

Decision for dispute CAC-UDRP-105549

Case number CAC-UDRP-105549

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Domain names BIOGARAN.XYZ

Case administrator

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

Complainant

Organization BIOFARMA

Complainant representative

Organization IP TWINS

Respondent

Organization Ge Rong Kai

OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the domain name <biogaran.xyz> ('the disputed domain name').

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade marks, amongst others:

- EU trade mark registration no. 018041651, registered on 5 September 2019, for the word mark BIOGARAN, in classes 3, 9, 10, 40 and 45 of the Nice Classification;
- International trade mark registration no. 797089, registered on 16 January 2003, designating China, for the figurative mark BIOGARAN (with Chinese characters), in class 5 of the Nice Classification; and
- French trade mark registration no. 3038362, registered on 8 December 2000, for the word mark BIOGARAN, in class 5 of the Nice Classification.

The Complainant further relies on national trade marks worldwide held by the Complainant and its subsidiaries.

(Hereinafter, collectively or individually, 'the Complainant's trade mark' or 'the (trade) mark BIOGARAN' interchangeably).

The disputed domain name was registered on 1 May 2023, and, at present, it does not resolve to an active website ('the Respondent's website').

FACTUAL BACKGROUND

The Complainant's contentions can be summarised as follows:

A. Background history

The Complainant is part of the Servier Group, one of the largest French pharmaceutical groups worldwide. The Servier Group operates in 150 countries, employing more than 21,000 personnel around the globe. The Complainant was founded in 1996 and is the first generic medicines laboratory in France, contributing to the Servier Group's revenue in excess of EUR 1.4b.

The Complainant operates its activities through the website <www.biogran.com>.

The Complainant seeks to obtain the transfer of the disputed domain name <biogaran.xyz> on the grounds set out in section B.2 below.

B.1 Preliminary Matter: Language of the Proceeding

On the matter of the language of the proceedings, the Panel notes the following:

- The Complaint is written in English and the Complainant has made a pre-emptive request that English be the language of this UDRP administrative proceeding;
- The registrar's verification response provided that the language of the registration agreement for the disputed domain name is Chinese; and
- The Complainant's grounds for English to be the language of this UDRP administrative proceeding can be summarised as follows: (i) the Panel's determination of Chinese as the language of this UDRP administrative proceeding would be inequitable and burdensome owing to the delay and costs associated with translations; (ii) English language is not the native language of the Complainant and its representative, such that choosing English as the language of this UDRP administrative proceeding would not give the Complainant an unfair advantage over the Respondent; and (iii) the Complainant's email address contains the words 'premium domain seller', which suggests that the Respondent possesses a working knowledge of English.

B.2 Substantive grounds

I. The disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights

The Complainant submits that the disputed domain name <biogaran.xyz> is confusingly similar to the Complainant's trade mark, to the extent that the disputed domain name reproduces the trade mark BIOGARAN in its entirety. Moreover, the gTLDs, in this case <.xyz>, are typically disregarded by UDRP panels under this Policy ground (see paragraph 1.11 of the WIPO Panel Views on Selected UDRP Questions, Third Edition ('WIPO Jurisprudential Overview 3.0')).

II. The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Claimant asserts that the Respondent lacks rights or legitimate interests in respect of the disputed domain name, owing to the following indicia:

- The Respondent is not commonly known by the disputed domain name, which redirects to a website offering the disputed domain name for sale;
- The Respondent is not affiliated or otherwise connected with the Respondent, nor has the Complainant authorised the Respondent to use the trade mark BIOGARAN; and
- The Complainant does not hold any trade mark rights in the term 'biogaran'; and
- Given the extensive use by the Complainant of the trade mark BIOGARAN which predates the registration of the disputed domain name, the burden is on the Respondent to establish rights or legitimate interests in connection with the disputed domain name.

In view of the above, the Complainant concludes that the Respondent has no rights or legitimate interests in the dispute domain name.

