

ADMINISTRATIVE PANEL DECISION

Young Pharmaceuticals, Inc. v. Xiaopeng Zhou
Case No. D2024-1699

1. The Parties

The Complainant is Young Pharmaceuticals, Inc., United States of America (“United States”), represented by Cantor Colburn LLP, United States.

The Respondent is Xiaopeng Zhou, represented by John Berryhill, Ph.d., Esq., United States.

2. The Domain Name and Registrar

The disputed domain name <young.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 23, 2024. On April 23, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 24, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on the same date providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on April 29, 2024.

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 the Respondent of the Complaint, and the proceedings commenced on May 2, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 26, 2024. The Response was filed with the Center on May 26, 2024.

The Center appointed John Swinson, Phillip V. Marano, and Andrew D. S. Lothian as the Administrative Panel in this matter on June 27, 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 Complainant is a global skin care company that was founded in 1977 and is based in Connecticut, United States. The Complainant develops transformative and specialized skincare products for use by dermatologists and plastic surgeons.

The Complainant owns a portfolio of United States trademark registrations, including United States Registration No. 3374754 for YOUNG that was filed on June 1, 2007 and registered on January 29, 2008. This registration claims a date of first use of May 23, 1982.

The Complainant uses <youngpharm.com> for its website and in its email addresses.

The disputed domain name was first registered on November 29, 1994. The original registrant of the disputed domain name was a person with the surname Young and who lived in Colorado, United States. As discussed below, the Respondent purchased the disputed domain name from Mr. Young for USD 220,000 in September 2023.

The Respondent is a domain name investor. The Respondent has an address in Nanjing, China. The Respondent has adopted the Western name "Miller Chou".

The Respondent seeks to buy and sell valuable domain names. The Respondent "admits to having had a large and dynamic domain portfolio for many years." The Respondent has owned thousands of domain names. There is no evidence that the Respondent has been involved in any other domain name dispute or has been the subject of an adverse legal claim. The Respondent sold most of his domain names in a portfolio sale in 2015.

Presently, the Respondent pursues what he calls high-value domain names not expressly for sale by cold-contacting their owners. The Respondent provided evidence of some outbound inquiries he made in June 2023 that show the Respondent was seeking to purchase several "dictionary words" domain names. For example, the Respondent has bought and sold domain names like <boy.com> and seeks to acquire other such domain names.

As stated above, the disputed domain name was owned by Mr. Young from Colorado for about 29 years, who used the disputed domain name to host his personal website. In September 2023, the Respondent offered Mr. Young USD 200,000 to purchase the disputed domain name, and eventually acquired it for USD 220,000.

After purchasing the disputed domain from Mr. Young, the Respondent tried to sell the disputed domain name, and shortly after that, on March 17, 2024, engaged a broker (Mr. Harbin of Grit Brokerage) to find potentially interested buyers for the disputed domain name plus two other domain names (<madam.com> and <perplexity.com>) owned by the Respondent. Mr. Harbin identified over 20 prospects to notify that the disputed domain name had become available to purchase, one being the Complainant.

In April 2024, Mr. Harbin sent an email the Complainant and to the other prospects on his list. The same email wording was used for all prospects. Mr. Harbin has received several substantial offers to purchase the disputed domain name because of his efforts but not surprisingly has ceased his marketing and sales efforts due to the present dispute.

The Complainant's CEO responded to Mr. Harbin's email, stating "Thank you for letting us know about this interesting opportunity. Can you give us an idea of cost?" Mr. Harbin stated that the disputed domain name was available for purchase for USD 699,999. An email exchanged ensued, with the Complainant's CEO expressing interest in the disputed domain name but requiring more time as he wanted input from others in his organization.

At about the same time, the Complainant's legal counsel submitted a complaint to the Registrar regarding the disputed domain name. The Complainant's legal counsel did not identify that they were acting for the Complainant or identify the Complainant's trademark, and the Complainant's CEO did not mention this to Mr. Harbin. Mr. Harbin responded to the Registrar's correspondence in respect of the complaint by emailing the Complainant's legal counsel on April 10, 2024, asking for further information. The Complainant's legal counsel did not respond to Mr. Harbin. Two weeks later, the Complainant filed the present Complaint.

