Panel Decision for dispute CAC-ADREU-003588

Case number	**CAC-ADREU-003588**
Time of filing	**2006-11-08 13:12:28**
Domain names	**xirona.eu, levothyrox.eu**

Case administrator

Name	**Josef Herian**

Complainant

Organization / Name	**Merck KGaA, Jonas Kölle**

Respondent

Organization / Name	**Zheng Qingying**

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

The panel is not aware of any other legal proceedings pending with regard to the domain names in dispute.

FACTUAL BACKGROUND

Complainant in this administrative proceeding is the Merck KGaA, Frankfurter Straße 250, 64293 Darmstadt, Germany.

The Complainant is a partnership limited by shares incorporated under German law, having its place of business within the European Community, Art 4 (2) (b) (i) of the Regulation (EC) No. 733/2002. The Complainant is registered with the German Commercial Register (Local court of Darmstadt, Registration No. 6164) and is represented by its executive board.
In support of this is an extract of the German company register (Handelsregister) is provided as Annex 1 to this Complaint.

The Complainant is the registered owner of the German trademark No. 30091898.4 XIRONA, the Community trademark No. 003332491 XIRONA, the International registration No. 764707 XIRONA and the German trademark No. 30155986.4 LEVOTHYROX. Evidence proving the said trademark registrations is provided as Annex 2.

The Respondent in this administrative proceeding is, Mr. Zheng Qingying, 204 Woolwich Road, SE7 7QY London, United Kingdom.

The disputed domain names XIRONA und LEVOTHYROX were registered by the Respondent on August 22, 2006 by EURID.

The Complainant’s Sunrise Applications for the above named domains were rejected for formal reasons before.

A. COMPLAINANT

The Complainant argues that the Respondent has no legitimate interest in the registered domain names according to Art. 21 (1) (a), (2) of the Regulation (EC) No. 874/2004 and that he registered the domain names in bad faith pursuant to Art, 21 (1) (b) of the Regulation (EC) No. 874/2004.

To support this argumentation the Complainant brings forward that the Respondent is neither commonly known under the name XIRONA nor LEVOTHYROX nor does he have any other rights with respect to the domain names.

Furthermore, the Complainant claims that the Respondent does not use the domain names for any legitimate commercial or non-commercial purposes. The Respondent has provided no evidence whatsoever of any actual or contemplated good faith use.

The fact that the Respondent registered the domain name without a legitimate interest and the fact that he also registered other domain

names corresponding with trademarks of third parties, namely “monot.eu” and “ocunet.eu” (the trademark Monot is registered for Merck Sante and the trademark Ocunet for Ms. Ursula Hahn) lead the Complainant to the conclusion that the Respondent follows a pattern of conduct and registered the disputed domain names in order to prevent the Complainant from reflecting its trademarks XIRONA and LEVOTHYROX in corresponding domain names.
This would qualify as bad faith registration pursuant to Art. 21 (3) (b) (i) of the Registration.

The Complainant states his own legitimate interest in the domain name based on his registered trademarks and registrations and requests the Panel to transfer the disputed domain names to him in accordance with Art. 21 (1) of the Regulation (EC) No. 874/2004, Art. 11 (b) of the ADR Rules.

B. RESPONDENT

The Respondent, Mr. Zeng Qingying, failed to comply with the deadline indicated in the Notification of Complaint and Commencement of ADR Proceeding for the submission of his response and with the deadline indicated in the Notification of Deficiencies in Response.

As a consequence, the panel will decide the case in its sole discretion according to Art. 10 (a) ADR Rules

DISCUSSION AND FINDINGS

The registrations for the domain names XIRONA and LEVOTHYROX shall be revoked by the panel if the registration is speculative or abusive as defined in Art. 21 Regulation (EC) No. 874/2004.

First, the registration would be speculative if the Respondent had registered the domain name without any legitimate interest as defined in Art. 21 (2) Regulation (EC) No. 874/2004.
The Respondent did not present any evidence to prove that he offered goods or services in connection with the domain names or prepares to do so, that he has been commonly known by any of the domain names or that he is making any legitimate and non-commercial fair use of the domain.
Therefore the panel cannot establish any legitimate interest of the Respondent in registering the domain names.

Second, the registration of the domain names would be abusive if the Respondent only registered the domain names to prevent the holder of such a name from registering the domain for himself provided that a pattern of such conduct can be demonstrated, Art. 22 (3) (b)(i) Regulation (EC) No. 874/2004.
The Respondent registered a whole variety of domain names which refer to existing trademarks and names without using them for his own business as pointed out by the Complainant. This behavior has not been disputed by the Respondent. The registration of domain names of existing trademarks in at least four cases (XIRONA, LEVOTHYROX, MONOT, OCUNET) is sufficient to establish a pattern of conduct according to Art. 22 (3)(b)(i) Regulation (EC) No. 874/2004.

Therefore, the panel finds that the registration of the domain names XIRONA and LEVOTHYROX was speculative and abusive, Art. 21 Regulation (EC) No. 874/2004.

Because of the registered trademarks and International Registrations of the Complainant for XIRONA and LEVOTHYROX, the legitimate interest of the Complainant is well established.

DECISION

For all the foregoing reasons, the Panel decides that the domain name shall be revoked and that the domain name shall be transferred to the Complainant, Art. 22 (11) Regulation (EC) No. 874/2004.

PANELISTS

Name	Thomas Johann Hoeren

DATE OF PANEL DECISION 2007-01-12

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The registrations for the domain names in question were speculative as the Respondent did not present any evidence to prove that he offered goods or services in connection with the domain names or prepares to do so, that he has been commonly known by any of the domain names or that he is making any legitimate and non-commercial fair use of the domain. Furthermore, the registrations were abusive as the Respondent registered a whole variety of domain names which refer to existing trademarks and names without using

them for his own business as pointed out by the Complainant.