Decision for dispute CAC-UDRP-101882

Case number	**CAC-UDRP-101882**
Time of filing	**2018-02-21 09:50:37**
Domain names	**kymriahcares.com**

Case administrator

Organization	**Iveta Špiclová (Czech Arbitration Court) (Case admin)**

Complainant

Organization	**Novartis AG**

Complainant representative

Organization	**BrandIT GmbH**

Respondent

Name	**chen ki**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant owns trademark registrations for the marks KYMRIAH and KYMRIAH CARES as below (IR = International Registration):

TM: KYMRIAH
Reg. no. IR1212288
Class: 05; 44
Date of Registration: 06.06.2014 (inc. Singapore)

Singaporean TM: Kymriah
Reg. no. T1412840H
Class: 05; 44
Date of Registration: 06.06.2014

TM: KYMRIAH CARES

Reg. no. IR1366728
Class: 44
Date of registration: 11.07.2017

Swiss TM: KYMRIAH CARES
Reg. no. 704618
Class: 44
Date of application: 11.05.2017
Date of registration: 11.07.2017

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant is the producer of the immunotherapy KYMRIAH. It is a global healthcare company based in Switzerland that provides solutions to address the evolving needs of patients worldwide. The Complainant's products are available in more than 180 countries and they reached nearly 1 billion people globally in 2015. About 123,000 people of 144 nationalities work at Novartis around the world. KYMRIAH is a novel immunotherapy to fight cancer and has received prominent media coverage online. In more detail, KYMRIAH is a CD19-directed genetically-modified autologous T cell immunotherapy indicated for the treatment of patients up to 25 years of age with B-cell precursor acute lymphoblastic leukemia (ALL) that is refractory or in second or later relapse.

The Complainant owns trademark registrations for the marks KYMRIAH and KYMRIAH CARES as below (IR = International Registration):

TM: KYMRIAH
Reg. no. IR1212288
Class: 05; 44
Date of Registration: 06.06.2014 (inc. Singapore)

Singaporean TM: Kymriah
Reg. no. T1412840H
Class: 05; 44
Date of Registration: 06.06.2014

TM: KYMRIAH CARES
Reg. no. IR1366728
Class: 44
Date of registration: 11.07.2017

Swiss TM: KYMRIAH CARES
Reg. no. 704618
Class: 44
Date of application: 11.05.2017
Date of registration: 11.07.2017

The disputed domain name was registered on May 23, 2017.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name to be 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 disputed 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 disputed 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

i) THE DISPUTED DOMAIN NAME IS CONSUFINGLY SIMILAR

The Panel finds that the Complainant established its rights in the marks KYMRIAH and KYMRIAH CARES through its registrations as below (IR = International Registration):

TM: KYMRIAH
Reg. no. IR1212288
Class: 05; 44
Date of Registration: 06.06.2014 (inc. Singapore)

Singaporean TM: Kymriah
Reg. no. T1412840H
Class: 05; 44
Date of Registration: 06.06.2014

TM: KYMRIAH CARES
Reg. no. IR1366728
Class: 44
Date of registration: 11.07.2017

Swiss TM: KYMRIAH CARES
Reg. no. 704618
Class: 44
Date of application: 11.05.2017
Date of registration: 11.07.2017

The Complainant contends that the disputed domain name was registered on May 23, 2017, and that it directly and entirely incorporates Complainant's registered trademarks KYMRIAH & KYMRIAH CARES. The addition of the generic Top-Level Domain (gTLD) ".com" does not add any distinctiveness to the disputed domain name. The Complainant has referred to a case 'the International Business Machines Corporation v. Sledge, Inc. / Frank Sledge WIPO Case No. D2014-0581' where the panel stated the following: "In addition, it is generally accepted that the addition of the top-level suffix in the domain name (e.g., ".com") is to be disregarded under the confusing similarity test".

The Panel agrees with the Complainant and finds that the disputed domain name is confusingly similar to the Complainant's

trademarks specified above.

ii) THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

Complainant must first make a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name under Policy 4(a)(ii), then the burden shifts to Respondent to show it does have rights or legitimate interests. See Banco Itau S.A. v. Laercio Teixeira, WIPO Case No. D2007-0912; Wal-Mart Stores, Inc. v. WalMart Careers, Inc., WIPO Case No. D2012-0285. See also Advanced International Marketing Corporation v. AA-1 Corp, FA 780200 (FORUM Nov. 2, 2011) (finding that a complainant must offer some evidence to make its prima facie case and satisfy Policy 4(a)(ii)); see also Neal & Massey Holdings Limited v. Gregory Ricks, FA 1549327 (FORUM Apr. 12, 2014) ("Under Policy 4(a)(ii), Complainant must first make out a prima facie case showing that Respondent lacks rights and legitimate interests in respect of an at-issue domain name and then the burden, in effect, shifts to Respondent to come forward with evidence of its rights or legitimate interests").

The Complainant contends that it has not found that the Respondent is commonly known by the disputed domain name or that it has interest over the disputed domain name or the major part of it. It also contends that the WHOIS information "chen ki" is the only evidence in the WHOIS record, which relates the Respondent to the disputed domain name. When entering the terms "KYMRIAH" & "KYMRIAH CARES", and "SINGAPORE" in the Google search engine, the returned results point to the Complainant and its business activity. The Complainant argues that the Respondent could have easily performed a similar search before registering the disputed domain name and would have quickly learned that the trademarks were owned by the Complainant and that the Complainant was using its trademarks. It also argues that the Respondent has not by virtue of the content of the website, nor by its use of the disputed domain name shown that the disputed domain name will be used in connection with a bona fide offering of goods or services. The Complainant further argues that there is no evidence that the Respondent has a history of using, or preparing to use, the disputed domain name in connection with a bona fide offering of goods and services.

The Panel finds that the Complainant has made out a prima facie case that arises from the considerations above. All of these matters go to make out the prima facie case against the Respondent. As the Respondent has not filed a Response or attempted by any other means to rebut the prima facie case against it, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

iii) THE DISPUTED DOMAIN NAME WAS REGISTERED AND IS BEING USED IN BAD FAITH

The Complainant contends that it is inconceivable that the unique combination of the marks "KYMRIAH" and "CARES" in the disputed domain name is not a deliberate and calculated attempt to improperly benefit from the Complainant's rights; in particular regarding the trademark KYMRIAH CARES.

It also argues that the Complainant tried to contact Respondent on February 5, 2018 through a cease and desist letter to which the Respondent replied asking EUR 2000 as a compensation for the disputed domain name. The Complainant cites a recent UDRP CAC case number 101486, involving the domain name <arla.site> where the panel stated: "the Panel entirely agrees with the submission of the Complainant that, as the Complainant tried to contact the Respondent on February 27, 2017 through a cease and desist letter and as the Respondent then asked for $800 to transfer the domain, this itself amounts to bad faith registration and use within the express provisions of paragraph 4(b) (i) of the Policy."

The Panel agrees with the Complainant and finds that the Complainant has established the requirement under UDRP 4(a)(iii).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **KYMRIAHCARES.COM**: Transferred

PANELLISTS

Name	**Mr. Ho-Hyun Nahm, Esq.**

DATE OF PANEL DECISION 2018-04-06

Publish the Decision