

ADMINISTRATIVE PANEL DECISION

Elanco Animal Health Inc. v. 刘国萍, 王铁柱 (wang tie zhu)

Case No. DCN2023-0035

1. The Parties

The Complainant is Elanco Animal Health Inc., United States of America (“United States”), represented by Corsearch, Inc., United States.

The Respondents are 刘国萍, China, and 王铁柱 (wang tie zhu), China.

2. The Domain Names and Registrars

The disputed domain name <seresto.net.cn> is registered with 成都西维数码科技有限公司; and the disputed domain name <serest0.com.cn> is registered with 北京新网数码信息技术有限公司 (the “Registrars”).

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 17, 2023. On May 19, 2023, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On May 22, 2023, the Registrars transmitted by email to the Center the verification responses, confirming that the Respondents are listed as the registrants and providing the contact details. The Center sent an email communication to the Complainant on May 25, 2023 regarding potential consolidation of the Respondents and the language of the proceeding, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint in English on May 30, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the China ccTLD Dispute Resolution Policy (the “Policy”), the China ccTLD Dispute Resolution Policy Rules (the “Rules”), and the WIPO Supplemental Rules for China ccTLD Dispute Resolution Policy and China ccTLD Dispute Resolution Policy Rules (the “WIPO Supplemental Rules”).

In accordance with the Rules, Articles 5 and 6, and Articles 14 to 16, and the WIPO Supplemental Rules, Paragraph 4(d), the Center formally notified the Respondents in English and Chinese of the Complaint and the proceeding commenced on June 1, 2023. In accordance with the Rules, Article 17 and 49, the due date for Response was June 21, 2023. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on June 23, 2023.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on July 5, 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, Article 29.

4. Factual Background

A. Complainant

The Complainant is a company established in 1954 and headquartered in the State of Indiana in the United States and a manufacturer of medicines and vaccinations for pets and livestock. The Complainant's wholly owned subsidiary, Bayer Animal Health GmbH, produces and sells worldwide (including in China) insecticides for pets under the trade mark SERESTO (the "Trade Mark"); and is the owner of several registrations for the Trade Mark, including International registration No. 1063282 for (designation including China), registered on December 6, 2010.

B. Respondents

The Respondents are located in China.

C. The Disputed Domain Names

The disputed domain names were registered on May 15, 2022 and May 29, 2022, respectively.

D. The Website at the Disputed Domain Names

The disputed domain names were previously resolved to the same English language website, featuring prominently the Trade Mark as well as the Complainant's logo, and purporting to offer product verification services by inviting consumers to scan the QR code on the Complainant's products.

As at the date of this Decision, the disputed domain names are no longer resolved to an active website.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain names are confusingly similar to the Trade Marks, the Respondents have no rights or legitimate interests in respect of the disputed domain names, and the disputed domain names were registered and are being used in bad faith.

B. Respondents

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

6. Discussion and Findings

6.1. Preliminary Issue: Consolidation of Respondents

Pursuant to Article 13 of the Rules "[t]he complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder".

In order to satisfy this requirement, the Complainant must demonstrate that the named Respondents are, in fact, the same person or entity and/or that the disputed domain names are under common control.

The Complainant contends that there should be consolidation of the Respondents, for the following reasons:

- (i) the Respondents use an identical email address [...]@126.com for both of the disputed domain names;
- (ii) the Respondents have used the same email address to register other domain names nominally under the same separate names as the Respondents herein, 刘国萍 and 王铁柱;
- (iii) the disputed domain names previously resolved to the same, identical Website; and
- (iv) the disputed domain names were registered in May 2022, only 14 days apart.

For the above reasons put forward by the Complainant, the Panel concludes that there are sufficient grounds to support the conclusion that the disputed domain names are subject to common control and that consolidation would be fair and equitable to all Parties. The Panel notes also that none of the Respondents has objected to the Complainant's consolidation request.

The Respondents will accordingly be referred to as the "Respondent" hereinafter.

6.2. Preliminary Issue: Language of the Proceeding

Pursuant to Article 6 of the Policy and Article 8 of the Rules, unless otherwise agreed by the parties or determined in exceptional cases by the Panel, the language of the domain name dispute resolution proceeding shall be Chinese.

