Decision for dispute CAC-UDRP-103338

Case number	CAC-UDRP-103338
Time of filing	2020-10-07 10:48:51
Domain names	wehealth.city, wehealth.life, wehealth.live

Case administrator

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

Complainant

Organization	BIOFARMA
Organization	LES LABORATOIRES SERVIER

Complainant representative

Organization	IP TWINS

Respondent

Organization	Ming Zhang

OTHER LEGAL PROCEEDINGS

The Panel is not informed of any other pending or decided legal proceedings relating to the disputed domain names.

IDENTIFICATION OF RIGHTS

The Complainants have provided evidence of being the owners of the following trademarks:

For BIOFARMA SAS:

• French Trademark registration WEHEALTH n° 4280290, dated June 15, 2016, covering products in international classes 5, 9, 10, 35, 36, 41, 42, and 44.

• International Trademark Registration WEHEALTH n° 1329611, dated October 5, 2016, covers products in international classes 5, 9, 10, and 44, notably designating China, India, Russia.

For LES LABORATOIRES SERVIER SAS:

• European Union Trademark registration WEHEALTH BY SERVIER n° 015850548, dated September 20, 2016, covering

products in international classes 5, 9, 10, 35, 36, 41, 42 and 44.

• French Trademark Registration WEHEALTH BY SERVIER n° 4300433, dated September 19, 2016, covering products in international classes 5, 9, 10, 35, 36, 41, 42 and 44.

• International Trademark Registration WEHEALTH BY SERVIER n° 1361896, dated November 11, 2016, covering products in international classes 5, 9, 10, and 44, notably designating China, United States, India, and Russia.

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 globally. The group is active in 149 countries and employs more than 22,000 people throughout the world. One hundred million patients are treated daily with Servier medicinal products and generics.

WEHEALTH is a department of the Servier group launched in 2016. It is focused on establishing and developing partnerships between the Servier Group and promising Startups in the domain of digital health. More information on WEHEALTH can be found on https://servier.com/.

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.

On the web, the Trademark WEHEALTH enjoys a dedicated website, accessible at the address https://www.wehealth-digitalmedicine.com.

The above-mentioned Trademark records and domain name registrations all predates the registrations of the disputed domain names by the Respondent.

PARTIES CONTENTIONS

COMPLAINANT

A. THE DOMAIN NAMES ARE IDENTICAL OR CONFUSINGLY SIMILAR

The disputed domain names are <wehealth.city>, <wehealth.live> and <wehealth.life>. The Complainants contend that the disputed domain names are either identical or confusingly similar to the Complainants registered Trademarks.

Indeed, the second levels of the disputed domain names, “wehealth”, are identical to Biofarma’s registered trademark WEHEALTH. The disputed domain names should also be considered as confusingly similar to the registered trademarks WEHEALTH BY SERVIER, as they are identical to the primary distinctive element of said Trademarks ("wehealth”), which is a fanciful term placed in attack position of the concerned trademark registrations.

Moreover, it is common case law within UDRP proceedings that the addition of gTLDs such as ".city", “.live” and “.life” are not significant in determining whether the disputed domain names are identical or confusingly similar to the mark.

The Complainants contend that the first requirement under paragraph 4(a) of the UDRP is satisfied.

B. RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTEREST IN RESPECT OF THE DOMAIN NAMES

The Respondent should be considered as having no rights or legitimate interests in respect of the disputed domain names for the following reasons:

Firstly, according to the Complainants' verifications, the Respondent is not commonly known by the disputed domain names, which all redirect towards error pages.

Screen captures of the disputed domain names use are provided as Annexes to this Complaint.

The Complainants' verification of Google and Baidu search engines did not allow us to find any element that would suggest that the Respondent could be known by "We health" or "Wehealth". The search results are provided as an Annex.

The Complainants performed verifications on WIPO's global brand database as well as the database tmsearch.cn, without finding any registered Trademark "wehealth" or "we health" held by the Respondent. The Complainants checked the transliteration of the Trademark owners' names published in Chinese characters on tmsearch.cn: none correspond to "Ming Zhang". The search results are provided as an Annex.

Secondly, the Complainants' research did not allow us to find any clue of preparation to use the disputed domain names connected with a bona fide offering of goods or services. The disputed domain names are currently not used on the web as per the Annexes.

