

ADMINISTRATIVE PANEL DECISION
Case No. DCN-1600679

Complainant:	Boehringer Ingelheim International GmbH
Respondent:	武汉百业网科技有限公司
Domain Name:	<ofev.net.cn>
Registrar:	深圳市邦众实业有限公司

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 April 15, 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.

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 18, 2016. In accordance with the Rules, the due date for the Response was May 9, 2016. No Response was received by the Centre.

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.

On June 2, 2016, the Panel issued Administrative Panel Order No. 1 requesting the Complainant to file a Chinese language translation of the Complaint, or alternatively, a request that the language of the proceeding be English, and giving the Respondent an opportunity to respond. On June 10, 2016, the Complainant submitted a Chinese language translation of the Complaint. The Respondent did not file any submissions regarding the language of the proceeding.

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 a company incorporated in China.

C. The Disputed Domain Name

The Respondent registered the disputed domain name on December 18, 2015.

D. The Website at the Disputed Domain Name

The disputed domain name has not been used.

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 or 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 filed the Complaint in both English and Chinese language.

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.

The Panel notes there is no evidence on the record to suggest that the Respondent is conversant in English. However, 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. Furthermore, the Respondent has been provided with both the English and Chinese language versions of the Complaint.

The Respondent has chosen to take no part in this proceeding.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that:

1. It will accept the filing of the Complaint in both English and Chinese language; and
2. It will render its Decision in 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 documents attached to the Complaint, 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. The disputed domain name has not been used.

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

The word "ofev" does not have any ordinary meaning in the English language. The Trade Mark has no other meaning other than as a reference to the Complainant's FDA-approved prescription drug for treating idiopathic pulmonary fibrosis, marketed and sold worldwide (including in China) under the Trade Mark. The Complainant's reputation and goodwill in the Trade Mark relate to a specialised market.

In all the circumstances, and in particular given the notoriety of the Trade Mark, the lack

of any explanation from the Respondent, and the fact the disputed domain name is identical to the Trade Mark, the Panel finds it is inconceivable that the Respondent had no knowledge of the Trade Mark when the disputed domain name was registered. The Panel therefore finds that the disputed domain name was registered in bad faith.

The Panel therefore finds that, in all the circumstances, the Respondent's passive use of the disputed domain name, together with the factors outlined above, are sufficient to amount to bad faith registration or use.

Accordingly, the Complainant has fulfilled the third condition of Article 8 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.net.cn> be transferred to the Complainant.

Sebastian Hughes

Sole Panelist

Dated: June 15, 2016