



Asian Domain Name Dispute Resolution Centre

beijing

## **ADMINISTRATIVE PANEL DECISION**

**Case No. CN-2201516**

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**Complainant: GILEAD SCIENCES INC.**

**Respondent: 邓成斌 (Deng Chengbin)**

**Domain Name: gileadcareers.com**

**Registrar: Eranet International Limited**

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### **1. Procedural History**

On 21 November 2022, the Complainant submitted a Complaint in Chinese to the Beijing Office of the Asian Domain Name Dispute Resolution Center (the ADNDRC Beijing Office) and elected this case to be dealt with by a one-person panel, in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy) and the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules) approved by the Internet Corporation for Assigned Names and Numbers (ICANN), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the ADNDRC Supplemental Rules) approved by the ADNDRC.

On 23 November 2022, the ADNDRC Beijing Office sent to the Complainant by email an acknowledgement of the receipt of the Complaint and transmitted by email to ICANN and the Registrar, Eranet International Limited, a request for registrar verification in connection with the disputed domain name.

On 29 November 2022, the Registrar transmitted by email to the ADNDRC Beijing Office its verification response, confirming that the Respondent is listed as the registrant and providing the contact details.

On 2 December 2022, the Complainant submitted the revised Complaint in English to the ADNDRC Beijing Office.

On 2 December 2022, the ADNDRC notified the Complainant that the Complaint has been confirmed and transmitted to the Respondent and the case officially commenced. On the same day, the ADNDRC Beijing Office transmitted the Written Notice of the Complaint to the Respondent, which informed that the Complainant had filed a Complaint against the disputed domain name and the ADNDRC Beijing Office had

sent the Complaint and its attachments through email according to the Rules and the Supplemental Rules. On the same day, the ADNDRC Beijing Office notified ICANN and the Registrar, Eranet International Limited, of the commencement of the proceedings.

The Respondent failed to submit a Response within the specified time period. The ADNDRC Beijing Office notified the Respondent's default on 23 December 2022. Since the Respondent did not mention the Panel selection in accordance with the time specified in the Rules, the ADNDRC Supplemental Rules, and the Notification, the ADNDRC Beijing Office informed the Complainant and the Respondent that the ADNDRC Beijing Office would appoint a one-person panel to proceed to render the decision.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Mr. ZHAO Yun, the ADNDRC Beijing Office notified the parties on 23 December 2022 that the Panel in this case had been selected, with Mr. ZHAO Yun acting as the sole panelist. The Panel determines that the appointment was made in accordance with Paragraph 6 of the Rules and Articles 8 and 9 of the Supplemental Rules.

On 23 December 2022, the Panel received the file from the ADNDRC Beijing Office and should render the Decision within 14 days, i.e., on or before 6 January 2023.

Pursuant to Paragraph 11 (a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding. The language of the current disputed domain name Registration Agreement is English, thus the Panel determines English as the language of the proceedings.

## **2. Factual Background**

### **A. The Complainant**

The Complainant in this case is GILEAD SCIENCES INC. The registered address is 333 Lakeside Drive, Foster City, California 94404, United States of America. The authorized representative in this case is Zhang Tao of AN, TIAN, ZHANG & PARTNERS.

### **B. The Respondent**

The Respondent in this case is 邓成斌 (Deng Chengbin). The registered address is zhen xiong xian yu dong xiang qing gang cun min wei yuan hui deng jia zhai cun min xiao zu 19 hao.

The Respondent is the current registrant of the disputed domain name “gileadcareers.com”, which was registered on 23 October 2022 according to the WHOIS information. The registrar of the disputed domain name is Eranet International Limited.

### **3. Parties’ Contentions**

#### **A. The Complainant**

(i) The disputed domain name is identical or extremely similar to the trademark or service mark owned by the Complainant, which is likely to cause confusion

“GILEAD” is the English trade name of the Complainant, derived from the Complainant’s English name GILEAD SCIENCES, INC., among which “Gilead” is not an inherent vocabulary in English, and has high originality and distinctiveness. As early as the 1990s, the Complainant began to use the “GILEAD” trademark and applied for registration worldwide, and successively applied for registration in Canada, Botswana, Cambodia, Chile, the Republic of Croatia, the European Union, Spain, and Italy, Japan, Jordan, Kenya, Hong Kong and other countries and regions. These trademark applications were all earlier than the registration time of the disputed domain name in this case. Therefore, the Complainant has the prior right to the term “GILEAD”.

