

Decision for dispute CAC-UDRP-103691

Case number CAC-UDRP-103691

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Domain names wehealth.vip

Case administrator

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

Complainant

Organization LES LABORATOIRES SERVIER

Organization BIOFARMA

Complainant representative

Organization IP TWINS

Respondent

Name li bai xing

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

The Complainants are, inter alia, 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, covering products 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 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.

The Complainant BIOFARMA is also the registrant of the domain names <wehealth.fr>, registered on June 8, 2016, and <wehealth.com>.

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

FACTUAL BACKGROUND

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

Factual and Legal Grounds:

I. The disputed domain name is identical or confusingly similar to the protected mark

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. 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>.

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 predate the registration of the disputed domain name by the Respondent.

The disputed domain name is <wehealth.vip>. The Complainants contend that this domain name is either identical or confusingly similar to the Complainants' registered trademarks.

Indeed, the second level of the disputed domain name, "wehealth", is identical to Biofarma's registered trademark WEHEALTH. The disputed domain name should also be considered as confusingly similar to the registered trademarks WEHEALTH BY SERVIER, as it is identical to the main 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 a gTLD such as ".vip", is not significant in determining whether the disputed domain name is identical or confusingly similar to the concerned trademarks: see CBS Broadcasting Inc. v. Worldwide Webs, Inc., Case No. D2000-0834.

The Complainants contend that the first requirement under paragraph 4(a) of the Uniform Dispute Resolution Policy is satisfied.

II. The Respondent does not have any rights or legitimate interest in the domain name

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

Firstly, according to the Complainants verifications, the Respondent is not commonly known by the disputed domain name, which redirects towards an error page.

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

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.

Secondly, the Complainants research did not allow to find any clue of preparation to use the disputed domain name in connection with a bona fide offering of goods or services. The disputed domain name is currently not used on the web.

Thirdly, 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.

Fourthly, since the adoption and extensive use – as it will be demonstrated in section III. of this Complaint – by the Complainants of the trademarks WEHEALTH and "WEHEALTH by Servier" predate the registration of the disputed domain name by the Respondent, the burden is on the Respondent to establish rights or legitimate interests it may have or have had in the domain name. See WIPO Case No. D2003-0174 "PepsiCo, Inc. v. Amilcar Perez Lista d/b/a Cybersor".

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.

Considering 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 name, 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 name. See Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455.

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

The Complainants contend that the second requirement under paragraph 4(a) of the Uniform Dispute Resolution Policy is satisfied.

III. The disputed domain name has been registered and is being used in bad faith

The Complainants contend that the Respondent has registered and is using the disputed domain name in bad faith, for the following reasons.

Firstly, the Complainants state 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. Several press releases, communiqués or news articles have been released on WEHEALTH and "WEHEALTH by Servier" prior to the disputed domain name registration, on an

international level, including in China. As an example, on June 20, 2017, the Servier Group launched a roadshow of medical health business plans in Beijing, China, together with 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 name due to a dictionary meaning and/or a supposed value of “wehealth” as a generic term.

Thirdly, and considering the two above paragraphs, the Complainants strongly believes that 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.

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

The disputed domain name is 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.

While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.”

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 in relation to 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 fine distinction, but it is an important one. The significance of 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 name would qualify the Respondent as using the disputed domain name 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 name was registered, has been and is being used in bad faith by the Respondent. The combination of all the elements listed and detailed above show that the Respondent has acted in bad faith when registering and using the disputed domain name, in line with the UDRP doctrine developed under Paragraph 4(a)(iii) of the Policy.

The Complainants contend that the Third requirement under paragraph 4(a) of the Uniform Dispute Resolution Policy is satisfied.

PARTIES CONTENTIONS

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 Complainants have 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 not, 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.

The Complainant requests that the language of this administrative proceeding be English pursuant to UDRP Rule 11(a): 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, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding. Complainant makes this request in light of the potential Chinese language Registration Agreement of the disputed domain name involved at this Complaint.

Paragraph 10 of the UDRP Rules vests a panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case. UDRP panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios were summarized into WIPO Jurisprudential Overview 3.0, 4.5.1. In this particular instance, the Complainant tried to request change of languages of proceedings in light of Chinese language Registration Agreement by showing that 1) having the Complainant translating subsequent communications in Chinese would entail significant additional costs for the Complainant and unnecessarily burden the Complainant; 2) disputed domain name <wehealth.vip> is formed by a combination of two English words, which creates a prima facie presumption that the Respondent at least demonstrates some working knowledge of English. Relevant decisions have been cited to support the Complainant's positions. In light of the scenarios and the possible additional burden falling on the Complainant having to translate the case into Chinese, without further objection from the Respondent on the issue, the Panel will proceed to issue the decision in English.

PRINCIPAL REASONS FOR THE DECISION

1. Identical or confusingly similar

The Complainants contend that the disputed domain name <wehealth.vip> is confusingly similar to the trademark WEHEALTH. WEHEALTH is a department of the Servier group that was launched in 2016 and is focused on establishing and developing partnerships between the Servier Group and promising Startups in the domain of digital health. Both complainants, LES LABORATOIRES SERVIER and BIOFARMA, each owns more than one French, EU and International trademark registrations for "WEHEALTH". The Complainant BIOFARMA is also the registrant of the domain names <wehealth.fr>, registered on June 8, 2016, and <wehealth.com>. On the web, the Trademark WEHEALTH enjoys a dedicated website, accessible at the address <https://www.wehealth-digitalmedicine.com/>.