At the present time, the disputed domain name resolves to a simple webpage that includes the following text: "Young.com. This domain name may be for sale. Price upon request" and includes a contact form. The webpage also includes a link to Grit Brokerage and a link to send an email to sales@gritbrokerage.com. There is no advertising or pay-per-click ("PPC") links on the webpage at the disputed domain name.

5. Parties' Contentions

A. Complainant

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 contends that the Complainant first used YOUNG on May 23, 1982, well before the first registration date of the disputed domain name. The Complainant enjoys wide consumer recognition of the YOUNG mark, and respectively submits that the YOUNG trademark is "well-known" and recognized by the relevant consumers in the cosmetics and skincare industry.

The disputed domain name is being used by the Respondent intentionally to mislead consumers that the website at the disputed domain name is an official website of Complainant. As a result, visitors to the website at the disputed domain name are likely to be misled into believing that the content on that website is approved of, sponsored by, or affiliated with the Complainant.

It is apparent that the Respondent has selected the disputed domain name at least to disrupt the business of the Complainant and/or to attract Internet users to its website by creating a likelihood of confusion with the Complainant's YOUNG trademark. It is not possible to conceive of any use of the disputed domain name that would not constitute an infringement of the Complainant's rights in the YOUNG trademark.

In view of the notoriety of the YOUNG trademark, the inclusion of "YOUNG" in its entirety in the disputed domain name with no addition of non-distinctive words or letters, and the use of the disputed domain name in connection with the cybersquatting scheme to profit of the goodwill of the YOUNG trademark, it is clear that the user of the disputed domain name knew of the existence of the Complainant's YOUNG trademark and the significance of YOUNG in the market as a strong and well-known mark as of the registration date of the disputed domain name.

The content on the website at the disputed domain name clearly shows only the purpose to resell the domain. The Complainant was approached by the Respondent or a "domain broker" of the Respondent, apparently with authority to sell the disputed domain name for USD 699,000.

B. Respondent

The Respondent contends that the Complainant has not satisfied the second and third elements required under the Policy for a transfer of the disputed domain name.

The Respondent contends that the Complainant makes ridiculous claims in the Complaint.

In summary, the Respondent asserts the following:

Any person can conceive of uses of the word “young” which have nothing to do with the Complainant. “Thousands of trademark claimants use the word ‘young’ in various marks. Wikipedia’s disambiguation page for the word ‘Young’ has dozens of entries, none of which reference the Complainant.”

When the disputed name is a common word, a complainant has a heightened burden to demonstrate that its trademark, necessarily narrower than the primary meaning of the word itself, was the reason why the respondent acquired the disputed domain name.

The Complainant has failed to show that the Respondent’s acquisition of a dictionary word and common surname for general public sale is in any way illegitimate merely because the Complainant is one of countless end users who might wish to use it.

For almost 30 years, the disputed domain name has been owned and used by Mr. Young from Colorado. The Complainant has long known it might never obtain control of the disputed domain name.

No one looking for skin anti-aging serum is going to be somehow “misled” into thinking a domain name for sale page is the Complainant’s website.

When contacted by the Respondent’s broker, the Complainant did not make any assertion of entitlement to the disputed domain name or put the Respondent on notice of the Complainant’s trademark rights.

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the 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.

The onus of proving these elements is on the Complainant.

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“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.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Respondent does not contest the first element of the Policy.

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

B. Rights or Legitimate Interests

In view of the findings made below in respect of the third element of the Policy, the Panel does not need to decide whether the second element of the Policy has been met.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy provides that the Complainant must establish that the Respondent registered and subsequently used the disputed domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant. *Instagram, LLC v. Domains By Proxy, LLC / Masud Rana, D-limit Ltd*, WIPO Case No. [D2022-0250](#).

The Complainant appears to rely upon several of the circumstances set out in paragraph 4(b) of the Policy to demonstrate registration and use of the disputed domain name in bad faith.

