

**DECISION OF THE THIRD-PARTY DECIDER**

**Boehringer Ingelheim Pharma GmbH & Co KG / Zhao Ke**

**Case no. 444121: spiriva.be**

**1. The parties**

- 1.1. **Complainant: Boehringer Ingelheim Pharma GmbH & Co KG**, with registered office at Binger Strasse 173, 55218 Ingelheim, Germany,

*Represented by:*

Mr. Laurent Becker, counsel at Nameshield, with office at 79, rue Desjardins, 49100 Angers, France,

- 1.2. **Domain name holder: Zhao Ke**, No 161 QiAi Road Pudong, 201210 Shanghai, China (e-mail: [ruochang@gmail.com](mailto:ruochang@gmail.com)).

**2. Domain name**

Domain name: **spiriva.be**  
Registered on: 3 November 2020

hereafter referred to as "the domain name".

**3. Procedure**

On 26 January 2021, Complainant filed a complaint with exhibits (9 in total) with the Belgian Centre for Arbitration and Mediation (CEPANI-CEPINA) concerning the domain name.

The Domain name holder did not file a response to the complaint.

The Complainant offered the possibility to the Domain name holder to voluntarily transfer the Domain name within 7 calendar days as from the filing of the complaint. The domain name holder did not react to this offer.

On 5 March 2021, the Complainant and the Domain name holder were notified that the undersigned had been appointed as Third-Party Decider to settle the dispute.

Pursuant to Article 13 of the CEPANI Rules for domain name dispute resolution the deliberations were closed on 12 March 2021.

The Complainant declared that there are no other legal proceedings in relation to the domain name.

#### **4. Factual background information**

Having examined the complaint submitted by Complainant, the Third-Party Decider finds that the following facts have been established.

Complainant is a large pharmaceutical group and is active on a worldwide level. One of Complainant's blockbuster products is the COPD and asthma drug Spiriva®.

Complainant is the owner of several trademark registrations for Spiriva, covering many territories, including the EU. Reference is made, for example, to Complainant's International trademark registration no. 692353, registered on 1<sup>st</sup> April 1998 and to Complainant's EU trademark registration no. 789529, registered on 3 April 1998<sup>1</sup>.

Complainant also owns several Spiriva domain names, such as spiriva.com, registered since 15 February 1999.

The Domain name holder registered the domain name on 3 November 2020.

The corresponding website [www.spiriva.be](http://www.spiriva.be) mentions that the domain is "for sale by its owner" and in this respect links through to a website [www.sedo.com](http://www.sedo.com) where an offer can be made to buy the domain name.

The corresponding website [www.spiriva.be](http://www.spiriva.be) also contains references to other names used by Complainant in combination with its Spiriva® brand, such as 'Spiriva Respimat', and 'Spiriva Handihaler' (see on the Complainant's website [www.spiriva.com](http://www.spiriva.com)).

Furthermore, the website [www.spiriva.be](http://www.spiriva.be) is a pay-per-click website diverting consumers to other websites with offerings in the healthcare sector, including regarding treatments against COPD.

#### **5. Position of the parties**

##### **5.1. Position of Complainant**

Complainant request the Third-Party Decider to order the transfer of the domain name to Complainant, stating that the conditions thereto are met:

(i) *Domain name is identical or confusingly similar to Complainant's trademark*

Complainant states that the domain name is identical to Complainant's Spiriva® trademark, and that the addition of the ccTLD '.be' does not change that.

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<sup>1</sup> The Third-party decider notes that Complainant's exhibits only refer to an International trademark registration not covering the EU/Benelux. However, from the publicly available trademark databases it appears that Complainant also has trademark rights in 'Spiriva' in the EU/Benelux.

(ii) *Domain name holder has no right or legitimate interest in the domain name*

Complainant states that the Domain name holder is not known by the domain name and is not authorized to register and use the Spiriva® trademark as a domain name. Complainant confirms that the Domain name holder is in no way affiliated with and has no commercial relationship with Complainant.

Furthermore, Complainant states that the domain name redirects to commercial links in relation with Complainant's activity. Complainant concludes that it has not been established that the Domain name holder is making a legitimate non-commercial use of the domain name, and that the Domain name holder hence has no rights or legitimate interests in the domain name.

(iii) *The domain name has been registered and is being used in bad faith*

Complainant points out that there have been previous UDRP proceedings between Complainant and the Domain name holder, namely in relation to the domain name dulcolax.es where the WIPO ordered the transfer of the domain name to Complainant (WIPO decision in case no. DES2016-0035).

Given the notoriety of Complainant's Spiriva® trademark, it is unlikely that the Domain name holder was unaware of it. The Domain name holder registered the domain name and uses it to obtain commercial advantage, namely by attracting, for commercial gain, visitors that are diverted to other websites. The offer to sell the domain name and the Domain name holder's history of cybersquatting only confirm this.

Finally, Complainant states that the Domain name holder must have known that, by registering the domain name, he prevented Complainant from doing the same, whereas consumers looking for Complainant's products and services would be diverted to websites of competitors of Complainant.

