ARBITRATION
AND
MEDIATION CENTER

WIPO
WORLD
INTELLECTUAL PROPERTY
ORGANIZATION

ADMINISTRATIVE PANEL DECISION
Aerogen Ltd. v. 深圳梵活生命科学股份有限公司 (Shen Zhen Fan Huo Sheng Ming Ke Xue Gu Fen You Xian Gong Si)
Case No. D2025-1296

1. The Parties

The Complainant is Aerogen Ltd., Ireland, represented by Eversheds Sutherland (Germany) Rechtsanwälte Steuerberater Solicitors Partnerschaft mbB, Germany.

The Respondent is 深圳梵活生命科学股份有限公司 (Shen Zhen Fan Huo Sheng Ming Ke Xue Gu Fen You Xian Gong Si), China.

2. The Domain Name and Registrar

The disputed domain name <air-icu.com> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on March 31, 2025. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 1, 2025, 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 (Feellife Health Inc./深圳梵活生命科学股份有限公司) and contact information in the Complaint. The Center sent an email communication to the Complainant on the same day, 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 amendment to the Complaint in English on April 4, 2025.

On April 1, 2025, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the disputed domain name is Chinese. On April 4, 2025, the Complainant requested that English be the language of the proceeding. The Respondent did not submit any 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 the Respondent in Chinese and English of the Complaint, and the proceedings commenced on April 9, 2025. In accordance with the Rules, paragraph 5, the due date for Response was April 29, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 2, 2025.

The Center appointed Matthew Kennedy as the sole panelist in this matter on May 6, 2025. 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.

On May 9, 2025, the Center received an email communication in Spanish from a law firm seeking details of the case on behalf of a client. On the same day, the Center sent an email in reply, inviting the Respondent or the law firm to clarify the relationship between them. On the same day, the Center received an email communication in Chinese, ostensibly from the Respondent, confirming receipt of the notification of Complaint and asking what to do. On May 10, 2025, the Center received emails in English from multiple email addresses, including the Respondent's contact email address, requesting an extension of the due date for Response. On May 12, 2025, the Center received a follow-up email communication in English. On May 12, 2025, the Center received an email communication in English from the Complainant, opposing an extension of the due date for Response. On the same day, the Center sent emails in reply acknowledging receipt of all communications. On May 13, 2025, the Center received another email in English from the address associated with the Respondent, claiming legitimate use of the disputed domain name.

4. Factual Background

The Complainant produces vibrating mesh nebulizer technology for aerosol drug delivery. Its parent company, Stamford Devices Limited, holds the following trademark registrations:

- United Kingdom trademark registration number UK0003861650 for AERICU (shown as "AerICU"), registered on March 17, 2023, specifying goods in class 10, including nebulizers; and

- European Union trademark registration number 018815357 for AERICU (shown as "AerICU"), registered on May 11, 2023, specifying goods in class 10, including nebulizers.

The above trademark registrations are current. The Complainant holds an exclusive license from its parent company to use its trademarks, including AERICU. The Complainant uses the domain name <aerogen.com> in connection with a website in multiple languages, including English and Chinese, where it provides information about itself and its Aerogen-branded products. The homepage prominently displays the Aerogen name, the tagline "Aerogen is a world leader in acute care aerosol drug delivery", two hyperlinks, an animation of lungs filling with air, and a navigation bar.

The Respondent is a company based in Shenzhen, China. Its name may be translated as "Shenzhen Fanhuo Life Sciences Co., Ltd." The Respondent's email address uses the domain name <feellife.com>.

The disputed domain name was registered on November 16, 2023. It resolves to a website in English and Chinese offering for sale aerosol drug delivery products. The homepage prominently displays "AirICU", the tagline "AirICU Acute Care - Aerosol Drug Delivery", two hyperlinks, an animation of lungs filling with air, and a navigation bar. Other pages on the website resemble the content and layout of the Complainant's website, while certain diagrams are identical to those on the Complainant's website.

According to the website associated with the disputed domain name, "AirICU belongs to the feellife group, a healthcare company". According to evidence presented by the Complainant, Feellife Health Inc., based in Shenzhen, China, holds European Union trademark registration number 018960716 for a semi-figurative AIRICU mark (registered as "AirICU"), registered on March 20, 2024 (application filed December 7, 2023), specifying goods in class 10, including nebulizers. That registration is subject to a cancellation proceeding, at the request of the Complainant. A search in the TM View database shows that Feellife Health Inc. holds registrations for the same mark in other jurisdictions as well, namely United Kingdom trademark registration

number UK00003988545 registered on March 8, 2024 (application filed December 7, 2023), and United States of America ("United States") trademark registration number 7639477, registered on January 7, 2025 (application filed December 9, 2023), both specifying goods in class 10, including nebulizers. Those trademark registrations are current.[1] Evidence presented by the Complainant also shows that Feellife Health Inc. has a facility in the United States where it produces AirICU medical devices and that it has made filings with the United States Food and Drug Administration.

