ADMINISTRATIVE PANEL DECISION
Case No. DCN-1800798

Complainant: Amgen Inc.
Respondent: pandianxin
Domain Name: blincyto.com.cn
Registrar: 阿里云计算有限公司（万网）

1. Procedural History

On 19 January 2018, the Complainant filed a Complaint in English in respect of the domain name <blincyto.com.cn> (the “disputed domain name”) with Hong Kong International Arbitration Centre (“HKIAC”) pursuant to the CNNIC ccTLD Dispute Resolution Policy (“CNDRP”) implemented by CNNIC on 21 November 2014. The Complainant elected to have the case decided by a single member panel. On the same day, HKIAC acknowledged receipt.

On 19 January 2018, HKIAC sent an email to the Registrar requesting verification of the disputed domain name registration information. On the same day, the Registrar replied to HKIAC confirming that the Respondent is listed as the registrant of the disputed domain name and providing the contact details.

On 22 January 2018, HKIAC sent an email to the Complainant notifying it of an administrative deficiency regarding the language in which the Complaint was submitted. On 26 January 2018, the Complainant filed a rectified Complaint requesting that English be the language of the proceeding. On 29 January 2018, HKIAC acknowledged receipt.

On 30 January 2018, HKIAC sent an email in Chinese and English to the Respondent forwarding the Complaint and notifying the commencement of proceedings. In accordance with the CNDRP, the CNNIC ccTLD Dispute Resolution Policy Rules (the “Rules”) and the HKIAC Supplemental Rules for CNNIC CNDRP (the “Supplemental Rules”), the Respondent had twenty (20) days to submit a Response (that is, on or before 22 February 2018). The Respondent was also entitled to reply to the Complainant’s language request within five calendar days (that is, on or before 5 February 2018). The Respondent did not file any response. Accordingly, on 23 February 2018, HKIAC notified the Respondent’s default.

On 27 February 2018, HKIAC informed the parties of the appointment of Prof. Matthew Kennedy as sole panelist in this dispute.
2. **Factual background**

The Complainant is a medical biotechnology company, founded in 1980. The Complainant and its subsidiaries have developed various drugs, among them blinatumomab, marketed as BLINCYTO, which is used for the treatment of relapsed or refractory B-cell precursor acute lymphoblastic leukemia in adults and children. The Complainant is the owner of trademark registrations in multiple jurisdictions for BLINCYTO, including Chinese trademark registration number 12981720 registered on 7 January 2015, specifying medicines and other goods in class 5. That trademark registration remains current. The Complainant registered the domain name <blincyto.com> on 12 November 2013, which it uses in connection with its official website to provide information about its BLINCYTO drug.

The Respondent appears to be an individual resident in Beijing. The contact information in the Registrar’s WhoIs database provides no street address. The disputed domain name was registered on 19 January 2016 and that registration remains effective. The disputed domain name does not resolve to any active website (“passive holding”).

3. **Parties’ Contentions**

A. **Complainant**

The Complainant’s contentions may be summarized as follows:

i. The disputed domain name is identical, and therefore confusingly similar, to the Complainant’s BLINCYTO mark. The addition of a country code Top-Level Domain (“ccTLD”) suffix is irrelevant and does not materially distinguish a domain name.

ii. The Respondent has no right or legitimate interest in respect of the disputed domain name. A search did not identify any BLINCYTO trademark registrations in the name of the Respondent. The Respondent has made no bona fide offering of goods or services; the website that appears at the disputed domain name is currently inaccessible. An Internet search did not uncover any use of the term “blincyto” by the Respondent. The Complainant has not licensed or otherwise permitted the Respondent to use its BLINCYTO trademark or to apply for or use any domain name incorporating that mark. The Respondent is not commonly known by the disputed domain name.

iii. The Respondent registered and is using the disputed domain name in bad faith. Given the Complainant’s worldwide reputation and the ubiquitous presence of the BLINCYTO mark, the Respondent was or should have been aware of the BLINCYTO mark long before registering the disputed domain name. It appears that the Respondent did not register the disputed domain name actually to offer goods or services but instead for the bad faith purpose of intentionally attempting to attract users to its website by creating a likelihood of confusion with the Complainant’s BLINCYTO mark. There is an obvious likelihood of confusion because the disputed domain name and the BLINCYTO mark are identical. BLINCYTO is a coined term with no dictionary definition. There is no reasonable explanation for the Respondent’s selection of the disputed domain
name other than intentionally attempting to trade off the goodwill that Complainant has established in its BLINCYTO mark.

B. Respondent

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

4. Findings

A. Preliminary Issues

Admissibility

Article 2 of CNDRP provides, relevantly, that “the Dispute Resolution Service Providers do not accept the Complaint regarding domain names with registration term of over TWO years.”

The Panel observes that the Complaint in these proceedings was filed on the second anniversary of the registration of the disputed domain name. As at that date, the disputed domain name had a registration term of exactly two years but not over two years. Therefore, the Panel finds that the Complaint is admissible.

