# Decision for dispute CAC-UDRP-103168

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| Case number | CAC-UDRP-103168 |
| Time of filing | 2020-07-13 11:25:05 |
| Domain names | wehealthlink.com |

## Case administrator

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| Organization | Iveta Špiclová (Czech Arbitration Court) (Case admin) |

## Complainant

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| Organization | BIOFARMA |
| Organization | LES LABORATOIRES SERVIER |

## Complainant representative

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| Organization | IP TWINS |

## Respondent

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| Name | Zhichao Yang |

OTHER LEGAL PROCEEDINGS

The Panel is not aware of other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainants are, inter alia, the owners of the following trademarks:

For BIOFARMA SAS :

• French trademark registration WEHEALTH Reg. No. 4280290, dated June 15, 2016, covering goods and services in international classes 5, 9, 10, 35, 36, 41, 42 and 44;

• International trademark registration WEHEALTH Reg. No. 1329611, dated October 5, 2016, covering goods and services in international classes 5, 9, 10 and 44, notably designating China, India and Russia

For LES LABORATOIRES SERVIER SAS:

• European Union trademark registration WEHEALTH BY SERVIER Reg. No. 015850548, dated September 20, 2016, covering

goods and services in international classes 5, 9, 10, 35, 36, 41, 42 and 44;

• French trademark registration WEHEALTH BY SERVIER Reg. No. 4300433, dated September 19, 2016, covering goods and services in international classes 5, 9, 10, 35, 36, 41, 42 and 44

• International trademark registration WEHEALTH BY SERVIER Reg. No. 1361896, dated November 11, 2016, covering goods and services in international classes 5, 9, 10 and 44, notably designating China, United States, India and Russia

The Complainant BIOFARMA is also the registrant of the domain names <wehealth.fr>, registered on June 8, 2016, and <wehealth.com>. Australian and Brazilian subsidiaries of the Complainants are also the registrants of the domain names <wehealthbyservier.com.au> and <wehealthbyservier.com.br>, both registered on November 14, 2016.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

Both Complainants are part of the Servier Group : the largest French pharmaceutical group on an independent level and the second largest pharmaceutical French group in the world. The group is active in 149 countries and employs more than 22,000 people throughout the world. 100 million patients are treated daily with Servier medicinal products and generics. WEHEALTH is a department of the Servier group that has been launched in 2016 and is focused on establishing and developing partnerships between the Servier Group and promising Startups in the domain of digital health.

The Complainants are, inter alia, the owners of the following trademarks:

The disputed domain name <wehealthlink.com> was registered on June 15, 2020. The disputed domain name resolves to a website featuring a parking page, listing commercial, automatically generated links.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

i) Both Complainants are part of the Servier Group: the largest French pharmaceutical group on an independent level and the second largest pharmaceutical French group in the world. The Complainant BIOFARMA SAS has rights in the WEHEALTH mark based on French trademark Reg. No.4280290, dated June 15, 2016 and International trademark Reg. No. 1329611, dated October 5, 2016, notably designating China, India and Russia. The Complainant LES LABORATOIRES SERVIER SAS has rights in the WEHEALTH BY SERVIER based on EUIPO trademark Reg. No. 015850548, dated September 20, 2016; French trademark Reg. No. 4300433, dated September 19, 2016; and International trademark Reg. No. 1361896, dated November 11, 2016, notably designating China, United States, India and Russia. The disputed domain name is confusingly similar to the Complainants' trademarks 'WEHEALTH' and 'WEHEALTH BY SERVIER' because each of them incorporates the Complainants' marks in its entirety with the addition of the descriptive term 'link.'

ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not commonly known by the disputed domain name which redirects towards a parking page, listing commercial, automatically generated links. The Complainants' researches did not reveal any element that would suggest that the Respondent could be known by "We health", "Wehealth" or "Wehealth Link". The Complainants' researches did not disclose any clue of preparation to use the disputed domain name in connection with a bona fide offering of goods or services. The Respondent has never been granted authorization, license or any right whatsoever to use the trademarks of the Complainants. The Respondent is

not commercially linked to the Complainants.

iii) The Respondent has registered and is using the disputed domain name in bad faith. The Servier Group is so widely well-known that it is very unlikely that the Respondent ignored the rights of the Complainants on the term WEHEALTH. The Respondent has registered the disputed domain name primarily for the purpose of selling it to the Complainants, owners of the trademarks WEHEALTH, for valuable consideration in excess of out-of-pocket costs directly related to the domain name. The current use of the disputed domain name also indicates an intention to attract, for commercial gain, Internet users to the webpage set by the Respondent, by creating a likelihood of confusion with the WEHEALTH mark. The high distinctiveness of WEHEALTH and "WEHEALTH by Servier" trademarks as well as their reputation and use on an international scale before the registration of the disputed domain name would qualify the Respondent as using the domain name in bad faith according to the Doctrine of Passive Holding, in the event the use for commercial gain would not be qualified.

RESPONDENT:

The Respondent did not submit a Response.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Paragraph 15(a) of the Rules for the UDRP ('the Policy') instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

(1) the domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
(2) Respondent has no rights or legitimate interests in respect of the domain name; and
(3) the domain name has been registered and is being used in bad faith.

In view of the Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory. See Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc., FA 95095 (Forum July 31, 2000) (holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); see also Talk City,

Inc. v. Robertson, D2000-0009 (WIPO February 29, 2000) (“In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.”).