The Complainant states that the Complainant's YOUNG trademark is well-known and that the disputed domain name is identical to the YOUNG trademark. The Complainant asserts that the Respondent selected the disputed domain name "at least to disrupt the business of Complainant and/or to attract internet users to its website by creating a likelihood of confusion with Complainant's YOUNG Mark. It is not possible to conceive of any use of the Disputed Domain Name that would not constitute an infringement of Complainant's rights in the YOUNG Mark." For support of its argument, the Complainant cites UDRP cases from 2000 and 2001 relating to famous marks such as "Barbie", "Telstra", and "Veuve Cliquot".

In the Panel's view, the Complainant's YOUNG trademark is not well-known to the public at large. It may be well-known to the Complainant's target customer base (dermatologists and plastic surgeons), but the Respondent is not a dermatologist or plastic surgeon. The Complainant provided no evidence to support its assertions that the Complainant's YOUNG trademark is well-known. The Complainant provided no evidence that would suggest that a person in China (where the Respondent is located) should have been aware of the Complainant or its YOUNG trademark.

An asserting party needs to establish that it is more likely than not that the claimed fact is true. An asserting party cannot meet its burden by simply making conclusory statements unsupported by evidence. To allow a party to merely make factual claims without any supporting evidence would essentially eviscerate the requirements of the Policy as both complainants and respondents could simply claim anything without any proof. For this reason, UDRP panels have generally dismissed factual allegations that are not supported by any bona fide documentary or other credible evidence. *Snowflake, Inc. v. Ezra Silverman*, WIPO Case No. [DIO2020-0007](#); *Captain Fin Co. LLC v. Private Registration, NameBrightPrivacy.com / Adam Grunweg*, WIPO Case No. [D2021-3279](#).

To rebut the Complainant's arguments, the Respondent provides a signed declaration. The Respondent stated that he currently focuses his domain name business on purchasing "high value" domain names that are not currently for sale. The Respondent states: "I believe a domain name has 'high value' if it is a word or phrase that can be used by many different parties for many different purposes. I believe it would be a poor investment strategy to buy domain names that are only suitable for one potential buyer, because it would limit the market to only what that buyer is willing to pay. Instead, I seek to purchase and sell domain names that have appeal to as wide a market as possible." The Respondent's statement is believable and is supported by example domain names he has acquired and sold, together with the sample outbound purchase offers which he listed.

The Respondent also states that he had not heard of the Complainant when he purchased the disputed domain name. He says: "It is not possible for me to have acquired the Young.com domain name in September 2023 for the purpose of selling it to Young Pharmaceuticals because I did not know who they were at that time." Based on the materials before the Panel, this statement is believable. For example, the Complainant did not instruct Mr. Harbin to market the disputed domain name to the Complainant or to any other entity; it was Mr. Harbin's decision to contact the Complainant and the other potential buyers. While there may be circumstances in which such attempts to reach a trademark owner who is a potential buyer would support an inference that brand owner is being targeted, as discussed herein, that is not the situation here, and the fact that the mark is also comprised of a dictionary word makes the complainant's case more difficult.

Contrary to the Complainant's assertions that it is not possible to conceive of any use of the disputed domain name that would not constitute an infringement of the Complainant's rights, the Response sets out plausible examples of potential good faith uses of the disputed domain name. For example, "Young" is a very common surname. Indeed, the original owner of the disputed domain name, Mr. Young from Colorado, used the disputed domain name for almost three decades in a way that did not infringe the Complainant's rights. The Respondent states that there have been 15 decisions under the Policy that involve domain names that include "young", none of which involve the Complainant. The Response sets out five United States trademark registrations for YOUNG that are not owned by the Complainant.

In short, there is no evidence presented by the Complainant that the Respondent had the Complainant in mind when he acquired the disputed domain name from the previous registrant. The evidence is to the contrary.

The Complainant also asserts that the Respondent is intentionally attempting to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with Complainant's YOUNG trademark. The Complainant states that the disputed domain name "is a parked website used for cybersquatting purposes with bad faith intent to resell the disputed domain at substantial profit." The Complainant's argument here appears to be based on three factors: (a) the fame of the Complainant's YOUNG trademark, (b) the disputed domain name was acquired by the Respondent for the sole purpose of reselling the disputed domain name for substantial profit; and (c) the Respondent owns over 6,000 domain names and thus is "cybersquatting on a gigantic scale".