Language of the Proceedings

Article 8 of the Rules provides that, “[u]nless otherwise agreed by the Parties or determined in exceptional cases by the Panel, the language of the domain name dispute resolution proceedings shall be Chinese.” This Rule does allow the Panel in some circumstances to determine that a language other than Chinese shall be the language of the proceedings. See, for example, Standard Life Employee Services Limited and Aberdeen Asset Management Plc v 申申申, HKIAC Case no. DCN-1700750.

The Complainant submitted the Complaint in English with a request that the Panel determine the language of the proceedings to be English. Its main arguments are that the Complainant’s working language is English, the evidence of use and bad faith is in English, the Respondent is a cybersquatter and the disputed domain name copies the Complainant’s domain name that resolves to its official website, which is in English.

The Panel observes that, despite having received notice of the Complaint and notice of the Complainant’s language request in both Chinese and English, the Respondent has not responded to either or otherwise expressed any interest in participating in these proceedings. The Panel also notes that most of the supporting evidence annexed to the Complaint is in English.

Article 31 of the Rules requires the Panel, inter alia, to “ensure that the parties are treated with equality and that each party is given a fair opportunity to present its case” and to “ensure that the proceedings take place with due expedition”. Given the circumstances in these proceedings, the Panel considers that requiring the translation of the evidence into Chinese would create an undue burden for the Complainant and unduly
delay the proceedings, while rendering this decision in English does not create unfairness for either party.

Having considered all the circumstances above, the Panel determines that the language of these proceedings shall be English.

B. Substantive Issues

As to the merits, 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**

On the basis of the evidence submitted, the Panel finds that the Complainant has rights in the BLINCYTO trademark.

The disputed domain name wholly incorporates the BLINCYTO trademark as its only distinctive element.

The disputed domain name also includes a second-level domain (“2LD”) suffix “.com” and the ccTLD suffix “.cn”. These elements are generally incapable of dispelling confusing similarity between a domain name and a trademark.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s BLINCYTO trademark.

**Rights or Legitimate Interests of the Respondent**

The Complainant submits that it has not licensed or otherwise permitted the Respondent to use its BLINCYTO trademark or to apply for or use any domain name incorporating that mark.

The disputed domain name does not resolve to any active website, which demonstrates that it is not used in connection with a bona fide offering of goods or services and, further, that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name.
The Registrar’s WhoIs database indicates that the Respondent’s name is “pandianxin”, which is neither the disputed domain name nor a major part of it. There is no evidence that the Respondent has been commonly known by the disputed domain name.

Based on the evidence, the Panel considers that the Complainant has made a prima facie case that the Respondent has no right or legitimate interest in respect of the disputed domain name or major part of the disputed domain name. The Respondent did not rebut that prima facie case because it did not respond to the Complainant’s contentions.

Accordingly, the Panel finds that the disputed domain name holder has no right or legitimate interest in respect of the disputed domain name or major part of the disputed domain name.

**Bad Faith**

The disputed domain name wholly incorporates the Complainant’s BLINCYTO trademark, with no additional elements besides 2LD and ccTLD suffixes, one of which is a technical requirement of domain name registration. The disputed domain name was registered after the Complainant obtained registration of its BLINCYTO trademark, including in China. The evidence shows that the disputed domain name was registered after the Complainant had begun using and promoting its BLINCYTO trademark in connection with its BLINCYTO drug. The BLINCYTO trademark is a coined term with no other apparent meaning. The disputed domain name is identical to the prior registered domain name that the Complainant uses with its official website for the BLINCYTO drug, with the additional element of the ccTLD suffix “.cn”, which gives the false impression that it is registered for use in connection with a Chinese site approved by, or affiliated with, the Complainant. The Respondent provides no explanation for its choice to register this term as the major part of the disputed domain name and provided only an incomplete address in the disputed domain name registration. This all gives rise to the inference that the Respondent was aware of the Complainant’s BLINCYTO trademark at the time of registration of the disputed domain name. The Panel finds it more likely than not that the Respondent registered the disputed domain name for the purpose of transferring the registration to the Complainant or to a competitor of the Complainant, and to obtain unjustified benefits, or to create confusion with the Complainant’s trademark so as to mislead the public.

Accordingly, the Panel finds that the disputed domain name holder has registered the domain name in bad faith.

5. **Decision**

In conclusion, the Panel finds that the Complainant has satisfied all three elements laid down in Article 8 of CNDRP. Therefore, the Panel supports the Complaint and orders that the disputed domain name be transferred to the Complainant.

综上所述，专家组认为本案投诉符合《解决办法》第八条规定的三个条件，即“被投诉的域名与投诉人享有民事权益的名称或者标志相同，或者具有足以导致混淆的
近似性：被投诉的域名持有人对域名或者其主要部分不享有合法权益；被投诉的域名持有人对域名的注册或者使用具有恶意”。

专家组决定支持投诉人的投诉请求，裁定本案争议域名转移给投诉人。

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Panelist: Prof. Matthew Kennedy

Date: 6 March 2018