



## **.hk Domain Name Dispute Resolution** **ARBITRATION PANEL DECISION**

Complainant: Boehringer Ingelheim International  
Respondent: Cheng Sai Lung  
Case Number: DHK-1500120  
Contested Domain Name: <jardiance.hk>  
Panel Member: M. Scott Donahey

---

### **1. Parties and Contested Domain Name**

The complainant in this case is Boehringer Ingelheim International, a company organized under the laws of Germany, whose address is Postfach 200, D55216, Ingelheim, Germany (Complainant"). Its authorized representative in these proceedings is Laurent Becker, Nameshield, 27 rue des arènes. 49100 Angers, France.

The respondent is Cheng Sai Lung, an individual, whose address is listed in Whois as Flat E, 12/F., Hoi Sing Mansion, Riviera Gardens, Tsuen Wan and whose email address is given as [sailing\\_cheng@yahoo.com.hk](mailto:sailing_cheng@yahoo.com.hk). ("Respondent"). Complaint, Annex 1. Respondent has not appointed any representative in these proceedings.

The domain name in dispute is <jardiance.hk>. The Registrar of the domain name is Hong Kong Domain Name Registration Company Limited (the "Registrar").

### **2. Procedural History**

On 1 April 2015, pursuant to the Hong Kong Internet Registration Company Limited ("HKIR") Domain Name Dispute Resolution Policy ("the Policy"), the HKIR Domain Name Dispute Resolution Policy Rules of Procedure ("the Rules") and Hong Kong International Arbitration Centre Domain Name Dispute Supplemental Rules ("the HKIAC Supplemental Rules"), the Complainant submitted a complaint in the English language to the Hong Kong International Arbitration Centre (the "HKIAC"), and elected this case to be dealt with by a one-person panel. On that same date, the HKIAC 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. On the same date the HKIAC sent a copy of the complaint to the Registrar, and requested that the Registrar verify that the Respondent was the registrant of the domain name at issue and that the Registrar confirm the contact details. On 8 April 2015 the Registrar confirmed that the Respondent was the registrant of the domain name at issue. All

correspondence to and from the HKIAC described herein was in the English language. On 20 April 2015 the HKIAC acknowledged receipt of the filing fee.

On 20 April 2015 the HKIAC notified the Respondent of the commencement of the action, informing Respondent that a response must be filed no later than 12 May 2015. On 14 May 2015, not having received a response, the HKIAC notified Respondent's default..

On 19 May 2015, 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 the Supplemental Rules. On that same date, the Panel received the file from HKIAC.

### **3. Factual Background**

#### For the Complainant

On 3 September 2008 the International Trademark System issued to Complainant a registration of the mark JARDIANCE. On 18 March 2013 Complainant received a registration of the mark JARDIANCE in Hong Kong. Complaint, Annex 2.

Complainant is a family owned pharmaceutical group headquartered in Ingelheim am Rhein, with 142 affiliated companies around the world employing more than 47,000 people. In 2013, Complainant's group of companies had net sales of approximately 14.1 million Euros. Complaint, Annex 3. Complainant developed a drug for the treatment of type 2 diabetes in adults that is marketed under the trademark JARDIANCE. Complaint, Annex 4.

Complainant has not authorized in any way Respondent to use its trademark, nor does Complainant transact any business with Respondent. On 27 February 2015, Complainant sent Respondent a cease and desist letter demanding to know the reason that Respondent had registered a domain name consisting of its trademark and the ccTLD .hk. Complaint, Exhibit 6. Respondent did not reply to Complainant's letter.

Respondent registered the domain name at issue on 25 March 2014. Complaint, Annex 1. Respondent's domain name resolves to a site where the domain name is offered for sale. Complaint, Annex 7.

#### For the Respondent

Respondent did not reply to the Complaint.

### **4. Parties' Contentions**

#### The Complainant

Complainant alleges that the domain name at issue is identical or confusingly similar to Complainant's JARDIANCE mark, in that it consists of the word mark "jardiance"



and the ccTLD *.hk*. Complainant asserts that Respondent has no rights or legitimate interests in respect of the domain name at issue, in that Complainant has never authorized Respondent to use the mark in any way. Finally, Complainant contends that Respondent has registered and is using the domain name at issue in bad faith in that the domain name is being used to resolve to a web site on which the domain name at issue is being offered for sale.

#### The Respondent

Respondent did not reply and failed to deny any of Complainant's assertions.

### **5. Findings**

According to Paragraph 4(a) of the HKDNR Domain Name Dispute Resolution Policy (the "Policy") which is applicable hereto, the Complainant has the burden of proving that:

- (i) the Disputed Domain is identical or confusingly similar to a trade mark or service mark in Hong Kong in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the Disputed Domain; and
- (iii) the Disputed Domain has been registered and is being used in bad faith; and
- (iv) if the Disputed Domain Name is registered by an individual person, the Registrant does not meet the registration requirements for that individual category of Domain Name.

#### **(1). Identical/confusing similarity**

The domain name consists of Complainant's registered trademark JARDIANCE and the country code suffix *.hk*. It has long been established that the TLD suffix is to be disregarded in conducting an analysis of whether the domain name is identical or confusingly similar to a trademark in which the complainant has rights. Accordingly, the Panel finds that the domain name at issue is identical to Complainant's trademark which has been registered in Hong Kong.

#### **(2). Rights or Legitimate Interests of Respondent**

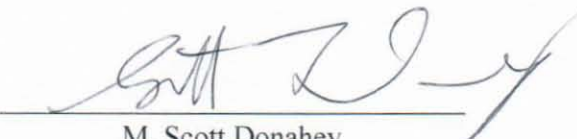
Complainant alleged that Respondent had no rights or legitimate interests in respect of the domain name at issue in that Complainant had never authorized Respondent to use its mark in any way. Respondent failed to respond and to assert that it has any rights or legitimate interests in respect of the domain name at issue. In such circumstances, Respondent's failure to meaningfully deny Complainant's allegations is fatal. The Panel finds that Respondent has no rights or legitimate interests in respect of the domain name at issue.

**(3). Bad faith**

The domain name at issue resolves to a web site on which the domain name at issue is being offered for sale. This is evidence under the Policy of bad faith registration and use pursuant to paragraph 4(b) (i). Moreover, Respondent apparently did not provide the Registrar with his correct name and/or address, as a cease and desist letter alleging that Respondent had no rights or legitimate interests in respect of the domain name at issue went unanswered. Finally, "jardiance" is a term coined by Complainant, it is inconceivable that it could be used in a domain name without being used in bad faith. *See, Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003. Accordingly, the Panel finds that the domain name at issue has been registered and is being used in bad faith.

**6. Conclusions**

For all of the above reasons, the Panel orders that the domain name at issue, <jardiance.hk> be transferred to Complainant.



---

M. Scott Donahey

Dated: 28 May 2015