



(Hong Kong Office)

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	<b>HK-1300514</b>
<b>Complainant:</b>	<b>Astellas Pharma Inc.</b>
<b>Respondent:</b>	<b>Xicheng Co.</b>
<b>Disputed Domain Name(s):</b>	<b>&lt;au-astellas.com&gt;</b>

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**1. The Parties and Contested Domain Name**

The Complainant is Astellas Pharma Inc., of 2-5-1, Nihonbashi-Honcho, Chuo-Ku, Tokyo 103-8411, Japan.

The Respondent is Xicheng Co., of Huixindongjie 15 2, Beijing Chaoyang 101402, Peoples Republic of China.

The domain name at issue is <au-astellas.com> (“the Domain Name”), registered by the Respondent with Bizcn.Com, Inc., of 702C, 59 Wang Hai Road, Xiamen Software Park (Phase 2) Postal Code: 361008 (“the Registrar”).

**2. Procedural History**

The Complainant initially filed its Complaint with the Asian Domain Name Dispute Resolution Centre (“the Centre”) on or about May 31, 2013, naming Whois Privacy Protection Service as the Respondent. It was allocated Case Number 1300501.

On May 31, 2013, the Centre transmitted by email to the Registrar a request for Registrar verification in connection with the Domain Name. On June 4, 2013, the Registrar transmitted by email to the Centre its verification response, identifying Whois Privacy Protection Service as registrant. On June 5, 2013, the Centre asked the Registrar to confirm whether Whois Privacy Protection Service is the true holder of the Domain Name and, if not, to reveal the true identity of the Domain Name holder. On June 6, 2013, the Registrar replied that it had “removed the whois protection service” and that Xicheng Co. is the registrant. Following further enquiry from the Centre, the Registrar reconfirmed that information on June 14, 2013.

The Centre sent an email communication to the Complainant on June 14, 2013 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint on or before June 19, 2013. In the absence of any amendment by that date, the Complaint was deemed withdrawn and the administrative proceeding terminated, according to Article 4(b) of the ICANN Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”).

The Complainant filed the present Complaint on June 27, 2013 naming Xicheng Co. as the Respondent. The Centre verified that the Complaint satisfied the formal requirements of the ICANN Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules, and the Centre’s Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Centre formally notified the Respondent of the Complaint, and the proceedings commenced on June 28, 2013. In accordance with the Rules, paragraph 5(a), the due date for Response was July 18, 2013. The Respondent did not submit any response. Accordingly, the Centre notified the Respondent’s default on July 19, 2013.

The Centre appointed Alan L. Limbury as the sole panelist in this matter on July 19, 2013. The Panel finds that it was properly constituted. The panelist has declared to the Centre that he has no conflict of interest, so is able to act independently and impartially between the parties, as required by the Centre to ensure compliance with the Rules, paragraph 7.

The language of the proceeding is English, being the language of the Registration Agreement.

### **3. Factual background**

The Complainant was established in Japan on 1 April 2005 through the integration of the businesses of two predecessors, Yamanouchi Pharmaceutical Co., Ltd. (founded in 1923) and Fujisawa Pharmaceutical Co., Ltd. (founded in 1894). The Complainant is now one of the world’s top 20 pharmaceutical companies, specializing in manufacturing, marketing and import/export of pharmaceuticals. It operates through subsidiaries across Asia, Europe, North America and Oceania.

The Complainant created the trademark ASTELLAS, which expresses the idea of “aspired stars” and “advanced stars” based on the Latin “stella”, Greek “aster” and English “stellar”, which all refer to “stars”. It also corresponds to the Japanese expression “Asu wo terasu” (“shine a light on tomorrow”) and conveys the Complainant’s aspiration to bring hope to all people desiring health through the provision of cutting-edge pharmaceutical products which play an active role in global markets.

The Complainant has registered its ASTELLAS trademark in many countries, in particular in Class 5 for “pharmaceutical, veterinary and sanitary preparations”. Examples are Japanese trademark No. 4863586, registered on May 13, 2005 and Australian trademark No. 1020865, registered on February 17, 2005. It has also heavily promoted the ASTELLAS mark.

The Domain Name was registered on December 2, 2012. At the time of the filing of the Complaint, it directed visitors to the website of the Complainant’s associated company, Astellas Pharma US, Inc., at <www.astellas.us>.

#### 4. Parties' Contentions

##### A. Complainant

The Complainant's contentions may be summarized as follows:

- i. The Domain Name is confusingly similar to the Complainant's trademark ASTELLAS, which is well-recognized by the public worldwide to be distinctive of the Complainant.
- ii. The Respondent is not related to the Complainant and was not authorized by the Complainant to use the trademark ASTELLAS. The Respondent's name "Xicheng Co." does not contain ASTELLAS or AU-ASTELLAS and the Respondent has no trademark right in those words. Therefore, the Respondent no rights or legitimate interests in respect of the Domain Name.
- iii. The Domain Name has been registered and is being used in bad faith. The Respondent is not operating its own website under the Domain Name, nor has the Respondent made demonstrable preparations to use the Domain Name in connection with a bona fide offering of goods or services. Instead, the Domain Name directs visitors to the website of Astellas Pharma US, Inc. This clearly shows that the Respondent has actual knowledge of the Complainant and is well aware of its established reputation. On this basis, there is reasonable ground to suspect that by registering the Domain Name and linking it to one of the Complainant's authorized websites, the Respondent intends to free-ride the Complainant's reputation and to confuse the public that it is connected to or authorized by the Complainant, or otherwise use the Domain Name in bad faith.
- iv. Further, the Complainant is in possession of evidence which demonstrates that the Domain Name has been used in connection with fraudulent or other illegal activities, in particular suspected money laundering activities as described below.
- v. Since around January 2013, the Complainant's associated company in Australia, Astellas Pharma Australia Pty Ltd, received enquiries from around 30 individuals about suspicious job advertisements found on the Internet. Upon investigation, the Complainant located a fraudulent job advertisement placed on several websites targeting job applicants in Australia, purportedly placed by the Complainant for the position of "Account Assistant". This fraudulent advertisement was in fact unrelated to the Complainant's group of companies. The Complainant has learnt from the victims that after responding to the fraudulent job advertisements, they received email responses from email addresses incorporating the Domain Name, which attached a fraudulent "Job Description" and a fraudulent application form, bearing the Complainant's name/mark and an email address "[name]@au-astellas.com" (which incorporates the Domain Name).
- vi. After providing the personal information to the perpetrator, who pretended to be the Complainant, the victims were contacted via telephone by individuals unknown to the Complainant who claimed to be employees of the