In China, as early as 1994, the Complainant applied the trademark “GILEAD” under No. 816124 in Class 5, which was approved for registration on 21 February 1996 and remain valid through renewal to this day. Since then, the Complainant has extended the registration of the “GILEAD” trademark, further expanding the scope of protection of the “GILEAD” trademark, including the “GILEAD” trademarks under No. 10357628, No. 12146670, No. 20419375, No. 20419376, etc.

In addition, the Complainant carried out extensive protection of the domain name containing its trade name and trademark. As early as May 1995, the Complainant had registered the domain name “gilead.com” containing the word “GILEAD” and used the domain name as the official website. Since then, the Complainant has registered hundreds of domain names containing “GILEAD” for commercial or defensive purposes, including but not limited to “gilead.eu” “gilead.asia” “gileadchina.com” “gileadchina.com.cn” “gilead.sh.cn”.

The disputed domain name in this case is “gileadcareers.com”. Besides the characters representing the top level domain name “.com”, the main part is “gileadcareers”, which consists of the two words “gilead” and “careers”. Among them, “careers” is a common English word, which is not distinctive. Therefore, the main identification part of the disputed domain name is “gilead”. Obviously, the main identification part is completely or at least substantially identical with the five

registered trademarks claimed by the Complainant. The difference in capitalization is only caused by the restrictions of the domain name registration system. And this small difference is not enough to distinguish the two words. Therefore, the Complainant believes that, “gilead” as the main part of the disputed domain name, and the combination of “.com” and “careers”, which are not distinctive, cannot constitute a substantial difference between the disputed domain name and the Complainant’s registered trademark. It is easy to establish a connection between the disputed domain name and the Complainant’s registered trademark by the general public and mistakenly believe that the disputed domain name is related to the Complainant.

Therefore, the Complainant believes that the disputed domain name is confusingly similar to the Complainant’s registered trademark, and the Complaint meets the conditions stipulated in Article 4(a)(i) of the Policy.

(ii) The Respondent does not have the rights or legitimate interests in the domain name

According to the content of the website used by the disputed domain name, the Complainant did not see that the Respondent obtained any legal rights to the disputed domain name by using it in good faith.

Therefore, the Complainant believes that, based on the existing information, the Respondent does not have the rights or legitimate interests to the domain name, and the Complaint meets the conditions stipulated in Article 4(a)(ii) of the Policy.

(iii) The domain name of the Respondent has been registered maliciously and is being used maliciously

The Complainant was established in 1987 and is a world-renowned medicine research and development company. For a long period of time since its establishment, the Complainant has focused on research on antiviral medicines, treatment areas including HIV infection, hepatitis B or influenza, and achieved breakthrough success. In 2009, the world-renowned “Business Week” magazine selected the Complainant as one of the 50 best-performing companies that year. In 2011, the Complainant had 4,500 employees in more than 20 countries on 4 continents (including China and Hong Kong Special Administrative Region of China), and its annual revenue that year reached USD 8.4 billion. After decades of hard work and development, the Complainant has become one of the largest biopharmaceutical companies in the world, and its corporate value has surpassed other long-established pharmaceutical companies such as Pfizer and Roche that have been in development for a century.

On 21 March 2017, the Complainant’s subsidiary in China, Gilead (Shanghai) Pharmaceutical Technology Co., Ltd. was formally approved for establishment. In Hong Kong, Hangzhou and other places, the Complainant also has affiliated companies.

The Complainant's "GILEAD" trademark was used in 1988 and entered the Chinese market in 2008. In the same year, the Complainant signed an agreement with the Chinese Ministry of Health and the State Food and Drug Administration to provide free medicines to Chinese AIDS patients. At the end of 2008, the Complainant signed an agreement with the Chinese Center for Disease Control and Prevention to donate 6000 bottles of the HIV antiviral drug "VIREAD" to Chinese patients, and the subsequent donation reached 395,653 bottles.

Given that the Chinese Center for Disease Control and Prevention requires the Complainant to increase the number of Chinese patients benefiting from the "VIREAD" drug from 15,000 to 45,000, the Complainant signed an agreement with the Chinese government to purchase it and the Chinese government entrusted the Chinese Center for Disease Control and Prevention to make the bid in 2012. The bid is to provide 354,540 bottles of "VIREAD" to Chinese patients to treat AIDS, and the Complainant will donate another 180,000 bottles. In 2012, the value of the "VIREAD" drug donated by the Complainant to China was US\$5.4 million based on the unit price sold to the China Centers for Disease Control and Prevention, or US\$42 million based on the market price.

