

Decision for dispute CAC-UDRP-104318

Case number	CAC-UDRP-104318
-------------	------------------------

Time of filing	2022-02-01 09:13:10
----------------	----------------------------

Domain names	spirivacoupons.com
--------------	---------------------------

Case administrator

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

Complainant

Organization	Boehringer Ingelheim Pharma GmbH & Co KG
--------------	---

Complainant representative

Organization	NAMESHIELD S.A.S.
--------------	--------------------------

Respondent

Organization	xianjin hong
--------------	---------------------

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 Complainant is the proprietor of the mark SPIRIVA in a number of territories. For instance, it has the international (Madrid) mark SPIRIA (692353, registered 1 April 1998 on the basis of a German mark of 1997, which is valid in multiple territories, in class 5 (pharmaceutical and veterinary preparations)).

FACTUAL BACKGROUND

The Complainant, a company with its seat in Ingelheim, Germany, is active in the pharmaceutical industry. It was founded in the 19th century and now has activities at a global scale, with over 50,000 employees. It produces and markets a broad range of human and animal products, including SPIRIVA, a formulation with the active ingredient tiotropium bromide used in the treatment of adult humans with chronic obstructive pulmonary disease. It promotes this product through a website at <www.spiriva.com>, the domain name being first registered on 15 February 1999 and duly renewed since then.

The Respondent, an individual with an incomplete address in Nanchong, Sichuan, China, registered the disputed domain name on 8 December 2021.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

The Complainant asks that the disputed domain name be transferred to it, contending that all aspects of the Policy have been addressed. It cites a range of past cases decided under the Policy, accompanied by evidence of its relevant product and activities.

RIGHTS

The Complainant has, 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).

Disregarding the TLD .com in accordance with established practice under the Policy, the disputed domain name (SPIRIVACOUPONS) differs from the Complainant's mark (SPIRIVA) in one respect - the addition of the string COUPONS. This is a generic or descriptive term as set out in the WIPO Jurisprudential Overview, version 3.0, para 1.8. Moreover, it is one that could be said to be associated with the Complainant's activities. As such, the disputed domain name is without question confusingly similar to the Complainant's mark SPIRIVA. The Panel notes in this context the Complainant's submission that previous panels have found that the Complainant has satisfied this aspect of the Policy in other disputes concerning domain names which include the text SPIRIVA: CAC Case No. 103021, Boehringer Ingelheim Pharma GmbH & Co KG v. neeraj manchanda <spirivadosing.com>, and WIPO Case No. D2016-0537, BOEHRINGER Ingelheim Pharma GmbH & Co. KG v. Kelvin Baraka <spiriva.top>.

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 Policy).

The Complainant has made out a prima facie case that the Respondent lacks any rights or legitimate interests pursuant to the Policy. It declares, without contradiction from the Respondent or any other evidence available to the Panel, that the Respondent is not related in any way with the Complainant, that there is no activity or business between the parties, and that the Complainant has not issued any license or authorisation to the Respondent, including in respect of its mark.

The Panel further notes that, as well as the Respondent's lack of participation, the disputed domain name does not resolve to an active website, and that the Respondent is known as Xian Jin Hong (Hong being the personal name and Xian Jin the family name, as set out in the Registrar Verification), which does not have any connection with the disputed domain name.

It can therefore be concluded that the prima facie case has not and could not have been rebutted in any plausible way and so finds that this aspect of the Policy has also been satisfied.

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 Policy).

The Complainant argues that the Respondent has not demonstrated any activity in respect of the disputed domain name, and that it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate (e.g. passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trade mark law).

The Panel notes again that the disputed domain name does not resolve to an active website, and notes the extensive jurisprudence interpreting the Policy in cases of 'passive holding' (since Telstra; see further WIPO Jurisprudential Overview, version 3.0, para 3.3). In that context, due weight is placed on the Complainant's assertion that the term 'SPIRIVA COUPONS' is associated with its activities (verified by the results of online searches included as an Annex to the Complaint), and the Panel's acceptance that the Respondent has failed to participate in these proceedings (and initially identified itself as being a different territory, while using proxy registration) or provide any evidence of good faith use.

It is further accepted that the mark SPIRIVA is distinctive and does not carry any other known meaning, so that the Respondent is likely to have been aware of and had in mind the Complainant at the point of registration. It is also the case that the particular term SPIRIVA is an artificial one chosen by the Complainant for this product and is not the active ingredient or a scientific description.

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 Panel notes that in response to the Provider's request that the Registrar confirm the language of registration of the agreement between it and the Respondent, the Registrar stated that 'if possible, the registrant would like to choose Chinese'. However, the Registrar subsequently confirmed to the Provider that the language of the agreement is English. This is the same language in which the Complaint was filed and the Complainant included in its Complaint a request that proceedings be in English.

It is the case that the default language of proceedings under the Policy is that of the language of the registration agreement, unless the Panel determines otherwise or it is otherwise agreed by the parties (UDRP Rules, rule 11; CAC Supplemental Rules, rule 8).

Given that it is not known whether the Registrar's statement was of its own accord or on behalf of the Respondent, and that the Respondent has not participated in these proceedings, the Panel sees no need to consider the present dispute in any language other than the language of registration (English), confirmed further by the use of the English-language term 'COUPONS' in the disputed domain name.

PRINCIPAL REASONS FOR THE DECISION

In the absence of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name. On the other hand, it is clear that the Complainant has rights in respect of the mark SPIRIVA, and that the disputed domain name is confusingly similar to this mark, differing in substance only with the addition of the generic term COUPONS. In light of the evidence presented by the Complainant, and applying the concept of passive holding, the Panel finds that the disputed domain name was registered and is being used in bad faith. The requirements for the acceptance of a Complaint under paragraph 4 of the Policy have therefore been met, and the disputed domain name should be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **SPIRIVACOUPONS.COM**: Transferred

PANELLISTS

Name	Dr Daithi Mac Sithigh
------	-----------------------

DATE OF PANEL DECISION 2022-03-12

Publish the Decision