Thirdly, the Respondent has never been granted authorization, license, or any right whatsoever to use the Complainants' trademarks. The Respondent is not commercially linked to the Complainants.

Fourthly, since the adoption and extensive use by the Complainants of the trademarks "WEHEALTH" and "WEHEALTH by Servier" predates the registration of the disputed domain names by the Respondent, the burden is on the Respondent to establish rights or legitimate interests it may have or have had in the disputed domain names.

The Complainants strongly believe that none of the circumstances which set out how a respondent can prove his rights or legitimate interests are present in this case.

In light of the above developments, given that the Complainants have made a prima facie case that the Respondent lacks legitimate rights or interest in the disputed domain names, the burden of proof shifts to the Respondent, who should come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain names.

Therefore, the Respondent should be considered as having no rights or legitimate interests in respect of the disputed domain names.

The Complainants contend that the second requirement under paragraph 4(a) of the UDRP is satisfied.

C. THE DOMAIN NAMES WERE REGISTERED AND ARE BEING USED IN BAD FAITH

The Complainants contend that the Respondent has registered and uses the disputed domain names in bad faith for the following reasons.

Firstly, the Complainants state that the Servier Group is so widely well-known that it is improbable that the Respondent ignored the Complainants' rights on the term WEHEALTH. Several press releases, communiqués, or news articles have been released on WEHEALTH and "WEHEALTH by Servier" before the disputed domain names registration, on an international level, including in China, as the Annexes demonstrate it. For example, on June 20, 2017, the Servier Group launched a roadshow of medical health business plans in Beijing, China, and DayDayUp, a Chinese innovation service company.

Secondly, WEHEALTH is a fanciful term consisting of a combination of English dictionary words. Indeed, the combination of "we" and "health" makes no sense, grammatically speaking. The Complainant contends that the Respondent could not have registered the disputed domain names due to a dictionary meaning and/or a supposed value of "wehealth" as a generic term.

Thirdly, and in light of the two above paragraphs, the Complainants strongly believes that the Respondent has registered the disputed domain names primarily to sell them to the Complainants, owners of the trademarks WEHEALTH, for valuable consideration in excess of out-of-pocket costs directly related to the domain names.

Fourthly, the Complainants must also demonstrate that the disputed domain names are being used in bad faith.

The disputed domain names are currently not used on the web, as their root and www redirect towards error pages.

WIPO Jurisprudential Overview 3.0 explicitly states that “panelists have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding.

As discussed in Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003, the relevant issue is not limited to whether the Respondent is undertaking a positive action in bad faith concerning the domain name, but instead whether, in all the circumstances of the case, it can be said that the Respondent is acting in bad faith. The distinction between undertaking a positive action in bad faith and acting in bad faith may seem a rather subtle difference, but it is an important one. The distinction is that the concept of a domain name "being used in bad faith" is not limited to positive action; inaction is within the concept.

In this case, the Complainants contend that 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 names would qualify the Respondent as using the disputed domain names in bad faith according to the Doctrine of Passive Holding, in the event the use for commercial gain would not be qualified.

Considering all the elements above, the Complainants contend that the disputed domain names were registered, have been, and are being used in bad faith by the Respondent. The combination of all the elements listed and detailed above shows that the Respondent has acted in bad faith when registering and using the disputed domain names, in line with the UDRP doctrine developed under Paragraph 4(a)(iii) of the UDRP Policy.

The Complainants contend that the Third requirement under paragraph 4(a) of the UDRP is satisfied.

Request for consolidation

The Complainants submit a request to consolidate their disputes in a single Complaint, as provided in UDRP Rules, paragraph 10(e). Indeed, both Complainants hold Trademark Registrations that contain the term WEHEALTH. The Complainants are both part of the Servier Group and are affected similarly by the registration and use of the disputed domain names by the Respondent.

Company information showing that the Complainants share common control, SERVIER SAS acting as President of both Companies, is provided in the Annexes.

In this context, the Complainants argue that it would be equitable and procedurally efficient to permit the consolidation.

On Language of Proceedings

Regarding the proceedings' language, the Respondent is domiciliated in China, and the Registrar is established in China. The Complainant has been informed the language of the Registration Agreement regarding the disputed domain names is Chinese.

As it is reminded in section 4.5.1. of the “WIPO Jurisprudential Overview 3.0” (WIPO Overview 3.0), “panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement”.