In this case, the disputed domain name incorporated the WEHEALTH trademark entirely, with no additional alterations. The second level of the disputed domain name, "wehealth", is identical to the Complainants' various registered trademarks WEHEALTH. The generic Top-Level Domain ".vip" is a new generic top level domain name and a standard registration requirement and should be disregarded when assessing whether a disputed domain name is confusingly similar to the trademark. Usually, a domain name identical to a complainants' registered trademark is already sufficient to establish identify or confusing similarity within the meaning of the Policy.

The Panel therefore concludes that the disputed domain name is confusingly similar to a trademark in which the Complainants have rights within the meaning of paragraph 4(a)(i) of the Policy.

2. No rights or legitimate interests

Although the Respondent did not file an administratively compliant (or any) response, the Complainant is still 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 Policy.

The Complainants in the present case have not licensed or authorized the Respondent to register or use the disputed domain name. There is no evidence that the Respondent is known by the Disputed Domain Name or owns any corresponding registered trademarks including the terms “wewealth.vip”. The disputed domain name <wewealth.vip> directs to inaccessible websites.

In this case, because the registrant has used a proxy service in registering the disputed domain name, additional information of the registrant needs to be discovered. The uncovered identity of the registrant, an individual/entity named “li bai xing” seems to have no connection with the Complainants’ brand. The Complainants contend that no evidence suggests that the Respondent has been known in any way by the disputed domain name. The Complainants did not grant any license or authorization to the Respondent to register or use the disputed domain name, nor the use of the Complainants’ trademark on every page of the disputed website. Before the dispute, the Respondent also has not used the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services.

On the basis of preponderance of evidence, and in the absence of any evidence to the contrary or any administratively compliant response being put forward by the Respondent, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

3. Bad faith

By trying to establish the bad faith element of paragraph 4(a) of the Policy, the Complainants have primarily attempted to rely on paragraph 4(b)(i) and 4(b)(iv) of the Policy.

Registration of the disputed domain name in bad faith – The Servier Group is widely well-known. However, the same thing cannot be said for the digital health brand created by the Group, which has only become known in 2016. The choice of word in the Complainants’ trademark is considerably non-distinctive, which consists of two common English words “We” and “Health”. The combination of which is a natural choice by products in the healthcare industry. Even though the Complainants have provided evidence showing that their “wehealth” products dominated Google.fr search, the same thing may not be true for google searches conducted in other parts of the world using the same term. In the Panel’s own google search, a couple of other companies with the name “wehealth” show up on the first page of the search result. The Complainants have not provided evidence showing results revealed from Baidu search, the dominant internet search method in China.

The Complainants provided that on June 20, 2017, the Servier Group launched a roadshow of medical health business plans in Beijing, China, together with DayDayUp, a Chinese innovation service company. In addition, the Complainants have also provided that Servier Group has marketed its WeHealth product in China by providing a June 2017 news article, however, the Complainants are not able to further substantiate the degree of reputation of its WeHealth products in China and/or internationally. Therefore, the Panel is not entirely persuaded that the registrant has actual or inferred knowledge of the Complainants’ WeHealth product by the standard of showing of preponderance of evidence.

Use of the disputed domain name in Bad Faith – the Complainants have further asserted that this case leads to a finding of passive holding. The Complainants have provided evidence that the disputed domain name is currently not used on the web, as their root and www redirect towards error pages.

However, mere passive holding does itself give rise to a finding of bad faith use. The WIPO Jurisprudential Overview 3.0 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. However, panelists will need look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the Complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.”

In this case, i) there is a high degree of 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; ii) the Respondent has failed to submit any evidence of actual or contemplated good-faith use. However, the Complainants have not provided evidence proving that Respondent has breached its registration agreement in providing false contact details, or that there is implausibility of any good faith use to which the domain name may be put.

There is no law that compels registrants to actively use their domain names. In *Telstra Corporation Limited v. Nuclear Marshmallows* (WIPO-D2000-0003, February 18, 2000) cited by the Complainant and as recognized by the Complainant, the Panel only reasoned that it is possible, in certain circumstances for inactivity by the Respondent to amount to the domain name being used in bad faith. As noted by the Panel in *Central Media S.C. v. Valentin Lotrean*, (WIPO D2016-2598, February 20, 2017), “[t]he Complainant’s case on bad faith hinges on alleged “passive holding” It does not mean, ..., that mere non-use of a domain name for a website is of itself somehow incriminating. Rather, the principle is that the lack of active use of a domain name does not as such prevent a finding of bad faith. In such circumstances, panels may draw inferences from circumstances which may nonetheless be indicative of bad faith such a complainant having a well-known trade mark, no response to a complaint having been filed and/or the registrant’s concealment of its identity.” Unfortunately, the Complainants have been unable to provide evidence showing additional bad faith of the Respondent in addition to the fact of mere non-use of the <wehealth.vip> domain name.

Therefore, in the absence of any evidence to the contrary (or any administratively compliant response) being put forward by the Respondent, the Panel determines that the Complainants have failed to provide that disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **WEHEALTH.VIP**: Remaining with the Respondent

PANELLISTS

Name	Carrie Shang
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DATE OF PANEL DECISION 2021-05-15

Publish the Decision