According to information provided by the Complainant, on April 25, 2025, a court in Germany (the Landgericht Düsseldorf) granted the Complainant and another party an interim injunction in a summary proceeding against Feellife Health Inc. and another party. The court order inter alia enjoins Feellife Health Inc. from using the sign AirICU in the course of trade in Germany, for reasons of trademark infringement.

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 itself, its products, and its trademarks are well known. The disputed domain name is identical, or at least highly confusingly similar, to its AERICU marks. The disputed domain name takes unfair advantage of the reputation of the AERICU marks of the Complainant.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has neither authorized the use of the term "AerICU" nor the use of its AERICU marks to the Respondent. The website associated with the disputed domain name is a blatant copy of the Complainant's website and the products offered are identical to the Complainant's. The European Union-registered trademark AIRICU was only created to exploit the Complainant's AERICU trademark.

The disputed domain name has been registered and is being used in bad faith. The Complainant's AERICU trademark registration predates the disputed domain name. The associated website showcases identical products and blatantly copies the Complainant's website. The associated website seems to pretend to advertise, sell, and offer for sale the Complainant's original AerICU medical products. The Respondent uses the well-known AERICU marks, the identical term "AirICU" on the website for identical goods.

B. Respondent

On May 10, 2025, the Center received emails in English from multiple email addresses, including the Respondent's contact email address, requesting an extension of the due date for Response. On May 13, 2025, the Center received another email in English from the address associated with the Respondent, indicating: "Regarding the domain name dispute, we currently reserve the right to file a counter-suit against the plaintiff. The original trademark "AirICU" belongs to feellife health Inc. and was widely used"

[1] The Panel notes its general powers articulated inter alia in paragraphs 10 and 12 of the Rules and has conducted a basic search for "AirICU" in the publicly available TM View database at https://www.tmdn.org/tmview/#/tmview to evaluate the Complainant's submission regarding that trademark. The Panel considers this process of evaluation useful in assessing the case merits and reaching a decision. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 4.8.

6. Discussion and Findings

6.1 Preliminary Issues

A. 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 and amendment to the Complaint were filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including that the Respondent is fully able to understand and communicate in English as he works for a company located in the United States; the disputed domain name only uses English terms; the whole content of the website associated with the disputed domain name is in English; conducting the proceeding in Chinese would be unfair to the Complainant and lead to unwarranted delay; the homepage of the Respondent's company's website is in English.

The Respondent did not make any submission with respect to the language of the proceeding but sent most of its email communications to the Center in English.

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 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.

B. Request for Extension of Due Date for the Response

On May 10, 2025, the Center received an email communication from the Respondent, requesting an extension of the due date for Response. The request alleged that as the registration, management, technical and billing contact email addresses to which the notification of the Complaint had been sent were all the same, this resulted in a failure to check the email information in time and failure to collect materials for the Response in time.

On May 12, 2025, the Complainant opposed the request for an extension of time on the grounds that (i) the request was sent from an email address that differed from the Respondent's contact email address verified by the Registrar; and (ii) there are no exceptional circumstances present that would justify an extension of time, particularly since the Respondent has copied a legal representative on its email communications.

The Panel notes that the request for an extension of the due date for Response was sent from multiple email addresses, one of which was the Respondent's verified contact email address in the Registrar's WhoIs database, and others of which were copied to that verified contact email address. The emails appear to have been sent by a colleague of the Respondent's contact person; they use the same domain name (<feellife.com>) and they attach a copy of the certification of registration for the disputed domain name. Accordingly, the Panel finds that the request for an extension was made by the Respondent.

Paragraph 10(b) and (c) of the Rules require the Panel to ensure that "each Party is given a fair opportunity to present its case" and that "the administrative proceeding takes place with due expedition". The Center served the notification of Complaint on the Respondent in accordance with paragraph 2(a) of the Rules, both at the Respondent's verified contact address and also at postmaster@air-icu.com, an address from which the Respondent has since sent email communications. The Parties are currently involved in parallel litigation and the Respondent is responsible for monitoring its own mailbox. The Respondent did not make its request

for an extension until one month after the commencement of the proceeding and four days after the appointment of the Panel. In view of these circumstances, the Panel finds that the Respondent was given a fair opportunity to present its case and that an extension of the due date for Response would create an unwarranted delay. Accordingly, the request for an extension is declined and the Panel maintains the due date for the Decision.

