

## ADMINISTRATIVE PANEL DECISION

Walgreen Co. v. 钱梦聃 (Meng Dan Qian)

Case No. D2023-1193

### 1. The Parties

The Complainant is Walgreen Co., United States of America (“United States” or “U.S.”), represented by Winterfeldt IP Group PLLC, United States.

The Respondent is 钱梦聃 (Meng Dan Qian), China.

### 2. The Domain Name and Registrar

The disputed domain name <walgreensvaccineschedule.com> is registered with Cloud Yuqu LLC (the “Registrar”).

### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on March 16, 2023. On March 17, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 18, 2023, 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 (Redacted For Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 24, 2023, 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 in English on March 29, 2023.

On March 24, 2023, 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 27, 2023, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

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 in English and Chinese of the Complaint, and the proceedings commenced on April 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 3, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 4, 2023.

The Center appointed Karen Fong as the sole panelist in this matter on August 31, 2023. 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 operates one of the largest retail pharmacy chains in the United States, with approximately 9,000 retail stores across the country. Its history dates back at least as far as 1901, when Charles R. Walgreen Sr. purchased the Chicago drugstore where he worked as a pharmacist, and that started the Walgreen chain. The Complainant now employs more than 240,000 people, including over 85,000 healthcare service providers such as pharmacists, pharmacy technicians, nurse practitioners and other health-related professionals. The Complainant filled 1.2 billion prescriptions, including immunizations, on a 30-day adjusted basis, in its 2021 fiscal year. Approximately 9 million customers interact with Walgreens online and in Walgreens stores daily, and nearly 80% of the U.S. population lives within 5 miles of a Walgreens store. Walgreens is ranked the 49th most valuable U.S. brand by Brand Finance in 2022.

The Complainant provides pharmacy and healthcare-related services through its retail drugstore, including prescription medicine refills, on-site pharmacy services, vaccinations and immunisations.

The Complainant and its holding company own numerous WALGREENS trade mark registrations all over the world including the following:

- Chinese Trade Mark Registration No. 1448757 dated September 21, 2000;
- Chinese Trade Mark Registration No. 6997485 dated April 28, 2014; and
- United States Trade Mark Registration No. 1057249 dated January 25, 1997;

(together, individually and collectively referred to as the "Trade Mark").

The Respondent appears to be based in China. The disputed domain name was registered on October 13, 2022. The disputed domain name resolves to pay-per-click ("PPC") webpage with link headings such as: "Booster Shot Moderna", "Vaccine Clinic Nearby", "Counselling Near Me that Takes Insurance (the "Website"). These links resolve to third party websites.

#### **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 disputed domain name is confusingly similar to the Trade Mark, that the Respondent has no rights or legitimate interests with respect to the disputed domain name, and that the disputed domain name was registered and is being used in bad faith. The Complainant requests transfer of the disputed domain name.

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

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

## 6. Discussion and Findings

### 6.1 Preliminary Issue: 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 the following reasons:

- The disputed domain name uses English characters, English words and the Website is in English, demonstrating that the Respondent is able to communicate in English;
- Requiring the Complainant to have to translate the Complaint would incur additional expenses and delay enforcement against the Respondent; and
- There are examples of many other UDRP decisions involving the Registrar which are in English.

The Respondent has not challenged the Complainant's language request and in fact has failed to file a response in either English or Chinese

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.

### 6.2 Substantive Issues

#### 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 trade mark and the disputed domain name. [WIPO Overview 3.0](#), Section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

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

While the addition of other terms here, "vaccine" and "schedule" may bear on assessment of the second and third elements, the Panel finds the addition of such 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.

Based on the available record, 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.

While 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 often impossible 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. 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.

The composition of the disputed domain name carries a risk of implied affiliation (see [WIPO Overview 3.0](#), Section 2.5.1). Having reviewed the 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.

Based on the available record, 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 Respondent must have been aware of the Trade Mark when he registered the disputed domain name given that the Trade Mark was registered and used long before the registration of the disputed domain name and the reputation of the Trade Mark; moreover the disputed domain name is the Complainant’s famous mark plus two terms in its industry – removing any doubt the Complainant was being targeted in bad faith. The fact that the PPC link headings are of pharmacy related activities demonstrates the Respondent’s knowledge of the Trade Mark.

It is therefore implausible that the Respondent was unaware of the Complainant when he registered the disputed domain name.

In the [WIPO Overview 3.0](#), section 3.2.2 states as follows:

“Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant’s mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant’s mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent’s claim not to have been aware of the complainant’s mark.”

The fact that there is a clear absence of rights or legitimate interests coupled with the Respondent’s choice of the disputed domain name without any explanation is also a significant factor to consider (as stated in [WIPO Overview 3.0](#), section 3.2.1). The disputed domain name falls into the category stated above and the Panel finds that registration is in bad faith.

The Panel also finds that the actual use of the inherently misleading disputed domain name is in bad faith. The Website is a PPC site which has been set up for the commercial benefit of the Respondent. It is highly likely that Internet users when typing the disputed domain name into their browser, or finding them through a search engine would have been looking for a site operated by the Complainant rather than the Respondent.

The disputed domain name is likely to confuse Internet users trying to find the Complainant's website. Such confusion may inevitably result due to the fact that the disputed domain name contains the Complainant's distinctive Trade Mark as the dominant part of the trade mark and additional words in the disputed domain name relate to the Complainant's activities.

The Respondent employs the reputation of the Trade Mark to mislead users into visiting the disputed domain name instead of the Complainant's. From the above, the Panel concludes that the Respondent intentionally attempted to attract for commercial gain, by misleading Internet users into believing that the Respondent's Website is that of or authorised or endorsed by the Complainant, and diverting the Internet users to the third party websites. The Panel therefore concludes that the disputed domain name was registered and is being used in bad faith under paragraph 4(b)(iv) 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 <walgreensvaccineschedule.com> be transferred to the Complainant.

*/Karen Fong/*

**Karen Fong**

Sole Panelist

Date: September 22, 2023