Indeed, the Panel has the authority to determine the language of proceedings. In many cases, many WIPO decisions have adopted English as the language of proceedings, even if the registrar's registration agreement was exclusively in Chinese.

The Panel has the discretion to decide otherwise having regard to the circumstances of the case. The Panel's discretion must be exercised judicially in the spirit of fairness and justice to both parties considering matters such as command of the language, time, and costs. It is crucial that the language finally decided by the Panel for the proceeding is not prejudicial to either one of the parties in his or her ability to articulate the arguments for the case.

Complainants are not able to communicate in Chinese effectively. Being French entities, the Complainants cannot conduct these proceedings in Chinese without a great deal of additional expense and delay due to the need for translation of the Complaint.

WIPO Overview 3.0 notably states that “certain scenarios may warrant proceeding in a language other than that of the registration agreement […] (i) evidence showing that the respondent can understand the language of the complaint, […] (vi) potential unfairness or unwarranted delay in ordering the complainant to translate the complaint”.

The disputed domain names are a combination of two English words. The Complainants contend this suggests at least an operational understanding of the English language from the Respondent.

The English language is not the native language of the Complainants or its representatives. Therefore the Complainants contend that choosing English as the language for the current proceeding would not give them an unfair advantage over the Respondent.

Considering the above, the Complainants deem it fair to both parties to conduct the English proceedings, as it is widely recognized as an international language.

Unsolicited supplemental submission

Following the Respondent's Response, the Complainant observes that the company's diminutive use for weivoice.com is "wei".

The Complainants interpret the Respondent's statement that the logic applied to the disputed domain names "wehealth" is the same. The same logic would have lead to the registration of "weihealth" domain names.

The Complainant takes this opportunity to indicate that the domain names "weihealth" are available under the TLDs .city, .live, and .life at the time of the present communication.

The Complainant is not convinced by the Respondent's arguments and contends that the Respondent had the Complainant's Trademark in mind when registering the disputed domain names.

RESPONDENT

The Respondent filed his contentions:

"Above all, I, Ming Zhang, as the Respondent, have legitimate interests and rights on the disputed domain names. I could not accept the charges of acting in bad faith raised by the Complainant. The main reasons are illustrated as follows.

Firstly, I am the registered legal person and co-founder of WeiWei Cangqiong (Shanghai) Health Technology Co., Ltd. (hereby as "Company WWCQ"), which was registered on August 7, 2020. Company WWCQ is engaged in indoor air purification and

disinfection, which relates to indoor air environmental protection. Company WWCQ is jointly set up by Shanghai WeiWei Network Technology Co., Ltd., (hereby as "Company WWNT") and Shanghai Cangqiong Environmental Protection Technology Co., Ltd. (hereby as"Company CQEPT").

Company WWNT applied and owned the domain <www.weivoice.com>. Using the same linguistic and pronunciation logic of "weivoice", "wehealth" was developed. This is one of the reasons "we" has been adopted as part of the disputed domain names for the newly established Company WWCQ. As mentioned above, the main focus of Company WWCQ is indoor air health products. That is why the word "health" is also incorporated. This name "wehealth" well represents the mission of the company setup.

Secondly, based on above-mentioned point, I purchased the disputed domain names: <wehealth.city>, <wehealth.live>, <wehealth.life>. The transactions were done in my name because the company bank account was not set up until September 7, so I purchased the disputed domain names under my name. This is also the reason the webpages are under construction. Company WWCQ is a newly established business as a development of my existing Company WWNT.

Thirdly, the registration and purchasing of the disputed domain names: <wehealth.city>, <wehealth.live>, <wehealth.life> are following formal process via Alibaba cloud website on August 21. The completion of the real name authentication system is evidence of the legitimacy of my purchase.

Fourthly, Company WWCQ is under the process of applying for "wehealth" as the trademark. There will be no duplication on the categories falling under the complainant's trademark registered in China.

To summarize, as the Respondent, I want to emphasize the purchase of the disputed domain names, which are genuine and legitimate for my business use. The charges raised by the complainant are not acceptable. I reject the complainant's request of transfer of the disputed domain names: <wehealth.city>, <wehealth.live>, <wehealth.life>."

RIGHTS

To the satisfaction of the Panel, the Complainant has shown that the disputed domain names are identical or confusingly similar to the trademark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

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

BAD FAITH

To the satisfaction of the Panel, the Complainant has shown the disputed domain names have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

Before moving on to the dispute's substance, the Panel must weigh in on a couple of procedural matters.

