

Decision for dispute CAC-UDRP-103488

Case number CAC-UDRP-103488

Time of filing 2020-12-30 09:09:02

Domain names wehealth.pro

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization BIOFARMA

Organization LES LABORATOIRES SERVIER

Complainant representative

Organization IP TWINS

Respondent

Organization (wangkun)

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

One of the Complainants BIOFARMA SAS has submitted evidence, which the Panel accepts, showing that it is the registered owner of the French trademark WEHEALTH (Registration n°4280290) and IR trademark WEHEALTH (Registration n°1329611).

Moreover, the Complainant BIOFARMA SAS is also the owner of the domain names bearing the sign "WEHEALTH" such as <wehealth.fr> and <wehealth.com>.

The other Complainant LES LABORATOIRES SERVIER SAS has submitted evidence, which the Panel accepts, showing that it is the registered owner of the EU trademark WEHEALTH BY SERVIER (Registration n°015850548), French trademark WEHEALTH BY SERVIER (Registration n°4300433) and IR trademark WEHEALTH BY SERVIER (Registration n°1361896).

FACTUAL BACKGROUND

The Complainants BIOFARMA SAS and LES LABORATOIRES SERVIER SAS are both part of the SERVIER GROUP which is the

largest French pharmaceutical group on an independent level and the second largest pharmaceutical French group in the world. SERVIER GROUP is active in 149 countries and employs more than 22,000 people throughout the world. WEHEALTH has been launched in 2016 and focused on establishment of partnerships between SERVIER GROUP and new startups in digital health.

The Complainants hold EU, IR and French trademark registrations for “WEHEALTH” and “WEHEALTH BY SERVIER”. One of the Complainants BIOFARMA SAS also holds domain names bearing “WEHEALTH” such as <wehealth.com>.

The Respondent registered the disputed domain name <wehealth.pro> on September 13, 2020 and the domain name is currently inactive.

The Complainants BIOFARMA SAS and LES LABORATOIRES SERVIER SAS requested the consolidation of their disputes in a single Complaint arguing that the consolidation would be equitable and procedurally efficient. Pursuant to the paragraph 10(e) of Rules for Uniform Domain Name Dispute Resolution Policy (“Rules”) upon a request by a Party the Panel shall decide to consolidate multiple domain name disputes in accordance with the Rules. The Complainants submitted information which shows and which the Panel accepts that they are both allied to the company SERVIER SAS and both hold trademark registrations for “WEHEALTH”. Accordingly, the Complainant’s consolidation request is accepted by the Panel and the disputes shall be resolved under sole Complaint.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANTS:

The Complainants BIOFARMA SAS and LES LABORATOIRES SERVIER SAS are parts of the SERVIER GROUP which is one of the largest pharmaceutical groups in France.

The Complainants hold the EU, IR and French trademark registrations for the trademarks “WEHEALTH” and “WEHEALTH BY SERVIER” and BIOFARMA SAS is also the owner of several domain names bearing “WEHEALTH”.

1. THE DISPUTED DOMAIN NAME IS CONFUSINGLY SIMILAR

The Complainants allege that the disputed domain name <wehealth.pro> is confusingly similar to the Complainants’ trademarks “WEHEALTH” and “WEHEALTH BY SERVIER” as it bears the distinctive element of the Complainants’ trademarks namely “WEHEALTH” as a whole.

Further, the addition of the GTLD “.pro” does not abolish the confusing similarity.

The Complainants refer to earlier Panel decision CBS Broadcasting Inc. v. Worldwide Webs, Inc., Case No. D2000-0834.

2. NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Complainants state that the Respondent has no rights on the disputed domain name as the Respondent is not known as the disputed domain name and as the Respondent does not hold any trademark for “WEHEALTH” or “WE HEALTH”.

The Complainants also argue that the Respondent did never use the disputed domain name and it demonstrates the lack of rights or legitimate interests.

Moreover, the Complainants state that neither license nor authorization has been granted to the Respondent to use the Complainants’ trademarks “WEHEALTH” and “WEHEALTH BY SERVIER” and the Respondent is not commercially linked to

the Complainants.

The Complainants indicate that they have made a prima facie case that the Respondent lacks legitimate rights or interests in the disputed domain name and the burden of proof has shifted to the Respondent referring to the earlier Panel decision Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455.

3. THE DISPUTED DOMAIN NAME WAS REGISTERED AND IS USED IN BAD FAITH

The Complainants state that the disputed domain name was registered and is being used in bad faith.

The Complainants assert that the Complainants' trademarks are widely-known and that the Respondent has registered and used the disputed domain name with full knowledge of the Complainants' trademarks "WEHEALTH" and "WEHEALT BY SERVIER".

The Complainants argue that "WEHEALTH" term which is the combination of English words "WE" and "HEALTH" does not have a dictionary meaning and accordingly the Respondent could not have registered the disputed domain name as a generic term.

The Complainants also state that the disputed domain name is not being used for any bona fide offering and this fact, not being used of the disputed domain name, alone is sufficient to prove the bad faith of the Respondent according to many WIPO UDRP decisions.

RESPONDENT:

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainants have, 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 Complainants have, 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 Complainants have, 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.