III. The Respondent registered and is using the disputed domain name in bad faith

Registration

The Complainant states that the disputed domain name was registered in bad faith, owing to the following indicia:

- The Complainant's trade mark BIOGARAN is so widely known that it is very unlikely that the Respondent was unaware of the Complainant's rights in the BIOGARAN mark; and

• The term 'biogaran' is devoid of any meaning in any dictionary, to the best of the Complainant's knowledge, such that the Complainant strongly believes that the Respondent has registered the disputed domain name with the Complainant's trade mark in mind.

Use

The Complainant avers that the Respondent uses the disputed domain name in bad faith in so far as the Respondent offers the disputed domain name for sale in excess of the initial registration costs (USD 1450). The Complainant further avers that an offer to sell a disputed domain name in excess of out-of-pocket costs may evidence bad faith under paragraph 4(b)(i) of the UDRP Policy.

The Complainant therefore concludes that the Respondent has registered and is using the disputed domain name in bad faith.

PARTIES CONTENTIONS

The Complainant's contentions are set out above.

The Respondent has failed to serve a Response within the deadline prescribed under Rule 5 of the UDRP Rules, or at all.

RIGHTS

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

PROCEDURAL FACTORS

A. Complainant's Language Request

The Panel is given discretion under Rule 11 of the UDRP Rules to determine the appropriate language of the UDRP administrative proceeding. The Panel notes Rule 10 of the UDRP Rules, which vests the Panel with authority to conduct the proceedings in a manner it deems appropriate while also ensuring that the parties are treated with equality, and that each party is given a fair opportunity to present its case.

On this particular matter, the Panel takes the liberty to adopt the language of proceeding test applied in CAC Case no. 104144, *Writera Limited v. alexander ershov*, which helpfully sets out the following six guiding factors:

- (i) the language of the disputed domain name string: the Panel considers that English is the only identifiable language in the disputed domain name string, in particular the noun 'bio';
- (ii) the content of the Respondent's website: the Respondent's website does not host any content. Consequently, this factor is immaterial to the Panel's determination on this occasion;
- (iii) the language(s) of the Parties: the Complainant is a company based in France and the Respondent appears to be a Chinese national residing in China. The English language would therefore be considered neutral for both Parties. In addition, the Respondent's email address on record contains the English language words 'premium', 'domain', and 'seller', which is an indicium of the Respondent's knowledge of, or interest in communicating in, English;
- (iv) the Respondent's behaviour: the Panel notes that the Respondent has shown no inclination to participate in this UDRP administrative proceeding;
- (v) the Panel's overall concern with due process: the Panel has discharged its duty under Rule 10 (c) of the UDRP Rules; and

(vi) the balance of convenience: while determining the language of the UDRP administrative proceeding, the Panel has a duty to consider who would suffer the greatest inconvenience as a result of the Panel's determination. On the one hand, the determination of English as the language of this UDRP administrative proceeding – a widely spoken language – is unlikely to cause the Respondent any inconvenience. The determination of Chinese as the language of this UDRP administrative proceeding, on the other hand, is very likely to cause the Complainant inconvenience, and to interfere with the overall due expedition of the proceedings under the UDRP Rules.

In view of the above factors, the Panel has decided to accept the Complainant's language request, such that the decision in the present matter will be rendered in English.

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

PRINCIPAL REASONS FOR THE DECISION

A. UDRP Threshold

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy sets out the following threshold for the Complainant to meet for the granting of the relief sought (transfer of the disputed domain name):

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

It is incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP administrative proceedings is the balance of probabilities and, on that basis, the Panel will now proceed to determine each of the three UDRP Policy grounds in turn.

B. Identical or Confusingly Similar

The Complainant has established registered rights in the mark BIOGRAN since as early as 2000.

The disputed domain name <biogaran.xyz> was registered on 1 May 2023, and consists of the term 'biogaran'.

The Panel has no difficulty in finding that the disputed domain name is identical to the Complainant's trade mark BIOGRAN, in accordance with paragraph 4(a)(i) of the UDRP Policy.