The first matter is a request for consolidation by BIOFARMA SAS and LES LABORATOIRES SERVIER SAS. Both Complainants own their respective trademarks with the term “wehealth” and similarly, both Complainants are part of the Servier Group. The WIPO Overview 3.0 in paragraph 4.11.1 sets forth two considerations when determining the consolidation under a case of multiple Complainants against a single Respondent, namely, a common grievance while respecting equity and procedural efficiency. In this matter, the Complainant advances arguments that are persuasive to the Panel. Both Complainants share trademarks where the dominant term is “wehealth”. Additionally, both parties appear to be related, as both belong to the same corporate group, namely the Servier Group. Because of the above, the Panel does not believe that consolidating both Complainants under single Complaints upsets the careful equitable balance of this proceeding, while at the same time aiding in its procedural efficiency.

The Panel also notes that the remedy requested is transferring the disputed domain names to the first Complainant, namely BIOFARMA SAS, if successful.

The Panel must now turn to the language of proceedings. It has been confirmed that the language of the registration agreement of the disputed domain names in Chinese; this is the reason why the Complainant requests to have English as the language of proceedings. It is worth noting that paragraph 10 of the UDRP Rules vests Panels with authority to conduct the proceedings in a manner it considers appropriate while simultaneously ensuring both parties are treated with equality. The Complainant makes various arguments in this request, and some of them fall under the guidance provided by the WIPO Overview 3.0 paragraph 4.5.1; namely, 1) there is evidence that the Respondent understands the language of the Complaint; the Response in English further confirmed this; 2) the language of the disputed domain name, particularly where the same as that of the complainant's mark; 3) potential unfairness or unwarranted delay in ordering the Complainant to translate the complaint and finally, 4) it appears the parties reasonably understand the nature of the proceedings. Having this in mind, the Panel determines English is the language of proceedings in this matter.

Concerning the Complainant's unsolicited supplemental filing, the Panel notes that no exceptional circumstances are warranting its submission in this case. Furthermore, and to respect due process and equity, the Panel will not be considering the submission.

The Panel is satisfied that all procedural requirements under UDRP have been met, and there is no other reason why it would be unsuitable for providing the Decision.

PRINCIPAL REASONS FOR THE DECISION

A. Identical or Confusingly Similar

Regarding the first step under this element, and as per evidence on record, the Complainant owns several trademarks containing the term "WEHEALTH" since 2016. Based on this, the Panel is satisfied that the Complainant has shown its trademark rights in "WEHEALTH".

Turning now to the second step under this element, namely, assessing the confusing similarity between the disputed domain names and the trademarks, the Panel notes that the disputed domain names reproduce the trademark "WEHEALTH" in its entirety. The addition of the corresponding gTLDs, namely <.city>, <.life> and <.live> is immaterial for the purposes of assessing confusing similarity under the Policy.

Based on this, the Panel finds the disputed domain names to be confusingly similar to the Complainant's trademark. As a result, the Panel determines that the Complaint has satisfied the first element set under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

For the second element under the Policy, the Complainant argues that the Respondent is not commonly known as "WEHEALTH". For this, he provides search engine results, where according to the Complainant, there are no elements that would suggest the Respondent is known as "WE HEALTH" or "WEHEALTH". Additionally, the Complainant asserts and provides evidence that there are no trademark records for "WE HEALTH" or "WEHEALTH" registered under the Respondent.

Additionally, the Complainant argues that no evidence would suggest efforts in using the disputed domain names in connection with a bona fide offering, notwithstanding the reasonably recent registration of the disputed domain names.

Furthermore, the Complainant claims it has not granted authorization, license, or any rights to the Complaint regarding the use of the trademark and/or the disputed domain names. And finally, the Complainant states the trademark predates the registration of the disputed domain names. Additionally, the trademarks have been granted in the territory where the Respondent is domiciled. The Complainant provides some evidence of the trademark's use and promotion.

In the Panel's view, these assertions and the evidence attached to them are enough to establish a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names (see 2.1 of WIPO 3.0 Overview).