No agreement has been entered into between the Complainant and the Respondent to the effect that the language of the proceeding should be English.

Article 31 of the Rules provides the Panel with a broad discretion with respect to the conduct of the proceeding. It is important to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes.

The Complainant has requested that the language of the proceeding be English, for the following reasons:

- (i) the disputed domain names are identical to the Trade Mark;
- (ii) the Website is entirely in English (with no words in Chinese);
- (iii) the Respondent has registered other domain names containing English language trade marks belonging to United States companies such as NBA (National Basketball Association) and MLB (Major League Baseball);
- (iv) Chinese as the language of the proceeding could lead to unwarranted delays and costs for the Complainant; and
- (v) the evidence shows that the Respondent has a level of familiarity with and knowledge of the English language, and that the Respondent appears to be able to understand and communicate in English.

The Respondent did not make any submissions regarding the language of the proceeding, and did not file any response in either Chinese or English, after the Respondent had been duly notified in both Chinese and English of the language of the proceeding, and the Complaint.

In exercising its discretion to use a language other than Chinese, 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.

The Panel finds there is sufficient evidence in support of the conclusion that the Respondent is conversant in English.

The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner.

Having considered all the matters above, the Panel determines that the language of the proceeding shall be English.

6.3. Substantive Elements of the Policy

The Complainant must prove each of the following three elements under Article 8 of the Policy in order to prevail:

- (i) the disputed domain names are identical with or confusingly similar to the Complainant's name or mark in which the Complainant has civil rights or interests; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names or major part of the disputed domain names; and
- (iii) the Respondent has registered or has been using the disputed domain names in bad faith.

A. Identical or Confusingly Similar to the Complainant's name or mark in which the Complainant has civil rights or interests

The Panel finds that the Complainant has civil rights and interests in the Trade Mark.

Disregarding the country code Top-Level Domain, the disputed domain name <seresto.net.cn> is identical to the Trade Mark; and the disputed domain name <serest0.com.cn> consists of a common, obvious, or intentional misspelling of the Trade Mark.

The Panel therefore finds that the disputed domain names are identical or confusingly similar to the Complainant's Trade Mark.

B. Rights or Legitimate Interests

Article 10 of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a disputed domain name:

- (i) the Respondent uses of the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name, even if he has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent of or commercial gain to misleadingly divert consumers.

In the present proceeding, there is no evidence that the Complainant has authorised, licensed, or permitted the Respondent to register or use the disputed domain names or to use the Trade Mark. The Complainant

has prior rights in the Trade Mark, which precede the Respondent's registration of the disputed domain names. There is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain names, and the burden is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that he has acquired any trade mark rights in respect of the disputed domain names or that the disputed domain names are used in connection with a *bona fide* offering of goods or services. To the contrary, the disputed domain names were previously resolved to the same unauthorised Website, purporting to offer product verification services; and as at the date of this Decision, they are not being used.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain names.

There has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain names.

The Panel therefore finds that the Respondent has no rights or legitimate interests in the disputed domain names.

C. Registered or Used in Bad Faith

Article 9 of the Policy provides that any of the following circumstances may amount to evidence of bad faith:

"... (c) The disputed domain name holder has registered or acquired the domain name for the purpose of damaging the Complainant's reputation, disrupting the Complainant's normal business or creating confusion with the Complainant's name or mark so as to mislead the public;

(d) Other circumstances which may prove the bad faith."

In light of the global reputation of the Trade Mark, including in China, where the Respondent is based; the manner of use of the disputed domain names on the Website; and the subsequent non-use of the disputed domain names, the Panel finds the requisite element of bad faith has been satisfied under Articles 9(c) and (d) of the Policy.

The Panel therefore finds that the Respondent has registered and has been using the disputed domain names in bad faith.

7. Decision

For the foregoing reasons, in accordance Article 14 of the Policy and Article 40 of the Rules, the Panel orders that the disputed domain names <seresto.net.cn> and <serest0.com.cn> be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Dated: July 19, 2023