Complainant's Australian company for "interviews". The victims were then provided with fraudulent job offers purportedly signed and sealed by the Complainant. Afterwards, the victims were contacted via email from email addresses incorporating the Domain Name, in which the victims were instructed to set up travel money cards / travel accounts with banking agencies and were told to deposit and transfer money to specified accounts in foreign countries as "personal transfers".

- vii. It is at least highly suspicious that the above activities were connected to money laundering and/or other illegal activities. The Complainant has already reported the above activities to the Australian Police and the case is now under investigation by the New South Wales Police Fraud Squad. The use of an email address incorporating the Domain Name clearly demonstrates that the Domain Name has been deliberately used by the Respondent and/or parties related to the Respondent to cause confusion in bad faith for possible criminal activities, and such use has already caused actual confusion amongst the public. In view of the above, it is clear that the Respondent has acted in bad faith when it made the application for registration of the Domain Name. There also is reasonable ground for the Complainant to suspect that the prefix "AU-" was added to the Domain Name so as to facilitate the fraudulent activities in Australia.

#### B. Respondent

The Respondent did not respond to the Complaint.

### 5. Findings

The Complainant has established all elements entitling it to transfer of the Domain Name.

The Policy provides, at Paragraph 4(a), that each of three findings must be made in order for the Complainant to prevail:

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

A respondent is not obliged to participate in a proceeding under the Policy but if it fails to do so, asserted facts may be taken as true and reasonable inferences may be drawn from the information provided by the complainant: *Reuters Limited v. Global Net 2000, Inc.*, WIPO Case No. D2000-0441. See also *Microsoft Corporation v. Freak Films Oy*, WIPO Case No. D2003-0109; *SSL International plc v. Mark Freeman*, WIPO Case No. D2000-1080 and *Alta Vista Company v. Grandtotal Finances Limited et al.*, WIPO Case No. D2000-0848.

#### A) Identical / Confusingly Similar

It is well established that "essential" or "virtual" identity is sufficient for the purposes of

the Policy: *The Stanley Works and Stanley Logistics Inc. v. Camp Creek Co., Inc.*, WIPO Case No. D2000-0113; that the test of confusing similarity is confined to a comparison of the disputed domain name and the trademark alone: *BWT Brands, Inc. and British American Tobacco (Brands), Inc v. NABR*, WIPO Case No.D2001-1480; and that the specific top level of the domain name, in this case “.org”, does not affect the domain name for the purpose of determining whether it is identical or confusingly similar: *Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson, Sr.*, WIPO Case No. D2000-1525.

The Complainant has established that it has rights in many countries in the registered trademark ASTELLAS. The Domain Name is not identical but is clearly confusingly similar to the Complainant’s mark, the prefix AU- doing nothing to distinguish the Domain Name from the mark.

The Complainant has established this element of its case.

### **B) Rights and Legitimate Interests**

The Panel finds that the ASTELLAS mark is distinctive and well known. The Complainant’s assertions are sufficient to constitute a *prima facie* showing of absence of rights or legitimate interest in the Domain Name on the part of the Respondent. The consensus view of WIPO panellists is that the evidentiary burden therefore shifts to the Respondent to show by concrete evidence that it does have rights or legitimate interests in that name: WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition (“WIPO Overview, 2.0”), Section 2.1. The consensus view of WIPO panellists has been held to be equally applicable at the Centre: *Bayer Aktiengesellschaft v. Xiao Zhang*, ADNDRC Case No. HK-1300493.

In the absence of any attempt by the Respondent to show that it has rights or legitimate interests in the Domain Name, the Panel finds that it has none.

The Complainant has established this element of its case.

### **C) Bad Faith**

Paragraph 4(b) of the Policy sets out four illustrative circumstances, which, though not exclusive, shall be evidence of the registration and use of the Domain Name in bad faith for purposes of paragraph 4(a)(iii) of the Policy.

In the absence of any Response, it appears from the material provided by the Complainant in support of its Complaint that the Respondent had the Complainant and the reputation of its ASTELLAS mark in mind when registering the Domain Name (in the name of a privacy service, in order to conceal its identity) and has used the Domain Name:

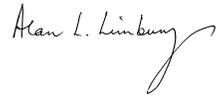
- (a) to direct Internet users to one of the Complainant’s associated company websites, in order to give the appearance that the Respondent was legitimately associated with the Complainant; and
- (b) to send emails incorporating the Domain Name to job applicants in Australia for the purpose of defrauding them.

Although not falling within any of the (non-exclusive) sub-paragraphs of Paragraph 4(b) of the Policy, the Panel finds that such conduct by the Respondent demonstrates both bad faith registration and bad faith use for the purposes of paragraph 4(a)(iii) of the Policy.

The Complainant has established this element of its case.

## **6. Decision**

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name <au-astellas.com> be transferred to the Complainant.



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Alan L. Limbury  
Panelist

Dated: July 23, 2013