



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2301772
Complainant:	Becton, Dickinson and Company
Respondent:	Shenyang Bokan Biotechnology Co., Ltd.
Disputed Domain Name(s):	<vacutainers.com>

1. The Parties and Contested Domain Name

The Complainant is Becton, Dickinson and Company, of 1 Becton Drive, Franklin Lakes, New Jersey 07417, United States of America.

The Respondent is Victoria Cheng of Shenyang Bokan Biotechnology Co., Ltd., of Building A13, No. 33-32, Punan Road, Shenbei New District, Shenyang, Liaoning, China.

The domain name at issue is <vacutainers.com>, registered by the Respondent with eNom, LLC, of 5808 Lake Washington Blvd NE Ste 300, Kirkland, Washington 98033, United States.

2. Procedural History

On June 20, 2023, pursuant to the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”) and the Rules for the Uniform Domain Name Dispute Resolution Policy (the “Rules”), the Complainant submitted a Complaint to the Hong Kong Office (“HK Office”) of the ADNDRC (“ADNDRC”). On June 21, 2023, the HK Office sent to the Complainant by email an acknowledgment of the receipt of the Complaint and reviewed the format of the Complaint for compliance with the Policy, the Rules and the HK Office Supplemental Rules. The HK Office also notified the Registrar of the Complaint by email. On the same day, the Registrar replied to the HK Office informing the identity of the domain name Registrant.

On June 26, 2023, the HK Office informed the Complainant that the information of the Respondent in the Complaint was different from the WHOIS information provided by the Registrar. On June 28, 2023, the Complainant submitted an amended Complaint to the HK Office. The HK Office confirmed receipt and forwarded the amended Complaint to the Respondent. The due date of the Response was July 20, 2023. The Respondent did not file a Response and on July 21, 2023, the HK Office informed the Respondent of his default. On July 25, 2023, the HK Office appointed Francine Tan as the sole panelist in this matter.

3. Factual background

The Complainant, Becton, Dickinson and Company (“BD”) states that it is a medical technology company founded in 1897 in New York City, that develops, manufactures and markets medical devices, medical systems and reagents, with a global presence. The products of the Complainant include medical supplies, laboratory instruments, antibodies, reagents, diagnostics and other products, with clients in various sectors such as medical institutions, life science institutes, clinical laboratories, industrial units and the general public. The Complainant attaches great importance to the Asian market, including China. The Complainant entered the Chinese market in 1994, and after decades of developments, the Complainant currently has offices in 18 cities throughout China, including Shanghai, Beijing, Guangzhou, Suzhou, and Chengdu.

“Vacutainer” is a brand created and launched by the Complainant from as early as 1946. The BD Vacutainer venous blood collection portfolio includes blood collection tubes, needles, holders and other devices for collecting blood samples.

The Complainant is the owner of the following trademark registrations:

- China Trademark Registration No. 280055 for “VACUTAINER”, registered on March 10, 1987;
- Hong Kong Trademark Registration No. 199203260AA for “VACUTAINER”, registered on November 25, 1989;
- Hong Kong Trademark Registration No. 199203259 for “VACUTAINER”, registered on November 24, 1989;
- United States Trademark Registration No. 0424957 for “VACUTAINER”, registered on October 29, 1946; and
- United States Trademark Registration No. 0575223 for “VACUTAINER”, registered on June 2, 1953.

The Complainant’s primary domain name <vacutainer.com>, was registered on April 5, 2000.

The Complainant states that its first use in commerce of the VACUTAINER trade mark began in 1946 and that through extensive use and promotion over the years, the Complainant has acquired substantial goodwill in its VACUTAINER trade mark

The disputed domain name was registered on February 4, 2021, and at the time of filing the Complaint, resolved to a website of Shenyang Bokan Biotechnology Co., Ltd, the Respondent (“the Website”), reflecting a figurative trade mark “Bokan bio”, displaying products which it manufactures such as blood collection tubes, face mask hematology analyzer reagents, amongst other products.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

- i. The disputed domain name is confusingly similar to the Complainant's VACUTAINER trade mark in which it has rights. The addition of the letter "s" in the disputed domain name does not negate the confusing similarity with the Complainant's VACUTAINER trade mark. Further, the addition of the top-level domain ".com" generally cannot serve to distinguish a disputed domain name from the Complainant's mark. The disputed domain name is confusingly similar to the Complainant's registered domain name <vacutainer.com> which will mislead or is very likely to mislead people into thinking that the disputed domain name relates to the Complainant.
- ii. The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant never authorized or licensed the Respondent, or any third party to use its VACUTAINER trade mark in any manner or to register the disputed domain name incorporating the trade mark. The Respondent's company name in both English (Shenyang Bokan Biotechnology Co., Ltd.) and Chinese (沈阳宝康生物工程有限公司) do not correspond to "vacutainer" or "vacutainers", and the Respondent is therefore not commonly known as "vacutainer" or "vacutainers". An Internet search of the Respondent's company name in English returns results which are totally unrelated to the VACUTAINER mark or any "vacutainers" mark.
- iii. Trademark searches undertaken in China and Hong Kong reveal that the Complainant is the owner of the VACUTAINER mark. Trademark searches of the Respondent's English and Chinese company names did not reveal any trademark applications or registrations reflecting the VACUTAINER mark and/or any "vacutainers" mark. The Respondent used the disputed domain name for its website to display and promote blood collection tubes which are products similar to and compete with the Complainant's products, without the Respondent providing any disclaimer as to the absence of any affiliation or connection with the Complainant. The Respondent's use of the disputed domain name is not in good faith
- iv. The Respondent registered and is using the disputed domain name in bad faith. The Complainant has earlier and longstanding goodwill in the reputation of its VACUTAINER trade mark in the medical industry. The Respondent could not have been unaware of the Complainant's VACUTAINER trade mark especially since the Respondent was using the disputed domain name for a website offering goods of the same nature as those of the Complainant, such as blood collection tubes. Further, the disputed domain name was registered on February 4, 2021, which was significantly later than the respective dates of the incorporation of the Complainant, the registration of the Complainant's trade mark, and the registration of the Complainant's domain name <vacutainer.com>. The VACUTAINER trade mark is so closely and exclusively associated with the Complainant that even a casual Internet search at the time of the registration of the disputed domain name would have returned results that made it clear that the Complainant owns the

