



## ADMINISTRATIVE PANEL DECISION

Case No. DCN-1500657

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Complainant:	Boehringer Ingelheim International GmbH
Respondent :	刘新建 (LIU Xin Jian)
Domain Name:	<synjardy.com.cn>
Registrar:	杭州爱名网络有限公司 (Hangzhou AiMing Network Co., Ltd.)

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### 1. Procedural History

The Complainant is represented in these administrative proceedings by Mr. Laurent Becker of Nameshield, whose address is 27, rue des arènes 49100, Angers, France.

The Complaint was filed with the Hong Kong International Arbitration Centre ('Centre') on 4 December 2015 in relation to the disputed domain name. On 7 December 2015, the Centre transmitted by email to the Registrar, Hangzhou AiMing Network Co., Ltd., a request for verification of the registered particulars of the disputed domain name <synjardy.com.cn>.

On 8 December 2015, the Registrar replied to the Centre and identified the Respondent, 刘新建 (LIU Xin Jian), as the Registrant of the disputed domain name.

The Centre confirmed that the Complaint satisfied the formal requirements of the *CNNIC ccTLD Dispute Resolution Policy* ('CNDRP') issued by the China Internet Network Information Center ('CNNIC'); the *CNNIC ccTLD Dispute Resolution Policy Rules* ('Rules of the CNDRP'); and the *HKIAC Supplemental Rules for CNDRP and Rules of CNDRP* ('Supplemental Rules') issued by the Centre; respectively, each of which became effective on 21 November 2014.

On 17 December 2015, in accordance with Articles 5 and 14 of the Rules of the CNDRP and Article 5(3) of the Supplemental Rules, the Centre formally notified the Respondent of the Complaint. These proceedings commenced. In accordance with Article 17 of the Rules of the CNDRP, the due date for the Respondent's Response was 6 January 2016.

No Response was submitted to the Centre by the Respondent in relation to the disputed domain name, whereupon, the Centre sent a Notice of Default to the parties by email on 7 January 2016.

The Centre appointed David L. Kreider as the sole panelist in this matter on 8 January 2016. The Panel finds that it was properly constituted. The Panel has submitted the

Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Centre to ensure compliance with Article 9(2) of the Supplemental Rules.

### Language

By its email to the Centre on 16 December 2015, the Complainant requests that English be used, exceptionally, as the language of these proceedings. The Complainant argues as grounds that the Complainant is located in Germany and has no knowledge of the Chinese language, and that the cost of retaining specialized translation services would impose a relatively significant burden on the Complainant, given the nature of these administrative proceedings, which are intended to be speedy and low cost. The Complainant cites as additional grounds that the Centre has provided copies of all correspondence and notices relative to these proceedings to the Respondent in both Chinese and English, and yet the Respondent has not submitted a Response after having been afforded an opportunity to do so.

Having considered all the circumstances of these proceedings, the Panel finds merit in the Complainant's request and decides, as an exception to the general mandate of Article 6 of the CNDRP and Article 8 of the Rules of the CNDRP, that the instant proceedings shall be conducted in English, rather than in Chinese.

## **2. Factual background**

The Complainant, Boehringer Ingelheim International GmbH, with offices located at Postfach 200 D-55216 Ingelheim, Germany, is a family-owned pharmaceutical group of companies with roots going back to 1885, when it was founded by Albert Boehringer (1861-1939).

Ever since, Boehringer Ingelheim has become a global, research-driven pharmaceutical enterprise and has today about 140 affiliated companies worldwide with roughly 46,000 employees. The two main business areas of Boehringer are: Human Pharmaceuticals and Animal Health. In 2013 alone, net sales of the Boehringer group of companies amounted to about EUR 14.1 billion.

Synjardy® has been granted marketing authorisation by the European Commission for the treatment of adults with type 2 diabetes (T2D) in the European Union (EU). Synjardy® is a new single-pill combination therapy from the Boehringer Ingelheim and Eli Lilly and Company diabetes alliance.

The Complainant owns several trademarks consisting in the wording Synjardy® in several countries, especially in China:

Trademark	Country	Registration Number	Registration Date
SYNJARDY	International	1199259	2014.02.17

The Complainant is also the owner of an important domain names portfolio including the trademark SYNJARDY®.

The disputed domain name <synjardy.com.cn> was registered on 1 July 2015.

On 30 September 2015, a cease-and-desist letter was sent by email to the Respondent. As has been noted, the Respondent made no reply to the cease-and-desist letter.

### 3. Parties' Contentions

#### A. Complainant

The Complainant's contentions may be summarized as follows:

#### 1. The disputed domain name is identical with or confusingly similar to the Complainant's name or mark in which the Complainant has civil rights and interests;

The Complainant contends that the disputed domain name is identical to the distinctive trademark SYNJARDY® (also registered in China). Indeed, the domain name <synjardy.com.cn> includes the Complainant's trademark in its entirety and without any adjunction of letter or word.

