.

3) The disputed domain name was registered and is being used in bad faith. As mentioned above, the Respondent's intention for registering the disputed domain name was to pose as the Complainant, mislead customers, and engage in unauthorized sales. Further, the impersonation of the Complainant is further evidence of bad faith. The Complainant has never authorized the Respondent to sell its AQUAPHOR products. The sale of purported AQUAPHOR products at a steep discount on the Respondent's webpage suggests illicit activity. This unauthorized sale of AQUAPHOR products interferes with the Complainant's sales and marketing efforts. Further, the Respondent is attempting to impersonate of the Complainant by listing the Complainant's address on the "contact us" information of the Respondent's website, which creates confusion to customers and is an attempt to legitimize the Respondent's illegal activity.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that:

- the disputed domain name and the content of the Respondent's webpage is in English;
- the "contact us" information (which is the Complainant's contact information) stated on the Respondent's webpage gives the false impression that the Respondent is located in the United States, and is targeting English-speaking consumers;
- the products offered for sale on the Respondent's webpage are identical to the products sold by the Complainant, and the Respondent is therefore targeting English-speaking consumers; and
- the generic Top-Level-Domain ("gTLD") of the disputed domain name is ".com", which is common to American companies, and to entities targeting the American market.

The Respondent did not make any submissions with respect to the language of the proceeding despite being duly notified by the Center in both Chinese and English of the language of the proceeding and of the commencement of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, 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 (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

Although the addition of an additional term here, "by", may bear on assessment of the second and third elements, the Panel finds the addition of such a term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Panel notes that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent was not licensed by the Complainant to use the AQUAPHOR trademark. The disputed domain name resolves to a webpage, which resembles the Complainant's legitimate webpage, and offers purportedly genuine AQUAPHOR products at a steep discount (above 75%, and with a "buy 2 get 1 free" offer on top) without any disclaimer disclosing the (lack of) relationship between the Parties. This suggests that the goods offered for sale on the Respondent's webpage maybe counterfeit goods. There is also no evidence that the Respondent is using or preparing to use the disputed domain name for any legitimate noncommercial or fair use. Paragraph 4(c) of the Policy provides a list of circumstances by which the Respondent may demonstrate rights or legitimate interests in the disputed domain name. The Respondent has, however, not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

Panels have held that the use of a domain name for illegal activity here, impersonation or the sale of presumably counterfeit goods, cannot confer rights or legitimate interests on the Respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the disputed domain name incorporates the entirety of the Complainant's distinctive and famous trademark with the addition of the prefix "by". The AQUAPHOR trademark has been registered for many years. Given the length of time of registration and the distinctiveness of the AQUAPHOR trademark, the Panel finds it highly unlikely that the Respondent did not know of the Complainant and the AQUAPHOR trademark at the time it registered the disputed domain name. Further, the addition of the term "by" in the disputed domain name is an attempt to convince and mislead Internet users that the disputed domain name is created "by" the Complainant. This is a clear sign of the Respondent's familiarity with the Complainant and its trademarks. This is further reinforced by the fact that the Respondent is purportedly offering for sale goods bearing the Complainant's AQUAPHOR trademark at a steep discount without any disclaimer disclosing the (lack of) relationship between the Parties, leading to the conclusion that the goods offered for sale on the Respondent's webpage are likely to be counterfeit goods. The impersonation of the Respondent clearly constitutes bad faith under the Policy.

Panels have held that the use of a domain name for illegal activity here, impersonation or the sale of presumably counterfeit goods, is also an indication of bad faith registration and use of the disputed domain name. [WIPO Overview 3.0](#), section 3.4.

The Panel finds that the Complainant has established the third element 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 disputed domain name <byaquaphor.com> be transferred to the Complainant.

/Jonathan Agmon/

Jonathan Agmon

Sole Panelist

Date: April 24, 2024