Turning now to the Respondent’s arguments, the Respondent claims he registered the disputed domain names for his company WeiWei Cangqiong Health Technology Co., Ltd. (WeiWei Cangqiong). However, the registration was carried out in his name because the corporate bank account had not been set up yet, so the disputed domain names are still under construction. Additionally, the Respondent states that WeiWei Cangqiong was jointly set up by Shanghai WeiWei Network Technology Co., Ltd., (Shanghai WeiWei) and Shanghai Cangqiong Environmental Protection Technology Co., Ltd. (Shanghai Cangqiong). The Respondent provides screenshots of the business license evidencing the existence of WeiWei Cangqiong and Shanghai WeiWei, but there is no evidence of Shanghai Cangqiong. Additionally, the Respondent provides a screenshot of the domain name <weivoice.com>, which Shanghai WeiWei owns the Respondent claims. The Respondent claims that the <weivoice.com> domain name is one reason why he registered the disputed domain names. The Respondent was trying to duplicate a similar linguistic pattern, namely the addition of the word "we" to a concept. In the disputed domain names, the concept was "health" to represent its business objective of "indoor air purification and disinfection”. Finally, the Respondent also states that it is in the process of registering the trademark “WEHEALTH”, but does not produce any evidence of this.

In parsing through these arguments, the Respondent's assertions relating to its corporate structure are only relevant to substantiate its argument to justify the domain name <weivoice.com> as the inspiration for registering the disputed domain names. However, this does not seem persuasive since the domain name <weivoice.com> reproduces the term "wei" plus "voice", not the phrase "we" as the Respondent claims. The word "wei" matches both companies' names associated with the Respondent, namely, WeiWei Cangqiong and Shanghai WeiWei. This explanation would also appear to fit better with the use of "wei" "voice" for a communication network business rather than "we" "i” “voice” or even “we” “ivoice". Considering its logical conclusion, it would then not justify the explanation given for selecting the terms used in the disputed domain names. Furthermore, and specifically relating to the disputed domain names, the Respondent claims it chose the term "health" to represent “indoor air purification and disinfection", which seems a tenuous connection, if any. Although “health” could relate to “indoor air purification and disinfection”, there could potentially be other terms that could fit better if the Panel were to take the Respondent's explanation at face value.

Overall, and on the balance of probabilities, the Respondent's explanations are not persuasive enough to demonstrate rights or legitimate interests in the disputed domain names. Additionally, no other available evidence on record would otherwise allow the Panel to find any rights or legitimate interests for the Respondent in the disputed domain names.

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names. Therefore the Complainant has fulfilled the second requirement set under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Complainant states the trademark has been used in the country the Respondent is domiciled and provides evidence of it. Even assuming the trademark's promotion was not extensive as the Complainant claims, on the balance of probability, the Respondent likely knew about it or should have known about the existence of the Complainant and/or its trademarks. Either through a basic search engine inquiry or by the domain name registration service when registering the disputed domain names. This conclusion is further reinforced because the Complainant’s “WEHEALTH” trademark is a fanciful neologism with no other meaning. Although the Respondent explained its choice of the terms composing the disputed domain names, the explanation did not wholly add up and failed to persuade the Panel, as described above. Therefore, the Panel considers it more likely than not that the Respondent was aware of the Complainant and its trademark when he registered the disputed domain names. The Panel then finds that the Respondent registered the disputed domain names in bad faith.

For use, the Complainant asserts that the Respondent currently makes only passive use of the disputed domain names. This does not preclude finding the use in bad faith, notwithstanding the Respondent’s explanation for this (see above). In the present dispute, taking into consideration the explanation by the Respondent (see above) and on the balance of probabilities, the disputed domain names appear to be more likely acquired by the Respondent primarily for selling, renting, or otherwise

transferring the disputed domain names registrations to the Complainant for valuable consideration in excess of the Respondent’s documented out-of-pocket costs directly related to the disputed domain names, as per Paragraph 4(b) of the Policy.

In light of the case's circumstances, based on the available records and balance of probabilities, the Panel finds that the Complainant has proven that the disputed domain names were registered and used in bad faith according to paragraph 4(a)(iii) of the Policy.

D. Decision

For the preceding reasons and concurrence with the provisions specified under Paragraph 4(i) of the Policy and Paragraph 15 of the Rules, the Panel orders the transfer of the disputed domain names to the first Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **WEHEALTH.CITY**: Transferred
2. **WEHEALTH.LIFE**: Transferred
3. **WEHEALTH.LIVE**: Transferred

PANELLISTS

Name	**Rodolfo Carlos Rivas Rea**

DATE OF PANEL DECISION 2020-11-11

Publish the Decision