VACUTAINER trade mark. The Respondent, having no rights or legitimate interests in respect of the VACUTAINER mark or in the sign “vacutainers”, and not being commonly known by the name “vacutainer” and/or “vacutainers”, cannot possibly have legitimate reasons for choosing the domain name <vacutainers.com> except for the purpose of passing itself off as the Complainant’s website. The Respondent intended thereby to attract, for commercial gain, Internet traffic to its own website or other online location by creating a likelihood of confusion with the Complainant’s trade mark as to the source, sponsorship, affiliation, or endorsement of the Website. The Respondent’s primary purpose was therefore to disrupt the business of the Complainant by registering the disputed domain name, which is confusingly similar to the Complainant’s trade mark.

B. Respondent

The Respondent did not file a Response to the Complaint.

5. Findings

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent’s domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- ii. Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. Respondent’s domain name has been registered and is being used in bad faith.

A) Identical / Confusingly Similar

The Complainant has provided evidence of its trademark registrations for the VACUTAINER trademark in multiple jurisdictions including China, where the Respondent is based.

The Complainant’s VACUTAINER mark is reproduced entirely in the disputed domain name and is recognizable. The addition of the letter “s” which appears to be an obvious or intentional misspelling of the VACUTAINER trade mark does not prevent a finding of confusing similarity under the first element of paragraph 4(a) of the Policy.

The Panel therefore finds that the disputed domain name is confusingly similar to the Complainant’s VACUTAINER trade mark in which it has rights. The inclusion of the generic Top-Level Domain (“gTLD”) “.com” does not remove the confusing similarity with the Complainant’s VACUTAINER trade mark as the gTLD is merely a technical requirement for domain name registrations.

The first element of paragraph 4(a) of the Policy has been satisfied.

B) Rights and Legitimate Interests

The Panel finds that the Complainant has demonstrated a *prima facie* case that the Respondent lacks rights or legitimate interests in respect of the disputed domain name.

The Respondent was not authorized to use the Complainant's VACUTAINER trade mark or to register a domain incorporating the trade mark or a misspelt or plural version of the mark. There is no evidence that the Respondent is commonly known by the disputed domain name. The Respondent does not appear to use the disputed domain name for a legitimate noncommercial or fair use, without intent for commercial gain.

Once a complainant has established a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect of the disputed domain name. (See *WIPO Overview of WIPO Panel View on Selected UDRP Questions, Third Edition*, section 2.1.) The Respondent did not submit a Response to the Complaint, nor has it provided any explanation or evidence to show it has rights or legitimate interests in the disputed domain name. The Respondent has therefore failed to rebut the Complainant's *prima facie* case.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The second element of paragraph 4(a) of the Policy has been satisfied.

C) Bad Faith

A complainant has the burden of proving that the respondent registered and is using the disputed domain name in bad faith. Paragraph 4(a)(iii) of the Policy states that:

“[T]he following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that [the respondent has] registered or [the respondent has] acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) [the respondent has] registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; or
- (iii) [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [its] web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] web site or

location or of a product or service on [the respondent's] web site or location.”

The Complainant's VACUTAINER trade mark was registered in China since 1987, in Hong Kong since 1989, and in the United States since 1946. The first use of commerce of its trade mark was in 1946. The Complainant has also registered its domain name <vacutainer.com> since 2000. Given the Complainant's many years of trademark proprietorship and reputation in the VACUTAINER trade mark, it is evident from how the disputed domain name is being used by the Respondent as shown on the Website, that the Respondent was well aware of and specifically targeted the Complainant and its VACUTAINER trade mark by registering the disputed domain name which consists of a misspelling of the mark to promote its own brand of blood collection tubes. Further, the Respondent is not an authorized reseller of the Complainant. The Respondent's attempt to pass off itself as being sponsored, affiliated, or endorsed with the Complainant, and to ride off the reputation and goodwill of the Complainant have not been disputed by the Respondent. The Panel finds that the circumstances demonstrate a blatant attempt by the Respondent to confuse and/or mislead Internet users seeking or expecting to find the Complainant at the Website. The Panel also draws an adverse inference from the Respondent's failure to file any Response or to rebut the Complainant's assertions, and agrees that the circumstances constitute evidence of bad faith registration and use under paragraph 4(b)(iv) of the Policy.

The third element of paragraph 4(a) of the Policy has been satisfied.

6. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <vacutainers.com> be transferred to the Complainant.



Francine Tan
Panelist

Dated: August 2, 2023