Decision for dispute CAC-UDRP-102493

Case number	CAC-UDRP-102493
Time of filing	2019-05-17 10:18:58
Domain names	hbnovartis.com

Case administrator

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

Complainant

Organization	Novartis AG

Complainant representative

Organization	BrandIT GmbH

Respondent

Organization	li dong qun

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

Complainant is the owner of numerous “NOVARTIS” trademarks worldwide and in China including „NOVARTIS“ (Reg No. G663765 registered on July 1, 1996).

The Complainant also owns various domain names including <novartis.com> and <novartis.com.cn>.

FACTUAL BACKGROUND

The Complainant, Novartis AG, was created in 1996 through a merger of Ciba-Geigy and Sandoz. It is a global healthcare company based in Switzerland that provides solutions to address the evolving needs of patients worldwide. It manufactures drugs such as clozapine (Clozaril), diclofenac (Voltaren), carbamazepine (Tegretol), valsartan (Diovan) and many others.

The Complainant’s products are sold in about 155 countries and they reached nearly 800 million people globally in 2018. About 125 000 people of 145 nationalities work at Novartis around the world.

The disputed domain name was registered on March 18, 2019 and presently resolves to an active website offering online

lottery services in the Chinese language.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

Complainant argues that the disputed domain name is identical to the NOVARTIS mark because it contains the entire mark and differs only by the addition “hb”.

Complainant also argues that Respondent does not have rights or legitimate interests in the disputed domain name. Respondent is not commonly known as the domain name or in possession of licensing rights.

Complainant further argues that the disputed domain name was registered and is being used in bad faith. Complainant argues that Respondent possessed actual notice and knowledge of its NOVARTIS mark due to its fame and Respondent had acted in bad faith by registering the disputed domain name. Complainant also argues that Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent’s website by creating a likelihood of confusion with the Complainant’s mark.

RESPONDENT:

The Respondent did not file a Response.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed 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 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.

Language of the Proceeding

Paragraph 11 of the Policy provides that:

“(a) 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 Registration Agreement for the disputed domain name is Chinese.

The Complainant requested that the language of the proceeding be English.

The Respondent did not comment on the language of the proceeding.

The Panel cites the following with approval:

“Thus, the general rule is that the parties may agree on the language of the administrative proceeding. In the absence of this agreement, the language of the Registration Agreement shall dictate the language of the proceeding. However, the Panel has the discretion to decide otherwise having regard to the circumstances of the case. The Panel’s discretion must be exercised judicially in the spirit of fairness and justice to both parties taking into consideration matters such as command of the language, time and costs. It is important that the language finally decided by the Panel for the proceeding is not prejudicial to either one of the parties in his or her abilities to articulate the arguments for the case.” (See Groupe Auchan v. xmxzl, WIPO Case No. DCC2006 0004).

The Panel finds that in the present case, the following should be taken into consideration upon deciding on the language of the proceeding:

(i) The disputed domain name consists of Latin letters, rather than Chinese characters;

(ii) The Complainant may be unduly disadvantaged by having to conduct the proceeding in the Chinese language;

(iii) The Respondent did not object to the Complainant’s request that English be the language of the proceeding.

Upon considering the above, the Panel determines that English be the language of the proceeding.

PRINCIPAL REASONS FOR THE DECISION

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner.

The Complainant has provided evidence of its trademarks’ registrations of the NOVARTIS mark in China.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The disputed domain name <hbnovartis.com> integrates the Complainant’s NOVARTIS trademark in its entirety with the addition of the letters „hb“ which are devoid of significance and fail to sufficiently distinguish the disputed domain name from the Complainant’s trademark (see Wal-Mart Stores, Inc. v. Kuchora, Kal, WIPO Case No. D2006-0033; Hoffmann-La Roche Inc. v. Andrew Miller, WIPO Case No. D2008-1345).

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the complainant to show that the respondent has no rights or interests in respect of the Domain Name.

Once the complainant establishes a prima facie case that the respondent lacks rights or legitimate interests in the Domain Name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the

Domain Name (see WIPO Overview 3.0, paragraph 2.1).

In the present case, the Complainant has demonstrated prima facie that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant has provided evidence that Respondent, identified as " li dong qun" in the Whois register, is not commonly known by the disputed domain name, the Respondent was not authorized or licensed to use the NOVARTIS trademark in any manner. See M. Shanken Commc'ns v. WORLDTRAVELERSONLINE.COM, FA 740335 (Nat. Arb. Forum Aug. 3, 2006) (finding that the respondent was not commonly known by the <cigaraficionada.com> domain name under Policy 4(c)(ii) based on the WHOIS information and other evidence in the record). Moreover, the use of the disputed domain name as a landing page for gambling services is not a clear bona fide use of the disputed domain name. Since the Respondent has not submitted a response and did not provide any evidence to show any rights or legitimate interests in the disputed domain name or an explanation to rebut the Complainant's prima facie case the Panel is therefore of the view that the Respondent has no rights or legitimate interests in respect of the disputed domain name and accordingly, paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires the complainant to show that its Domain Name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence that the Respondent registered the disputed domain name long after the Complainant registered its trademarks. The Complainant's evidence has shown that it owned the trademark since 1996 whereas the disputed domain name was only registered in March 2019. Under these circumstances, the Complainant's prior registered trademark is suggestive of the Respondent's bad faith (see Sanofi-Aventis v. Abigail Wallace, WIPO Case No. D2009-0735).

The Complainant provided evidence showing that 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 the Respondent's website or location or of a product or service on the Respondent's website or location. Complainant has provided evidence that the disputed domain name that is confusingly similar to the Complainant's trademark redirects Internet users to another Chinese lottery website <GD55.com> which redirects to various domains such as <gd5552.com> and <gd3366.com>, both of which are the same websites of (Guang Da Lottery / Everbright Lottery).

The Complainant has also provided evidence of correspondence with the Respondent sent prior to the commencement of this proceeding. The Complainant issued a cease-and-desist letter to the Respondent by way of e-mail on its website and via an online contact form. When these methods failed, the Complainant contacted the Registrar and requested for the letter to be forwarded to the Respondent. In all of these instances, the Respondent did not respond to the letters. The Respondent did not submit a Response in this proceeding. This is a further indication of the Respondent's bad faith.

Further, the Panel notes that the Respondent is using a privacy shield to conceal its information and hide its identity. Given also that NOVARTIS is a distinctive mark which is a made-up word that does not have any meaning, the Respondent's behavior is clear evidence of bad faith registration and use of the disputed domain name.

Based on the evidence presented to the Panel, including the registration of the disputed domain name long after the registration of the Complainant's marks, the confusing similarity between the disputed domain name and the Complainant's marks, the Respondent's use of the disputed domain name, the Respondent's failure to present any credible rationale for registering the disputed domain name, and the fact that is no plausible good faith use the Respondent can put the disputed domain name to, the Panel finds that the disputed domain name was registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **HBNOVARTIS.COM**: Transferred

PANELLISTS

Name	**Mr. Jonathan Agmon**

DATE OF PANEL DECISION 2019-07-03

Publish the Decision