It should be noted that, as the Complainant's most important medicine, all the "VIREAD" packages have the Complainant's GILEAD trademark, and every tablet has the GILEAD trademark.

As mentioned above, the Complainant has a high reputation and influence in the pharmaceutical industry, especially in the production of antibiotics and antiviral drugs, therefore, the Complainant's "GILEAD" trademark products have been sold on the Chinese market very early. Along with its breakthrough medicinal effects and extremely simple way of taking, it quickly occupied the Chinese market and gained a high reputation. Coupled with continuous and extensive publicity over the years, the Complainant's "GILEAD" trademark product has been widely known in the Chinese market and has become a very well-known product.

In view of the Complainant's high reputation and market influence in the industry, coupled with years of continuous and extensive publicity, the Complainant's products with the "GILEAD" trademark have been well-known by the majority of Chinese consumers and have become high reputation products. In 2014 alone, the sales of the Complainant's "VIREAD" and "Truvada" products reached USD 31,526,076.63. As of April 2015, the Complainant's sales of the product "GILEAD HIV" alone were as high as USD8,923,708.13. On 6 July 2018, the Complainant sold 5,000 bottles of "explusa" to Sinopharm Holding Group Co., Ltd. in Shanghai, China, for an amount of RMB 82,125,000; on 20 September 2018, the Complainant sold 2992 bottles of "Genvoya" to Shanghai Pharmaceutical Co., Ltd. in Shanghai, China with a value of USD6,133,600; on 31 January 2018, the Complainant sold 8355 bottles of "Sovaldi" to

Cardinal Health (Shanghai) Pharmaceutical Co., Ltd. in Shanghai, China, with a value of USD16,300,305; 2018 On 15 December 2018, the Complainant sold 10,080 bottles of “Vemlid” medicine to China Resources Guangdong Pharmaceutical Co., Ltd. in Guangzhou, China, for an amount of RMB 6,810,552.

China’s major famous websites have reported on the Complainant’s “GILEAD” trademark, such as Sina.com, Sohu.com, Biology Valley, Drug Information Network, Medical Forum, 99Health.com, Health Frontline, Seeking Doctors, and China Red Ribbon net etc.

Through long-term use and extensive publicity, the Complainant’s “GILEAD” trademark has gained a high reputation and market influence among the relevant public, and has formed a long-term, stable and unique correspondence with the Complainant.

In view of this, when registering the disputed domain name, it is impossible for the Respondent to include the non-fixed English word “gilead” in the registered domain name without knowing the Complainant and its trademark. This is not a coincidence, but the Respondent did it deliberately. Knowing that their registration would affect the Complainant’s registration and use of the disputed domain name, the Respondent who should have made reasonable evasion during registration but still registered the disputed domain name, preventing the Complainant from obtaining the disputed domain name. Such act is obviously malicious which fell into the situation stipulated in Article 4(b)(ii) of the Policy.

The main purpose of the Respondent’s preemptive registration of the disputed domain name was to use the Complainant’s high reputation and influence to mislead Internet users to visit his website for profit. The Respondent attempted to mislead Internet users (including patients and business partners) to visit its website by registering and using “gileadcareers.com”, a domain name that is easily confused with the Complainant’s trademark and business. Therefore, the way which the Respondent uses the disputed domain name also belongs to the malicious situation stipulated in Article 4b(ii) of the Policy.

Thus, the Complainant believes that the Respondent maliciously registered and maliciously used the disputed domain name, and the Complainant’s complaint met the conditions stipulated in Article 4(a)(iii) of the Policy.

The Complainant requested to transfer the disputed domain name to the Complainant.

## **B. The Respondent**

The Respondent failed to submit a Response within the specified time period.

## **4. Discussions and Findings**

Paragraph 4(a) of the Policy provides that in order to be entitled to a transfer of the disputed domain name, the Complainant shall prove the following three elements:

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

Paragraph 4(b) of the Policy states that the following circumstances in particular, but without limitation, shall be evidence of registration and use of a domain name in bad faith:

- (i) Circumstances indicating that the respondent has registered or 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 documented out-of-pocket costs directly related to the domain name; or
- (ii) The respondent 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 website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location.

