

Decision for dispute CAC-UDRP-105945

Case number **CAC-UDRP-105945**

Time of filing **2023-11-08 09:46:22**

Domain names **servierconnect.com**

Case administrator

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

Complainant

Organization **LES LABORATOIRES SERVIER**

Complainant representative

Organization **IP TWINS**

Respondent

Name **Yi Ling Hu**

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

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

- EU trade mark registration no. 004279171, dated 7 February 2005, for the word mark SERVIER, in classes 5, 35, 41 and 42 of the Nice Classification;
- International trade mark registration no. 814214, dated 5 August 2003, designating China amongst others, for the word mark SERVIER, in classes 5, 35, 41, 42 and 44 of the Nice Classification;
- International trade mark registration no. 571972, dated 29 May 1991, designating China amongst others, for the figurative mark SERVIER, in classes 1, 3 and 5 of the Nice Classification; and
- International trade mark registration no. 549079, dated 19 January 1990, designating China amongst others, for the figurative mark SERVIER, in classes 1, 3, 5, 10, 16, 35, 41 and 42 of the Nice Classification.

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

The disputed domain name was registered on 23 September 2023 and, at the time of writing this decision, it resolves to an active website, the particulars of which are discussed further below ('the Respondent's website').

FACTUAL BACKGROUND

The Complainant's contentions can be summarised as follows:

A. Complainant's Factual Allegations

The Complainant is part of the Servier group, which is the largest French pharmaceutical group of an independent level and the second largest pharmaceutical French group worldwide. The Complainant's group personnel comprise over 21,000 employees across 150 countries, in which 100 million patients are treated daily with Servier medicinal products and generics.

In addition to the trade marks mentioned under the above section 'Identification of Rights', and other trade marks in its portfolio, the Complainant also owns and operates its business through the domain name <servier.com>, which was registered in 1998.

B. Respondent's Factual Allegations

The Respondent has defaulted in this UDRP administrative proceeding and has therefore made no factual allegations.

PARTIES CONTENTIONS

A. Complainant

A.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 Complainant is unable to communicate in Chinese and the Panel's determination of Chinese as the language of the proceeding would be inequitable and burdensome owing to the delay and costs associated with translations; (ii) the use of the English word 'connect' in the disputed domain name string suggests that the Respondent is able to communicate in English; (iii) English language is not the native language of any of the parties, such that choosing English as the language of the proceedings would not give the Complainant unfair advantage over the Respondent; and (iv) English is widely recognised as an international language, such that it would be fair to both parties to conduct the proceedings in English.

A.2 Substantive grounds

The Complainant's submissions can be summarised as follows:

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 <servierconnect.com> is confusingly similar to the Complainant's trade mark, to the extent that the disputed domain name reproduces the trade mark SERVIER in its entirety. The addition of the generic word 'connect' to the disputed domain name string does not prevent a finding of confusing similarity with the Complainant's trade mark SERVIER. Instead, the generic word 'connect' could be used for a web portal or mobile application by any company within a broad range of business areas.

Furthermore, the generic top-level domains ('gTLDs'), in this case <.com>, are typically disregarded by UDRP panels under this UDRP Policy ground.

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

The Complainant 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 affiliated or otherwise connected with the Respondent, nor has the Complainant authorised the Respondent to use the trade mark SERVIER in any form, not least in the disputed domain name;
- The Complainant does not hold any trade mark rights in the term 'servier';
- There is no evidence that the Respondent has been commonly known by the disputed domain name; and
- The Respondent is not making a legitimate non-commercial or fair use of the disputed domain name, nor has the Respondent

shown demonstrable preparations to use the disputed domain name in connection with a bona fide offering of good or services. The Respondent's website directs to an error page.

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 advances the following grounds in support of a finding of registration in bad faith:

- The Servier group is so widely known that it is very unlikely that the Respondent registered the disputed domain name without knowledge of the Complainant;
- 'Servier' is the Complainant's founder's surname, which is a fanciful term devoid of any meaning except in German language where it has the meaning of 'serve'; and
- The Complainant has a subsidiary in China, where the Respondent appears to reside.

Use

The Complainant submits that it is not possible to conceive any bona fide use of the disputed domain name which currently directs to an error page.

The Complainant alludes to the doctrine of passive holding to support its claim for a finding of bad faith (in particular, Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-003; and paragraph 3.3 of the WIPO Panel Views on Selected UDRP Questions, Third Edition ('the WIPO Jurisprudential Overview 3.0')).

The Complainant further submits that, considering the distinctiveness and intensive use of the Complainant's trade mark SERVIER, and the reputation of the Complainant, the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

The Respondent has defaulted in this UDRP administrative proceeding and has therefore failed to advance any substantive case on the merits.

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 Panel makes no ruling on this UDRP Policy ground for the reasons set forth in section 'Principal Reasons for the Decision' further below.

