



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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Decision Submission

English Print

Decision ID	DE-0400032
Case ID	HK-0400050
Disputed Domain Name	www.51botox.com
Case Administrator	Dennis Choi
Submitted By	M Scott Donahey
Participated Panelist	M Scott Donahey

Date of Decision 02-11-2004

The Parties Information

Claimant	Allergan, Inc
Respondent	Shanghai Ilongen Bio Technology, Co., Ltd

Procedural History

The complainant in this case is Allergan, Inc., a corporation organized under the laws of the State of Delaware, United States of America. Its address is 2525 Dupont Drive, Irvine, California, United States of America. Its authorized representative in these proceedings is Bird & Bird.

The respondent is Shanghai Ilongen Bio Technology, Co., Ltd, 2288 Qixin Road, Dongfang Park, Shanghai, China. Respondent has not appointed any representative in these proceedings.

The domain name in dispute is <51botox.com>. The Registrar of the domain name is Tucows, Inc., the address of which is 96 Mowat Avenue, Toronto, Ontario, Canada.

On 13 August 2004, pursuant to the Uniform Domain Name Dispute Resolution Policy ("the Policy"), the Rules for the Uniform Domain Name Dispute Resolution Policy ("the Rules") and Hong Kong International Arbitration Centre Supplemental Rules ("the HKIAC Supplemental Rules"), the Complainant submitted a complaint in the English language in electronic format to the Hong Kong International Arbitration Centre (the "HKIAC"), an office of the Asian Domain Name Dispute Resolution Centre and elected this case to be dealt with by a one-person panel. On 16 August 2004, Hong Kong International Arbitration Centre sent to the complainant by email an acknowledgement of the receipt of the complaint and reviewed the format of the complaint for compliance with the Policy, the Rules and the HKIAC Supplemental Rules. All correspondence to and from the HKIAC described herein was in the English language.

On 30 August 2004 the HKIAC notified the Respondent of the commencement of the action.

On 23 September 2004, the HKIAC notified the Complainant that the Respondent had failed to submit a Response.

Since the Respondent did not file a response in accordance with the time specified in the Rules the HKIAC Supplemental Rules, and the Notification, the HKIAC informed Complainant and Respondent by email about the default, stating that, as Respondent did not file a response within the required time, the HKIAC would appoint the panelist to proceed to render the decision, in the absence of a response by Respondent.

On 28 September 2004, the HKIAC notified the parties that the Panel in this case had been selected, with M. Scott Donahey acting as the sole panelist. The Panel determines that the appointment was made in accordance with Rules 6 and Articles 8 and 9 of the Supplemental Rules.

On 11 October 2004, the Panel received the file from HKIAC.

Factual Background

For Claimant

Complainant, founded in 1950, is one of the leading pharmaceutical companies in the world. It has global marketing and sales capabilities in over 100 countries, with offices in 20 countries. Complainant's worldwide sales for the financial year ending 200e totaled US\$1,755,400,000. Complainant acquired botulinum toxin type A, sold under Complainant's trademark, BOTOX, for which Complainant has trademark registrations in more than 80 countries, including the United States, where Complainant is headquartered, and China, where Respondent resides. Complaint, Annexes 2, 3, and 4. Complainant is the registrant of the domain name <botox.com> which it initially registered on 29 March 1999. Complainant has registered other domain names which include its BOTOX trademark. Complaint, Annexes 8 and 9.

For Respondent

The domain name at issue was registered by the Respondent on 20 June 2004. The domain name at issue is used to resolve to a web site at which botulinum toxin type A is offered under the brand name "BTS."

Parties' Contentions

Claimant

Complainant asserts that the domain name at issue is identical or confusingly similar to Complainant's trademark and service mark, in that the domain name at issue is comprised of Complainant's mark with the addition of the number "51." Complainant further alleges that Respondent has no rights or legitimate interests in respect of the domain name, and that Respondent's domain name has been registered in bad faith.

Respondent

The respondent did not file a response within the stipulated time.

Findings

Identical / Confusingly Similar

The Panel finds that the domain name <51botox.com> is confusingly similar to the mark BOTOX in which Complainant has rights, since domain name incorporates Complainant's trademark. *Electric Company v. CPIC NET and Hussain Syed*, WIPO Case No. D2001-0087.

Rights or Legitimate Interests of the Respondent

Rights and Legitimate Interests

Complainant has in a credible way alleged that Respondent has no rights or legitimate interests in respect of the domain name at issue. Respondent has failed to show that Respondent has any rights or legitimate interests in respect of the domain name at issue. This entitles the Panel to infer that Respondent has no rights or legitimate interests in respect of the domain name at issue. *Alcoholics Anonymous World Services, Inc. v. Lauren Raymond*, WIPO Case No. D2000 0007; *Ronson Plc v. Unimetal Sanayi ve Tic. A.S.*, WIPO Case No. D2000 0011. Accordingly, the Panel finds that Respondent has no rights or legitimate interests in respect of the domain name.

Bad Faith

At the time that the Complaint was filed, the domain name at issue was being used to resolve to a web site on which a product directly competitive with Complainant's trademarked product was offered for sale. Complaint, Annex 11. The product being offered is the same chemical compound as that offered by Complainant under its BOTOX trademark. Therefore, Respondent is attempting to take advantage of the good will created by Complainant in its trademark to sell a directly competitive product. This is evidence of bad faith registration and use under paragraph 4(b)(iv) of the Policy.

The Panel finds that Respondent has registered and is using the domain name in bad faith.

Status

www.51botox.com

Domain Name Transfer

Decision

For all of the foregoing reasons, the Panel decides that the domain name registered by Respondent is confusingly similar to the trademark and in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the domain name at issue, and that the Respondent's domain name has been registered and is being used in bad faith. Accordingly, pursuant to Paragraph 4(i) of the Policy, the Panel requires that the registration of the domain name <51botox.com> be transferred to the Complainant.

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