Furthermore, the Complainant contends that the addition of the ccTLD ".COM.CN" is not sufficient to escape the finding that the domain name is identical to its trademark SYNJARDY®.

It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademarks and its domain names associated. A previous panel has confirmed that the Complainant has rights on decision: *DCN-1500638 Boehringer Ingelheim International GmbH v. 段佐春 <synjardy.cn>*.

**So the disputed domain name is identical to the Complainant's trademark.**

#### 2. The holder of the disputed domain name has no legitimate right or interest over the domain name or the major part of the domain name;

According to the WIPO case no. D2003-0455, "*Croatia Airlines d.d. v. Modern Empire Internet Ltd.*", the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP.

In the present matter, the Complainant argues that the Respondent has no rights or legitimate interests in the disputed domain names as he has no relationship with the Complainant's business and is not authorized or licensed to use the trademark SYNJARDY®.

Further, since the date of registration, the domain name resolves to an inactive web page. This information proves that the Respondent has no legitimate interest by maintaining the litigious domain name.

Moreover, the Respondent has not provided evidence of any rights or legitimate interests in the disputed domain name following the sending of the cease and desist letter.

**Accordingly, the Respondent has no rights or legitimate interests in the disputed domain name.**

**3. The holder of the disputed domain name registered or is using the disputed domain name in bad faith.**

The disputed domain name is identical to the prior trademark SYNJARDY® and domain names owned by the Complainant.

The domain name resolves to an inactive web page. As prior WIPO UDRP panels have held, the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use. Please see for instance:

WIPO D2000-0003 *Telstra Corporation Limited v. Nuclear Marshmallows*

WIPO D2000-0400 *CBS Broadcasting, Inc. v. Dennis Toepfen*

The domain name is on sale on the Sedo platform.

Further, following the sending of the cease and desist letter, the Respondent has not provided a response to justify that the domain name is registered and used in good faith. The Complainant contends that the respondent has registered the domain name reflecting the Complainant's trademark only for commercial gain.

**On these bases, the Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.**

**B. Respondent**

The Respondent's contentions may be summarized as follows:

The Respondent failed to submit a Response to the Complaint within the specified time period.

**4. Findings**

As to the case, Article 8 of CNDRP provides that a complaint against a registered domain name shall be supported if the following conditions are fulfilled:

- i. The disputed domain name is identical with or confusingly similar to the Complainant's name or mark in which the Complainant has civil rights or interests;

- ii. The disputed domain name holder has no right or legitimate interest in respect of the domain name or major part of the domain name;
- iii. The disputed domain name holder has registered or has been using the domain name in bad faith.

Article 7 of CNDRP states that the complainant and the respondent shall bear the burden of proof for their own claims. With reference to the complaint and the attached documents, the Panel of this case considers that:-

### ***Identical or Confusing Similarity***

The disputed domain name <synjardy.com.cn> incorporates the Complainant's highly distinctive trademark in its entirety. The Complainant correctly asserts that the mere addition of the ccTLD “.COM.CN” is not sufficient to escape the finding that the domain name is identical to its trademark SYNJARDY ®. Another panel has so held in a related decision brought by the Complainant: *DCN-1500638 Boehringer Ingelheim International GmbH v. 段佐春 <synjardy.cn>*.

This panelist finds that the disputed domain name is identical to the Complainant's trademark.

### ***Rights or Legitimate Interests of the Respondent***

The name “SYNJARDY” is highly distinctive and is obviously connected with the Complainant and its products and is not a word any market participant or other domain registrant would legitimately choose unless seeking to create an impression of an association with the Complainant. The Complainant has alleged that it has not licensed or otherwise permitted the Respondent to use its trademark. The Respondent, on its part, has defaulted and has filed no Response in these proceedings.

The Respondent has not used the disputed domain name, or a name corresponding to the domain name, in connection with a bona fide offering of goods or services. Rather, the disputed domain name resolves to an inactive web page.

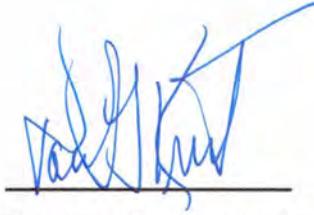
The Panel finds that the Respondent has no legitimate right or interest in respect of the disputed domain name or the major part of the domain name.

### ***Bad Faith***

Any doubt as to the Respondent's bad faith registration or use of the disputed domain name is removed by the Respondent's failure to respond to Complainant's 30 September 2015 cease and desist letter; to submit a Response to the Complaint within the specified time period in these administrative proceedings; and by Complainant's evidence showing that the Respondent has put the disputed domain name up for public sale on the Sedo platform.

**5. Decision**

The Panel orders that the disputed domain name <synjardy.com.cn> be transferred to the Complainant.



Panelist : David L. Kreider, Esq.

Date: 11 January 2016