Under the information provided by the Registrar, the Registration agreement was in Chinese language. The Complainants BIOFARMA SAS and LES LABORATOIRES SERVIER SAS submitted the Complaint in English stating that they are both French entities which are not able to effectively communicate in Chinese and the conduct of the proceeding in Chinese would cause additional translation expenses. The Complainants argue that the disputed domain name consists of the combination of two English words which shows that the Respondent has at least an operational understanding of the English language. The Complainants refer to earlier Panel decisions WIPO Case n° D2008-1191 "Zappos.com, Inc. v. Zufu aka Huahaotrade" and WIPO Case n° D2018-0873 "Yves Saint Laurent, SAS v. (Yin Sulan)".

Pursuant to the paragraph 11(a) of Rules for Uniform Domain Name Dispute Resolution Policy ("Rules") unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement and the Panel has the authority to determine otherwise. The Panel

determines in accordance with the Rules, paragraph 11(a), that the language of the present administrative proceeding shall be English. Although the language of the Registration Agreement is Chinese, the Panel finds that it would be inappropriate, given the circumstances of this case, to conduct the proceedings in Chinese and request a Chinese translation of the Complaint while the disputed domain name was created in English and the Respondent has failed to file any response to the Complaint. Considering that the English is not the native language of the Complainants; the Panel is convinced that the Respondent will not be prejudiced by a decision being rendered in English.

PRINCIPAL REASONS FOR THE DECISION

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In this context, the Panel also notes that the burden of proof is on the Complainant to make out its case and past UDRP panels have consistently said that a Complainant must show that all three elements of the Policy have been made out before any order can be made to transfer a domain name.

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

- A. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- B. the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- C. the disputed domain name has been registered and is being used in bad faith.

The Panel will therefore deal with each of these requirements in turn.

A. IDENTICAL OR CONFUSINGLY SIMILAR

The Policy simply requires the complainant to demonstrate that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. The Panel is satisfied that the Complainants are the owner of registration of "WEHEALTH" and "WEHEALTH BY SERVIER" trademarks.

The Panel finds that the disputed domain name contains the Complainants' trademark "WEHEALTH" as a whole. Moreover, the addition of the gTLD ".pro" is not enough to abolish the similarity.

The Panel is of the opinion that the Internet users will easily fall into false impression that the disputed domain name is an official domain name of the Complainants. The Panel recognizes the Complainants' rights and concludes that the disputed domain name is confusingly similar with the Complainants' trademarks. Therefore, the Panel concludes that the requirements of paragraph 4(a)(i) of the Policy is provided.

B. NO RIGHTS OR LEGITIMATE INTERESTS

Under paragraph 4(a)(ii) of the Policy, the complainant has the burden of establishing that the respondent has no rights or legitimate interests in respect of the domain name.

It is open to a respondent to establish its rights or legitimate interests in a domain name, among other circumstances, by showing any of the following elements:

- (i) before any notice to the respondent of the dispute, the use or making demonstrable preparations to use 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 of the dispute (as an individual, business, or other organization) has been commonly known by the

domain name, even if it has acquired no trademark or service mark rights; or

(iii) the respondent of the dispute is making a legitimate non-commercial or fair use of the domain name, without an intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Thus, if the respondent proves any of these elements or indeed anything else that shows that it has a right or legitimate interest in the disputed domain name, the complainant will have failed to discharge its burden of proof and the complaint will fail. The burden is on the complainant to demonstrate a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain name. Once the complainant has made out a prima facie case, then the respondent may, inter alia, by showing one of the above circumstances, demonstrate rights or legitimate interests in the disputed domain name.

The Complainants contend that the Respondent has nothing to do with the Complainants and any use of the trademark "WEHEALTH" has to be authorized by the Complainants and there is no such authorization. Moreover, the disputed domain name has no relation with the Respondent and the Respondent is not commonly known as the disputed domain name.

In the absence of a response, the Panel accepts the Complainants' allegations as true that the Respondent has no authorization to use the Complainants' trademarks in the disputed domain name. Hence, as the Complainants have made out their prima facie case, and as the Respondent has not demonstrated any rights or legitimate interests as illustrated under paragraph 4(c) of the Policy, nor has the Panel found any other basis for finding any rights or legitimate interests of the Respondent in the disputed domain name, the Panel concludes that the Complainants have satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. BAD FAITH

The Panel concludes that the Complainants' WEHEALTH and WEHEALT BY SERVIER trademarks have a significant reputation and are of distinctive character. Therefore, the Panel is of the opinion that due to the earlier rights of the Complainants in the WEHEALTH and WEHEALT BY SERVIER trademarks and the associated domain name, the Respondent, was aware of the Complainants and their trademarks at the time of registration of the disputed domain name (see e.g., Ebay Inc. v. Wangming, WIPO Case No. D2006-1107). Referring to Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net, WIPO Case No. D2000-0226, the Panel believes that the awareness of the Complainants' trademarks at the time of the registration of the disputed domain name is to be considered an inference of bad faith registration.

Moreover, the link < wehealth.pro > is currently inactive.

Therefore, in light of the above-mentioned circumstances in the present case, the Panel finds that the disputed domain name has been registered and is being used in bad faith and that the Complainants have established the third element under paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. WEHEALTH.PRO: Transferred

PANELLISTS

Name	Mrs Selma Ünlü
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DATE OF PANEL DECISION 2021-02-10

Publish the Decision