Rights

The Complainants contend that BIOFARMA SAS has rights in the WEHEALTH mark based on French trademark Reg. No.4280290, dated June 15, 2016; and International trademark Reg. No. 1329611, dated October 5, 2016, notably designating China, India and Russia. The Complainants further contend that LES LABORATOIRES SERVIER SAS has rights in the WEHEALTH BY SERVIER based on EUIPO trademark Reg. No. 015850548, dated September 20, 2016; French trademark Reg. No. 4300433, dated September 19, 2016; International trademark Reg. No. 1361896, dated November 11, 2016, notably designating China, United States, India and Russia.

The Complainants have provided the Panel with each copy of the trademark registrations at issue. Registration of a mark with national and international trademark authorities sufficiently establishes the required rights in the mark for purposes of the Policy. As such, the Panel finds that the Complainants have established their rights in the marks ‘WEHEALTH’ and ‘WEHEALTH BY SERVIER’.

The Complainants further contend that the disputed domain name is confusingly similar to the Complainants’ trademarks ‘WEHEALTH’ and ‘WEHEALTH BY SERVIER’ because each of them incorporates the Complainants’ marks in its entirety with the addition of the descriptive term ‘link’.

The Panel agrees with the Complainants and notes that the addition of '.com' gTLD and a descriptive term is generally disregarded in the assessment under paragraph 4(a)(i) of the Policy when comparing disputed domain name and trademarks. Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainants’ trademarks ‘WEHEALTH’ and ‘WEHEALTH BY SERVIER’.

No rights or legitimate interests

The Complainant must first make a prima facie case that Respondent lacks rights and legitimate interests in the disputed domain name under Policy paragraph 4(a)(ii), then the burden shifts to Respondent to show it does have rights or legitimate interests. See Croatia Airlines d. d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455 (the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP). See also Advanced International Marketing Corporation v. AA-1 Corp, FA 780200 (Forum November 2, 2011) (finding that a complainant must offer some evidence to make its prima facie case and satisfy Policy paragraph 4(a)(ii)).

The Complainants contend that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not commonly known by the disputed domain name which redirects towards a parking page, listing commercial, automatically generated links. The Complainants have submitted a screen capture of the resolving website of the disputed domain name use. The Complainants’ researches did not reveal any element that would suggest that the Respondent could be known by “We health”, “Wehealth” or “Wehealth Link”. A search on the WIPO database did not bring any trademark registration containing WEHEALTH whose holder is established in China, while a search on Tmsearch.cn did not provide any valid WEHEALTH trademark record whose holder is established in the Anhui province. The Complainants’ researches did not disclose any clue of preparation to use the disputed domain name in connection with a bona fide offering of goods or services. The Respondent has never been granted authorization, license or any right whatsoever to use the trademarks of the Complainants. The Respondent is not commercially linked to the Complainants.

The Panel finds that the Complainants have made out a prima facie case that arises from the considerations above. All of these matters go to make out the prima facie case against the Respondent. As the Respondent has not filed a Response or attempted by any other means to rebut the prima facie case against it, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

Bad faith

Paragraph 4(b) of the Policy provides a non-exclusive list of circumstances that evidence registration and use of a domain name in bad faith. Any one of the following is sufficient to support a finding of bad faith:

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that the complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

The Complainants contend that the Respondent has registered and is using the disputed domain name in bad faith. The Complainants contend that the Servier Group is so widely well-known that it is very unlikely that the Respondent ignored the rights of the Complainants on the term WEHEALTH. The Complainants provide several press releases, communiqué or news articles relating to WEHEALTH and "WEHEALTH by Servier" prior to the disputed domain name registration, on an international level, including in China.

The Panel observes that while constructive knowledge is insufficient to support a finding of bad faith, actual knowledge can be used to demonstrate a respondent's bad faith registration and use. See Orbitz Worldwide, LLC v. Domain Librarian, FA 1535826 (Forum February 6, 2014) ("The Panel notes that although the UDRP does not recognize 'constructive notice' as sufficient grounds for finding bad faith per paragraph 4(a)(iii) of the Policy, the Panel here finds actual knowledge through the name used for the domain and the use made of it."). The Panel infers, due to the notoriety of the Complainants' marks and the manner of use of the disputed domain name by the Respondent that the Respondent had actual knowledge of the Complainant's rights in 'WEHEALTH' and 'WEHEALTH BY SERVIER' marks before the registration of the disputed domain name, which constitutes bad faith registration and use per paragraph 4(a)(iii) of the Policy.

The Complainants further contend that the Respondent currently redirects the disputed domain name towards a parking page displaying pay-per-click links. Considering the arbitrary nature and intense use of the WEHEALTH trademark, including in China where the Respondent is established, the Complainants contend that the current use of the disputed domain name qualify as bad faith use.

Using a confusingly similar domain name to commercially benefit via, pay-per-click links can evince bad faith registration and use per paragraph 4(b)(iv) of the Policy. See Tumblr, Inc. v. Ailing Liu, FA1402001543807 (Forum Mar. 24, 2014) ("Bad faith use and registration exists under paragraph 4(b)(iv) of the Policy where a respondent uses a confusingly similar domain name to resolve to a website featuring links and advertisements unrelated to complainant's business and respondent is likely collecting fees"); see also Vivint, Inc. v. Online Management, FA1403001549084 (Forum April 23, 2014) (holding that the respondent had registered and used the disputed domain name in bad faith according to Policy ¶ 4(b)(iv) where the disputed domain name resolved to a parking page that featured no content besides sponsored advertisements and links). The Complainants have provided screenshots of the resolving website of the disputed domain name which features a parking page, listing commercial, automatically generated links. Thus, the Panel finds that the Respondent registered and uses the disputed domain name in bad faith per paragraph 4(b)(iv) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **WEHEALTHLINK.COM**: Transferred

## PANELLISTS

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| Name | **Mr. Ho-Hyun Nahm, Esq.** |

DATE OF PANEL DECISION 2020-08-15

Publish the Decision