Decision for dispute CAC-UDRP-101248

Case number	**CAC-UDRP-101248**
Time of filing	**2016-07-14 11:32:34**
Domain names	**saxendaonline.com**

Case administrator

Name	**Lada Válková (Case admin)**

Complainant

Organization	**Novo Nordisk A/S**

Complainant representative

Organization	**Wallberg IP Advice**

Respondent

Name	**Luca Radu**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

EU Registered Trademark No. 012254025 for the word mark "Saxenda", registered on 19 March 2014 in Class 5 on application dated 25 October 2013 with priority date of 19 August 2013; and corresponding registrations in other countries

FACTUAL BACKGROUND

The Complainant is a global healthcare company with almost 90 years of innovation and leadership in diabetes care. The company also has leading positions in haemophilia care, growth hormone therapy and hormone replacement therapy.

Headquartered in Denmark, Novo Nordisk employs approximately 41,600 employees in 75 countries, and markets its products in more than 180 countries. The annual turnover was 14.3 billion Euro in 2015.

The Complainant holds around 30 trademark registrations of the word mark "Saxenda" in different territories around the world including the EU. It uses this trademark for a product for the treatment of obesity.

The Respondent registered the disputed domain name on 18 May 2016 with DomainContext, Inc. The domain name resolves to a website which promotes products to promote loss of weight under the mark "Saxenda". The website refers to different

qualities of "Saxenda" which may relate to products of other companies similar to the Complainant's product but not placed on the market by or with the Complainant's consent under this mark.

Parties' Contentions

The Complainant contends that that the disputed domain name is confusingly similar to the trademark “Saxenda” in which it has registered rights.

The Complainant states it has not granted any licence, consent or authorisation to the Respondent to use its trademark “Saxenda” in a domain name or in any other manner, nor acquiesced in any such use. The Complainant claims that the Respondent did not use the domain name prior to its registration and is not commonly known by it.

The Complainant asserts that Respondent has registered and is using the disputed domain name in order to attempt to attract for commercial gain, Internet users to the Respondent’s website, where the Respondent claims to be offering the Complainant’s “Saxenda” product, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation or endorsement of the Respondent’s website.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Name is identical or confusingly similar to a trademark or service mark in which the complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the Domain Name (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the Domain Name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Pursuant to Paragraph 4(a) of the Policy a complainant must prove each of the following:

(i) the respondent’s domain name is identical or confusingly similar to a trade mark or service mark in which Complainant has rights; and
(ii) the respondent has no rights or legitimate interests in respect of the domain name; and
(iii) the domain name has been registered and is being used in bad faith.
It is convenient to address these requirements in turn.

In accordance with paragraph 14(b) of the Rules, the Panel shall draw such inferences as it considers appropriate from the Respondent’s default in failing to file a response. This includes the acceptance of plausible evidence of the Complainant which has not been disputed.

A. Identical or Confusingly Similar

The Complainant has registered rights in the word mark "Saxenda". The disputed domain name is confusingly similar to this mark since it consists of the entirety of this mark together with the generic term "online" and the generic top level domain suffix. Internet users would understand the domain name to indicate a website where the Complainant's "Saxenda" product can be obtained online. The first requirement of the Policy is satisfied.

B. Rights or Legitimate Interests

The Panel follows the guidance provided by the decision in WIPO Case No. D2001-0903 Oki Data Americas, Inc. v. ASD, Inc. (okidataparts.com) and applied in numerous subsequent cases, as to the circumstances in which a business may be regarded as making a bona fide offering of goods or services, and hence as having a legitimate interest in the domain name in accordance with paragraph 4(c)(i) of the Policy, when it uses a domain name corresponding to a supplier's mark to locate a website advertising the resale of that supplier's products.

According to that guidance, a business using such a domain name in this way may have a legitimate interest, provided that the following conditions are satisfied: that it is actually offering the Complainant's products; that the website at the domain name is used to promote only those products; that the website accurately and prominently discloses the true relationship between the registrant and the supplier; and that the registrant does not attempt to register all domain names that reflect the supplier's mark.

Applying this guidance to the facts of this case, as summarised above, the Respondent's use of the disputed domain name does not qualify as a bona fide offering of goods or services, since it appears to promote products not made by the Complainant; and even if it only promotes genuine "Saxenda" products marketed by the Complainant, it contains no indication making it clear that the Respondent is not connected with or authorised by the Complainant.

The Panel accepts the Complainant's undisputed evidence that the Respondent is not commonly known by the disputed domain name or a corresponding name and it is evident that the Respondent is not using the domain name for a legitimate non-commercial or fair use. Accordingly, none of the circumstances specified in paragraph 4(c)(iii) of the Policy is present.

There does not appear to be any other basis on which the Respondent could claim any right or legitimate interest in respect of the domain name. The second requirement of the Policy is satisfied.

C. Registered and Used in Bad Faith

The Panel accepts the Complainant's undisputed evidence that the domain name is being used intentionally to attract Internet users to the Respondent's website for commercial gain by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the website or the products promoted on it.

In accordance with paragraph 4(b)(iv) of the Policy these circumstances constitute evidence of the registration and use of the disputed domain name in bad faith.

There is no evidence contradicting this presumption. Accordingly the Panel finds that the third requirement of the Policy is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **SAXENDAONLINE.COM**: Transferred

PANELLISTS

Name	**Jonathan Turner**

DATE OF PANEL DECISION 2016-08-17

Publish the Decision