The gTLDs, in this case <.xyz>, are typically disregarded by UDRP panels under this UDRP Policy ground (see WIPO Overview 3.0, paragraph 1.11).

The Panel therefore finds that the Complainant has met the requirement under paragraph 4(a)(i) of the UDRP Policy.

C. Rights or Legitimate Interests

The Respondent has defaulted in this UDRP administrative proceeding. Nevertheless, the Panel is empowered to draw adverse inferences from the Respondent's silence (Rule 14 (b) of the UDRP Rules).

The Panel notes that the Respondent does not carry out any activity for, or has any business or relationship of any nature with, the Complainant. There is no contractual arrangement between the Parties to that effect, nor has the Complainant otherwise authorised the Respondent to make any use of the Complainant's trade mark. Moreover, there is no evidence on the record to suggest that the Respondent (as an individual, business, or other organisation) has been commonly known by the disputed domain name.

The Panel also notes that there is no evidence on the record to suggest that the Respondent is affiliated with, or endorsed by, the Complainant (and, in any event, any affiliation or endorsement has been firmly denied by the Complainant).

The Panel is furthermore unconvinced that, before any notice of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services.

For the foregoing reasons, and noting that the Respondent has not provided a Response to refute any of the allegations and evidence adduced by the Complainant in this UDRP administrative proceeding, the Panel finds that the Complainant has made prima facie showing of the Respondent's lack of rights or legitimate interests in the disputed domain name under the UDRP Policy.

The Panel therefore finds that the Complainant has succeeded under paragraph 4(a)(ii) of the UDRP Policy.

D. Registered and Used in Bad Faith

The Panel has looked at the totality of the evidence and considers it to be sufficient to give rise to a finding of bad faith registration and use of the disputed domain name by the Respondent, for the following reasons:

- The disputed domain name <biogaran.xyz> incorporates the Complainant's trade mark BIOGARAN in its entirety;
- The Complainant operates its activities using the domain name <biogaran.com>, which was registered in 2000;
- There is no credible explanation for the Respondent's choice of the disputed domain name, which was registered in 2023, bearing in mind that the Complainant has registered trade mark rights in BIOGARAN since as far back as 2000;
- According to the registrar's verification response, the Respondent's email address on record consists of the words 'premium', 'domain', and 'seller', which suggests an increased likelihood that the Respondent registered the disputed domain name with the intention to obtain financial gain from the Complainant;
- The Respondent has not provided a Response within the time prescribed under the UDRP Rules, or at all, and has thus failed to offer any explanation or justification to the matters raised by the Complainant in the context of this UDRP administrative proceeding;
- There is nothing on the record suggesting that the Respondent is affiliated or otherwise connected with the Complainant, and the Complainant denies any association;
- The Complainant has provided evidence that the disputed domain name, at some point in time, was offered for sale for valuable consideration in excess of the documented out-of-pocket costs directly related to the disputed domain name. The Respondent's behaviour would consequently fall in the realm of paragraph 4(b)(i) of the UDRP Policy;
- At the time of writing this decision, the Respondent's website does not resolve to an active website. The Panel considers that the current use of the disputed domain name would fall within the behaviour set out in paragraph 4(b)(iv) of the UDRP Policy, notably in view of the potential financial gain derived from misleadingly diverting Internet users (most likely the Complainant's - existing or potential - customers) because of the use of the Complainant's trade mark within the disputed domain name string;
- The Respondent did not provide any evidence of actual or contemplated evidence good faith use of the disputed domain name; and
- Taken the above together, the overall unlikelihood of any good faith use of the disputed domain name.

In view of the above, the Panel finds that the Complainant has succeeded under paragraph 4(a)(iii) of the UDRP Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BIOGARAN.XYZ**: Transferred

PANELLISTS

Name	Yana Zhou
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DATE OF PANEL DECISION **2023-08-10**

Publish the Decision