6.2 Substantive Issues

Paragraph 4(a) of the Policy provides that a complainant must demonstrate each of the following elements:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

(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 burden of proof of each element is borne by 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. See WIPO Overview 3.0, section 1.7.

The Complainant has shown rights in respect of an AERICU trademark for the purposes of the Policy. See WIPO Overview 3.0, section 1.2.1.

The mark is reproduced within the disputed domain name, except that an "i" is substituted for the "e" and a hyphen is added in the middle before "ICU" (the acronym for "Intensive Care Unit"). Despite these differences in spelling and punctuation, the disputed domain name is aurally identical or near-identical to the mark. The only additional element in the disputed domain name is a generic Top-Level Domain extension (".com") which, as a standard requirement of domain name registration, may be disregarded in the assessment of confusing similarity. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. See WIPO Overview 3.0, section 1.7.

Therefore, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests, Bad Faith, and the Scope of the Policy

In the present case, the disputed domain name resolves to a website offering for sale acute care aerosol drug delivery products. The website homepage prominently displays an AirICU brand in connection with those products. The website indicates that its operator is part of the Feellife group and the Complainant confirms that Feellife Health Inc. holds a European Union trademark registration for AIRICU. That trademark registration is currently valid, although subject to a cancellation proceeding at the request of the Complainant. The Panel notes that Feellife Health Inc. also holds registrations for the same mark in the United Kingdom and the United States that are not subject to any pending cancellation proceedings.

The Panel considers that a respondent's trademark rights would ordinarily support a finding that it has rights or legitimate interests in the disputed domain name. See WIPO Overview 3.0, section 2.12.1. At the same time, trademark rights do not automatically confer rights or legitimate interests on a respondent for the purposes of the Policy where, for example, the overall circumstances demonstrate that the trademark was obtained primarily to circumvent the application of the Policy or otherwise to prevent the Complainant's exercise of its rights. See WIPO Overview 3.0, section 2.12.2.

In the present case, the Panel proceeds on the assumption that the Respondent and the registered proprietor of the AIRICU trademark (i.e., Feellife Health Inc.) are related companies and that the Respondent is licensed to use that trademark. The disputed domain name differs from that trademark only in the addition of a hyphen between the word "air" and the acronym "ICU". The trademark is used on the associated website and on the products of Feellife Health Inc. in the form in which it is registered (without a hyphen). The applications for the AIRICU trademarks were filed in December 2023, almost one month after the registration of the disputed domain name. The registrations are valid in certain jurisdictions to which the website is directed, including the United States where Feellife Health Inc. appears to have a production facility, and the registrations specify goods of the type offered for sale on the Respondent's website, such as nebulizers.

The Complainant provides evidence showing a high degree of similarity between the Respondent's website and its own. The products offered for sale are the same (i.e., acute care aerosol drug delivery products). The websites' content and layout are very similar, including the animations on the homepage of lungs filling with air, and certain diagrams are identical. These similarities and commonalities cannot be coincidental.

Nevertheless, the Respondent's website does not imitate the brand shown on the Complainant's website. Despite the Complainant's allegation that the Respondent's website pretends to offer "the Complainant's original AerICU medical products", nothing on the record indicates that the Complainant has ever marketed products under that brand. Rather, the Complainant's website displays an Aerogen brand and does not appear to display a single instance of its registered AERICU mark. Nor does the Complainant's domain name (<aerogen.com>) incorporate the registered AERICU mark. The Respondent's website uses an AirICU brand that is distinguishable from Aerogen and corresponds to Feellife Health Inc.'s AIRICU registered trademark.

The Panel also notes that in parallel with this UDRP proceeding, a German court has granted an interim injunction in a summary proceeding against Feellife Health Inc., enjoining it from using the sign AirICU in the course of trade in Germany.

In view of the above circumstances, this is not a typical cybersquatting dispute. The Panel recalls that it is not a general domain name court and that the Policy is not designed to adjudicate all disputes of any kind that relate in any way to domain names. Rather, the Policy establishes a streamlined, inexpensive administrative dispute resolution procedure intended only for the relatively narrow class of cases of "abusive cybersquatting". The UDRP is not an appropriate procedure to adjudicate a complex trademark and unfair competition dispute such as this one, where the Panel does not have the benefit of witness testimony, disclosure of documents, or the other appropriate instruments that are typically available to assist a court to resolve a dispute between the Parties.

Therefore, the Panel has decided to deny the Complaint, not on the merits, but on the broader ground that the case regarding the disputed domain name is part of a wider, more complex trademark and unfair competition dispute between the Parties that exceeds the scope of the UDRP. The wider dispute can be addressed by a court of competent jurisdiction. See WIPO Overview 3.0, section 4.14.6.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Matthew Kennedy/
Matthew Kennedy
Sole Panelist
Date: May 12, 2025