#### **A. Identity or Confusing Similarity**

The Complainant is an American company in the field of medicine research and development. The trademark registration certificates submitted by the Complainant show that the Complainant has registered "GILEAD" as its trademark in many countries and regions around the world. The trademark registration and renewal certificates further show that the trademark "GILEAD" has been registered in China as early as 1996 and that the trademark is still within the protection period. The Panel has no problem in finding that the Complainant enjoys the trademark right over "GILEAD". The Panel further finds that the registration date of the above trademark is much earlier than the registration date of the disputed domain name (23 October 2022). The Complainant enjoys the prior rights in the trademark "GILEAD".

The disputed domain name "gileadcareers.com" ends with ".com", this suffix only

indicates that the domain name is registered under this gTLD and “.com” is not distinctive. The main part (“gileadcareers”) of the disputed domain name consists of two sub-parts, “gilead” and “careers”. Obviously, the first sub-part (“gilead”) is identical to the Complainant’s trademark “GILEAD”. The second sub-part (“careers”) is a generic English term and thus is not distinctive. The addition of “careers” to the Complainant’s trademark “GILEAD” does not differentiate the main part of the disputed domain name from the Complainant’s trademark. Therefore, the disputed domain name is confusingly similar to the Complainant’s trademark “GILEAD”.

Accordingly, the Panel holds that the Complaint fulfills the condition provided in Paragraph 4(a)(i) of the Policy.

### **B. Rights or Legitimate Interests of the Respondent**

The Complainant contends that the Respondent does not have rights to or legitimate interests in the disputed domain name. The Complainant’s assertion is sufficient to establish a prima facie case under Policy 4(a)(ii), thereby shifting the burden to the Respondent to present evidence of its rights or legitimate interests.

The Respondent has failed to show that the Respondent has any rights or legitimate interests in respect of the disputed domain name. No evidence has shown that the Respondent is using or plans to use the domain name for a bona fide offering of goods or services. The Respondent is not commonly known by the domain name. The evidence submitted by the Complainant further shows that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. The act of registering the disputed domain name does not automatically endow any legal rights or interests with the Respondent.

The Panel therefore finds that the Complaint fulfills the condition provided in Paragraph 4(a)(ii) of the Policy.

### **C. Bad Faith**

The Complainant is a leading American company in the field of medicine research and development in many countries around the world. The Complainant has been selected by the “Business Week” magazine to be one of the Top 50 best-performing companies in 2009. The Complainant has established extensive business networks around the world. The evidence shows that the Complainant registered the trademark “GILEAD” in many countries and regions; in China, the trademark “GILEAD” was registered as early as 1996 and the trademark is still in the protection period. This registration date is much earlier than the registration date of the disputed domain name, i.e. 23 October 2022. Since its registration, the Complainant has put in a lot of money and efforts in promoting its products and services trademarked with “GILEAD”. Through extensive use, advertisement and promotion, the trademark has achieved wide recognition.

The Complainant entered the Chinese market in 2008 and has since collaborated with



the Chinese Ministry of Health and the State Food and Drug Administration, Chinese Center for Disease Control and Prevention in the field of medical treatment. The evidence submitted by the Complainant sufficiently shows that through the years, the Complainant has enjoyed a high reputation in the Chinese market, with high amount of product sales over the years. Moreover, the Complainant and its trademark "GILEAD" have been widely reported in major Chinese websites, including sina.com, sohu.com, Biology Valley, Drug Information Network, Medical Forum, 99 Health.com, Health Frontline, Seeking Doctors, and China Red Ribbon net. As such, the public has come to recognize and associate the Complainant's trademark as originating from the Complainant and no other.

The above evidence, to be further substantiated by the fact that "GILEAD" is not a common English term, can only lead to the conclusion that the Respondent, as a Chinese citizen, is aware of the existence of the Complainant and its trademark. The action of registering the disputed domain name *per se* has constituted bad faith. Actually, it is impossible to conceive of any plausible active use of the disputed domain name by the Respondent that would not be illegitimate.

Accordingly, the Panel finds that the Complaint satisfies the condition provided in Paragraph 4(a)(iii) of the Policy.

## 5. Decision

Having established all three elements required under the ICANN Policy, the Panel concludes that relief should be granted. Accordingly, it is ordered that the disputed domain name "gileadcareers.com" should be TRANSFERRED from the Respondent to the Complainant GILEAD SCIENCES INC.

Sole Panelist:



Dated: 6 January 2023