From these circumstances, the Complainant concludes that the domain name was registered and is being used in bad faith.

## 5.2. Position of the Domain name holder

The Domain name holder did not file any response with CEPANI as provided for by Article 6 of the CEPANI Rules for domain name dispute resolution.

## 6. Discussion and findings

Pursuant to Article 16.1 of the CEPANI Rules for domain name dispute resolution, the Third-Party Decider shall rule on domain name disputes following the parties' views and in accordance with the dispute resolution policy of DNS.be, the registration agreement and following the provisions of the CEPANI Rules for domain name dispute resolution.

Pursuant to Article 10(b)(1) of the Terms and conditions for .be domain name registrations, the Complainant must prove that:

1. the Domain name holder's domain name is identical or confusingly similar to a trademark, a trade name, a social name or corporation name, a geographical

designation, a name of origin, a designation of source, a personal name or name of a geographical entity in which Complainant has rights; and

2. the Domain name holder has no rights or legitimate interests in the domain name; and
3. the Domain name holder's domain name has been registered or is being used in bad faith.

#### 6.1. The domain name is identical to a trademark of Complainant

To meet the first condition of Article 10(b)(1) of the Terms and conditions for .be domain name registrations, the domain name must be either identical or confusingly similar to a sign owned by the Complainant.

It has been established that the domain name is identical to Complainant's registered trademark Spiriva®.

The first condition of Article 10(b)(1) is fulfilled.

#### 6.2. The Domain name holder has no right or legitimate interests in the domain name

To meet the second condition of Article 10(b)(1) of the Terms and conditions for .be domain name registrations, Complainant must prove that the Domain name holder has no right to or legitimate interest in the domain name.

The Third-Party Decider is of the opinion that Complainant has made it plausible that the Domain name holder has no rights or legitimate interests in the domain name.

First, there are no indications that the Domain name holder has used the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services or made demonstrable preparations for such use. No evidence is available showing that the Domain name holder would have been commonly known by the domain name.

There are also no indications that the Domain name holder is making a legitimate and non-commercial or fair use of the domain name. On the contrary, the Domain name holder offers the domain name for sale and uses it for a website that creates pay-per-click income by referring to other websites with offerings in the healthcare sector, including regarding .

In general, there does not appear to be any potentially legitimate connection between the Domain name holder and the domain name. There is no logic to the registration of the domain name by the Domain name holder, other than that it fits in the pattern of conduct in which it engages, as demonstrated by previous decisions issued against the Domain name holder by WIPO (see above) and also by CEPANI (decision of 4 April 2017 in case no. 44421 regarding the domain name glashuette-original.be).

Finally, the Domain name holder did not file any reply to the complaint.

The Third-Party Decider therefore concludes that the Domain name holder has no rights or legitimate interests in the domain name and that the second condition of Article 10(b)(1) is also fulfilled.

### 6.3. The domain name has been registered or is being used in bad faith

The third condition of Article 10(b)(1) of the Terms and conditions for .be domain name registrations requires the Complainant to demonstrate that the Domain name holder registered or used the domain name in bad faith. Article 10(b)(2) provides a non-exhaustive list of circumstances which prove that a domain name is used or registered in bad faith.

In the case at hand, the Third-Party decider is of the opinion that the bad faith of the Domain name holder has been sufficiently established. This is because:


- Taking into account the notoriety of the Complainant's trademark in the concerned sector, it is highly improbable that the Domain name holder was not aware of Complainant's rights when he registered the domain name. On the website for which the Domain name holder uses the domain name, reference is even made to other trademarks of Complainant, such as 'Respimat' and 'Handihaler'. This can only mean that the Domain name holder was aware of Complainant's rights.
- The Domain name holder's registration of the domain name prevents Complainant from using the domain name and the Domain name holder's use of the domain name disrupts Complainant's business by diverting consumers to other websites with offerings in the healthcare sector.
- The Domain name holder's registration and use of the domain name clearly aims at obtaining a commercial advantage because it is a pay-per-click website that diverts consumers to other websites, and because it is explicitly stated that the domain is for sale.
- The Domain name holder also appears to engage in a pattern of conduct of registering domain names in which he does not appear to have any rights or legitimate interests. As pointed out by Complainant, the Domain name holder has been repeatedly found to have unlawfully registered domain names corresponding to trademarks owned by third parties, and several UDRP decisions have been issued against the Domain name holder in that respect.
- Finally, the fact that the Domain name holder did not respond to the complaint is also indicative of its bad faith.

As a consequence, the third condition of Article 10(b)(1) is also met.

## 7. **Decision**

Consequently, pursuant to Article 10(e) of the Terms and conditions of domain name registrations under the ".be" domain operated by DNS BE, the Third-Party Decider hereby rules that the domain name registration for the "spiriva.be" domain name shall be transferred to Complainant.

Brussels, 22 March 2021

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GOMMERS, Carina  
The Third-Party Decider