Based upon the Respondent's domain name portfolio that has been disclosed, there is no evidence that the Respondent is a cybersquatter. There is evidence that the Respondent invests in non-trademark, dictionary word or initialism domain names for resale at a profit, which can be regarded as a legitimate business in the absence (as here) of any circumstances allowing a reasonable inference of cybersquatting intent to be made. Owning a large portfolio of domain names is not bad faith per se. Dealing in domain names in the secondary market is a legitimate trading activity. A domain name investor usually has the intention of reselling domain names at a price in excess of the purchase price. Trying to make a profit by reselling domain names also is not bad faith per se. *Calmino group AB v. Domain Administrator, DomainMarket.com*, WIPO Case No. [D2024-1579](#); *Sage Global Services Limited v. Narendra Ghimire, Deep Vision Architects*, WIPO Case No. [DAI2023-0010](#).

There is no evidence that the Complainant was singled out as the "real" target of the Respondent. The Respondent cites *Royal Caribbean Cruises, Ltd. v. James Booth, BQDN.com*, WIPO Case No. [D2019-1042](#) to illustrate the point that a direct approach from a broker does not automatically demonstrate targeting in and of itself. The Panel agrees. In that case, the Panel stated:

"... the Panel accepts that the Respondent more probably than not acquired the disputed domain name due to its value as a short, ubiquitous and memorable three-letter string which would be attractive to a wide variety of existing and potential entrants to the marketplace rather than in a bad faith attempt to target one specific rights owner in the form of the Complainant. To a considerable degree, this turns on the limited extent of the uniqueness and fame or well-known nature of the initialism contended for by the Complainant when compared with other actual or possible uses.

... approaches to potentially interested parties to purchase a domain name which has been registered without intent to target a particular rights owner do not automatically constitute registration and use in bad faith in terms of the Policy...”

The evidence in the case file as presented does not support Complainant’s case.

The Panel finds the third element of the Policy has not been established.

D. Reverse Domain Name Hijacking

Paragraph 15(e) of the Rules provides that, if after considering the submissions, the Panel finds that the Complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or to harass the domain-name holder, the Panel shall declare in its decision that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding. The mere lack of success of the complaint is not, on its own, sufficient to constitute reverse domain name hijacking. [WIPO Overview 3.0](#), section 4.16.

This dispute involved a domain name that is a dictionary word and common surname. In the circumstances, one would expect that the Complainant would have provided substantial evidence of both the fame of its trademark and the bad faith conduct of the Respondent. Instead, the Complainant relies upon older outdated cases, and those in which the fame of the trademark concerned was established and makes exaggerated arguments. For example, to say that the Respondent selected the disputed domain name “at least to disrupt the business of Complainant” is a statement not supported by any evidence, and to assert that it is not possible to conceive any legitimate use of the disputed domain name is simply nonsense.

The Panel could list several submissions and assertions made by the Complainant which are not borne out by any reasonable interpretation of the evidence that the Complainant had to hand when the Complainant filed the Complaint.

Further, the Complainant withheld from the Complaint the correspondence involving the Complainant’s legal counsel’s complaint to the Registrar and Mr. Harbin’s very appropriate response. It appears that the Complainant decided to string Mr. Harbin along for a time as to a potential purchase of the disputed domain name, while its legal counsel had already asserted that the disputed domain name violated a trademark without either disclosing the client for whom they were acting or specifying the trademark concerned.

Based on the evidence presented in the Complaint, the Complainant and its legal counsel should have known that the Complaint had no reasonable prospects of success.

The Panel finds that the Complaint was brought in bad faith and is an abuse of the administrative proceeding.

7. Decision

For the foregoing reasons, the Complaint is denied. Moreover, the Panel finds that the Complaint has been brought in bad faith and constitutes an attempt at Reverse Domain Name Hijacking.

/John Swinson

John Swinson

Presiding Panelist

/Phillip V. Marano/

Phillip V. Marano

Panelist

/Andrew D. S. Lothian/

Andrew D. S. Lothian

Panelist

Date: July 11, 2024