

**ADMINISTRATIVE PANEL DECISION**  
**Case No. DCN-1600677**

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<b>Complainant:</b>	<b>Boehringer Ingelheim International GmbH</b>
<b>Respondent:</b>	<b>杨智</b>
<b>Domain Name:</b>	<b>&lt;ofev.cn&gt;</b>
<b>Registrar:</b>	<b>Wenzhou City Network Computer Technology Service Co., Ltd</b>

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**1. Procedural History**

The Complaint was filed with the Hong Kong International Arbitration Centre (the “Centre”) on March 7, 2016. On March 8, 2016, the Centre transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 8, 2016, the Registrar transmitted by email to the Centre its verification response confirming that the Respondent is listed as the registrant of the disputed domain name and providing the Respondent’s contact details.

On March 16, 2016, the Centre requested the Complainant to file a Chinese language translation of the Complaint, or alternatively, a request that the language of the proceeding be English. On March 17, 2016, the Complainant submitted its request that the language of the proceeding be English.

The Centre has verified that the Complaint satisfies the formal requirements of the CNNIC Domain Name Dispute Resolution Policy (the “Policy”), the Rules of Procedure under the Policy (the “Rules”) and the Centre’s Supplemental Rules.

In accordance with the Rules, the Centre formally notified the Respondent of the Complaint, and the proceeding commenced, on April 25, 2016. In accordance with the Rules, the due date for the Response was May 15, 2016.

No Response was received by the Centre.

In its email of April 25, 2016, the Centre also advised the Respondent of the Complainant’s language request and invited the Respondent to submit a response regarding the Complainant’s language request for consideration by the Panel. The Respondent did not submit any response regarding the language of the proceeding.

The Centre appointed Sebastian Hughes as the Panelist in this matter on May 31, 2016. The Panel finds that it was properly constituted and has acted impartially in reaching its conclusion.

## **2. Factual background**

### **A. Complainant**

The Complainant is a company incorporated in Germany and the owner of international registration number 1120388 for the trade mark OFEV, designating China, with a registration date of April 10, 2012 (the “Trade Mark”).

### **B. Respondent**

The Respondent is apparently an individual based in China.

### **C. The Disputed Domain Name**

The Respondent registered the disputed domain name on May 21, 2015.

### **D. The Website at the Disputed Domain Name**

The disputed domain name has been resolved to a pay-per-click website with sponsored links relating to pharmaceutical products, including the Complainant’s FDA-approved prescription drug for idiopathic pulmonary fibrosis, marketed and sold under the Trade Mark (the “Website”). The disputed domain name has also been offered for sale via the SEDO domain marketplace.

## **3. Parties’ Contentions**

### **A. Complainant**

The Complainant contends that the disputed domain name is identical to the Trade Mark, the Respondent has no rights or legitimate interests in respect of the disputed domain name, and the disputed domain name has been registered and used in bad faith.

### **B. Respondent**

The Respondent did not reply to the Complainant’s contentions.

## **4. Findings**

### **1. Language of the Proceeding**

Pursuant to Article 6 of the Policy, the language of the proceeding shall be Chinese, unless otherwise agreed by the parties, or determined by the Panel. No agreement has been entered into between the Complainant and the Respondent to the effect that the language of the proceeding should be English.

Article 31 of the Rules provides the Panel with a broad discretion with respect to the conduct of the proceeding. It is important to ensure fairness to the parties and the

maintenance of an inexpensive and expeditious avenue for resolving domain name disputes.

The Complainant has requested that English be the language of the proceeding for the following reasons:

- i. The English language is the language most widely used in international relations and is one of the working languages of the Centre;
- ii. The domain name is registered in Roman (ASCII) characters;
- iii. The Complainant is located in France and has no knowledge of Chinese;
- iv. In order to proceed in Chinese, Complainant would have had to retain specialised translation services at a cost very likely to be higher than the overall cost of this proceeding;
- v. The use of Chinese in this proceeding would therefore impose a burden on the Complainant which must be deemed significant in view of the low cost of this proceeding; and
- vi. The Complaint is written in English but the Center informed the Respondent in Chinese and afforded the Respondent the opportunity to respond in Chinese.

The Respondent did not file any submissions with respect to the language of the proceeding and did not file a Response.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs.

The Panel is also obliged by virtue of Article 31 of the Rules to ensure that the proceeding takes place with due expedition.

All communications from the Centre in this proceeding have been sent to the parties in both Chinese and English, and the Respondent has been given the opportunity to file submissions regarding the language of the proceeding.

The Website and the sponsored links thereon are in the English language, which demonstrates the likely possibility that the Respondent is proficient in English.

The Respondent has chosen to take no part in this proceeding and, therefore, in all the circumstances, the Panel finds it is not foreseeable that the Respondent would be unduly prejudiced, should English be adopted as the language of the proceeding.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

## **2. Decision**

Article 8 of the Policy provides that a complaint filed in respect of a registered .cn domain name shall be upheld 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 rights or legitimate interest in respect of the domain name or major part of the domain name; and
- iii. The disputed domain name holder has registered or has been using the domain name in bad faith.

Article 7 of the Policy states that the complainant and the respondent shall each bear the burden of proof for their own claims.

With reference to the Complaint and the attached documents, the Panel finds as follows:

### ***Identical or Confusingly Similar***

The Complainant has rights in the Trade Mark acquired through use and registration which incidentally predate the date of registration of the disputed domain name.

The disputed domain name is identical to the Trade Mark.

The Panel therefore holds that the Complaint fulfils the first condition of Article 8 of the Policy.

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

Article 10 of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in the disputed domain name:

- (i) before any notice to the respondent of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent (as an individual, business, or other organisation) has been commonly known by the domain name even if the Respondent has acquired no trade mark or service mark rights; or
- (iii) the respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

There is no evidence that the Complainant has authorised, licensed, or permitted the Respondent to register or use the disputed domain name or to use the Trade Mark. The Complainant has prior rights in the Trade Mark which precede the Respondent's registration of the disputed domain name. There is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and the burden is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that it has acquired any trade mark rights in respect of the disputed domain name or that the disputed domain name is used in connection with a *bona fide* offering of goods or services. To the contrary, the disputed domain name has been used in respect of the Website which, without the Complainant's authorisation, seeks to capitalise on the Complainant's reputation in the Trade Mark by providing sponsored links to unrelated third party websites.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain name.

There has been no evidence adduced to show that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name.

The Panel therefore finds that the Complaint fulfils the second condition of Article 8 of the Policy.

### ***Bad Faith***

Under Article 9 of the Policy, any of the following circumstances may amount to evidence of the registration and use of a domain name in bad faith:

- i. The purpose for registering or acquiring the domain name is to sell, rent or otherwise transfer the domain name registration to the complainant who is the owner of the name or mark or to a competitor of that complainant, and to obtain unjustified benefits...;
- iii. The disputed domain name holder has registered or acquired the domain name for the purpose of damaging the Complainant's reputation, disrupting the Complainant's normal business or creating confusion with the Complainant's name or mark so as to mislead the public; or
- iv. Other circumstances which may prove the bad faith.

In light of the Respondent's use of the Website in the manner described above, and the offer for sale of the disputed domain name via the SEDO domain marketplace, the Panel finds the requisite element of bad faith has been satisfied, under Article 9 of the Policy.

## **4. Decision**

For all the foregoing reasons, in accordance with Article 14 of the Policy and Article 37 of the Rules, the Panel orders that the disputed domain name <ofev.cn> be transferred to the Complainant.

**Sebastian Hughes**  
Sole Panelist

Dated: June 14, 2016