BAD FAITH

The Complainant has failed to demonstrate that 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 both 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 applied the language of proceeding test set out 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, namely the generic word 'connect';

(ii) the content of the Respondent's website: the Respondent's website hosts content in Chinese only;

(iii) the language(s) of the Parties: the Complainant is a French company and the Respondent appears to be a Chinese national residing in China. English would therefore be considered neutral for both Parties;

(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 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 grounds which the Complainant must establish to succeed:

- 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 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 Panel is satisfied that the Complainant owns trade mark rights in 'SERVIER' since at least 1990.

The disputed domain name is <servierconnect.com>, and the Complainant's trade mark is SERVIER.

The Panel notes that the Complainant's trade mark SERVIER is wholly incorporated into the disputed domain name, the only difference being the contiguous generic word 'connect'. This additional term has no material bearing on the confusing similarity assessment, such that the disputed domain name clearly evokes the Complainant's trade mark SERVIER.

In addition, the gTLD <.com> is typically disregarded by UDRP panels under this UDRP Policy ground (see WIPO Jurisprudential 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

In light of the Panel's finding under section D below, the Panel shall not consider this UDRP Policy ground as any such finding would consequently be immaterial to the outcome of this UDRP administrative proceeding.

D. Registered and Used in Bad Faith

In order to succeed under this UDRP Policy ground, the Complainant must provide evidence that the disputed domain name was registered and is being used in bad faith. The UDRP Policy enumerates non-exhaustive circumstances which would evidence bad faith registration and use of a domain name, as follows:

- 1) circumstances indicating that the respondent has registered or has 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 complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

2) 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 you have engaged in a pattern of such conduct; or

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

4) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

The Panel has considered the evidence put forward by the Complainant, and has also performed independent, albeit limited, factual research on certain aspects of this UDRP administrative proceeding. The Panel considers that the factual elements critical to the assessment of bad faith registration and use in this case are interconnected and, consequently, will be dealt with by the Panel concurrently.

The Complainant relies upon the UDRP jurisprudential construction of 'passive holding' to support its claim of bad faith registration and use of the disputed domain name. The Panel notes that paragraph 3.3 of the WIPO Overview 3.0 sets out four factors conducive to a finding of passive holding, as follows: (i) the degree of distinctiveness or reputation of the Complainant's trade 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 to which the disputed domain name may be put.

The Complainant has supplied evidence that the disputed domain name directed, at some point in time, to an error page, and such use formed the basis for the Complainant's passive holding claim. Nevertheless, the Panel notes that with respect to item (iv) of the passive holding test, the disputed domain name was registered in September 2023 and the Complaint filed in November 2023.

The passage of time between the above two key events is rather brief, and the Panel does not consider implausible that the disputed domain name may have been put to good faith. For example, the disputed domain name could have resolved to a holding page because the Respondent was making good faith preparations to commence use of the disputed domain name. The Panel is also somewhat surprised that the Complainant does not appear to have attempted to contact the Respondent prior to commencement this UDRP administrative proceeding, and even if it did, there is no evidence in the file to suggest so. Therefore, it is difficult for the Panel to conclude that the Respondent only commenced use of the disputed domain name after being put on notice by the Complainant.

Notwithstanding all of the above, the Panel notes that at the time of writing the disputed domain name resolves to an active website which holds content in Chinese language only. The Respondent's website, which does not resemble the Complainant's own website, has the look and feel of a (in front of the paywall) daily news/knowledge forum in which a list of posts and articles are made available on topics extremely varied, for example news about technology, sports, fashion, etc. None of these posts appear to refer or relate to the Complainant or the Complainant's segment of business. The risk of affiliation with the Complainant is, in the circumstances, rather fanciful. It is likewise unclear to the Panel the extent to which the Respondent's website may be used as a vehicle for any commercial venture. On balance, the Panel considers that there does not appear to be any underlying commercial gain associated with the use of the Respondent's website within the parameters of the UDRP Policy.

The Panel is furthermore unconvinced that the Respondent's behaviour would fall within any of the other three circumstances – all of which laid down in the UDRP Policy for registration and use in bad faith. In the Panel's view, the case particulars would similarly not warrant a deviation from the illustrative four circumstances.

The UDRP Policy requires evidence of bad faith registration and use of the disputed domain name, and the available record does not meet the evidential threshold of the UDRP Policy. The Panel reminds the parties that the burden of proof under this UDRP Policy ground lies with the Complainant. On balance, and given the lack of convincing evidence of bad faith registration and use, the Panel finds that the Complainant has failed to establish this UDRP Policy ground.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **servierconnect.com**: Remaining with the Respondent

PANELLISTS

Name	Yana Zhou
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DATE OF PANEL DECISION: 2023-12-15

DATE OF PANEL DECISION - - -

Publish the Decision
