Decision for dispute CAC-UDRP-102702

Case number	**CAC-UDRP-102702**
Time of filing	**2019-10-04 09:21:27**
Domain names	**novartis.tech**

Case administrator

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

Complainant

Organization	**Novartis AG**

Complainant representative

Organization	**BRANDIT GmbH**

Respondent

Name	**Xian Zhong Wu**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings.

IDENTIFICATION OF RIGHTS

Complainant is the owner of the international trademark NOVARTIS nr. 663765, date of registration 1 July 1996, also applicable in China.

FACTUAL BACKGROUND

Complainant requests that the language of the proceedings should be English.
Complainant submits that Respondent has registered other domain names that contain terms in English, e.g. caronline.top, chinagame.biz, sixdomain.biz and sixdomainchain.biz. The disputed domain name includes Complainant's trademark NOVARTIS in its entirety combined with a gTLD ".tech", which is very often used for "technology", and is related to Complainant's business activities in the context that the terms are used together. According to Complainant it is a global company whose business language is English, and the main website operated by Complainant is in English (see www.novartis.com).
Complainant concludes that these facts show that Respondent obviously understands English. To avoid any potential unfairness or unwarranted delay Complainant requests that the language of the proceedings should be English.

According to the evidence submitted by Complainant, Complainant is a global healthcare company based in Switzerland.

Complainant's products are sold in about 155 countries and reached nearly 800 million people globally in 2018. About 125 000 people of 145 nationalities work at Complainant around the world. Complainant submits that it has a strong presence in China where Respondent is located. Complainant also owns a number of domain names, which include the trademark NOVARTIS. The disputed domain name <novartis.tech> was registered on 27 August 2019. The trademark registration of Complainant has been issued prior to the registration of the disputed domain name.

According to Complainant the disputed domain name is identical to Complainant's trademark as it incorporates Complainant's well-known, distinctive trademark NOVARTIS in its entirety. The addition of the gTLD ".tech" does not add any distinctiveness to the disputed domain name, to the contrary, as the term "tech" is very often used for "technology" "technic" in short, which is closely related to Complainant's business activities; it creates the misleading impression that the disputed domain name is authorized or somehow related to Complainant..

According to Complainant, Respondent has no rights or legitimate interest in the disputed domain name and Respondent is not related in any way with the business of Complainant. Respondent is not using the disputed domain name to offer any goods or services. The disputed domain name does not resolve to any active website.

According to Complainant the disputed domain name is registered and is being used in bad faith. Given the distinctiveness of Complainant's trademark Complainant submits that the registration of the Complainant's trademarks pre-dates the registration of the disputed domain name and that Respondent has never been authorized by Complainant to use these trademarks nor to register the disputed domain name.
Considering that Complainant's trademark is a well-known, distinctive mark worldwide, including in China where the Respondent is located, and that Respondent has been passively holding the disputed domain name Complainant therefore concludes that Respondent has been using the disputed domain name in bad faith.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

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 Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

Complainant has, to the satisfaction of the Panel, shown 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

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

Under paragraph 11(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (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. In the present case, the language of the Registration Agreement is Chinese.

Complainant submitted its Complaint in English and requested that the language of the proceeding be English. Respondent has not submitted any comments in this regard despite having been given the opportunity to do so. Taking into account Respondent's default and all of the other relevant circumstances of the case, in particular the fact that Respondent registered other domain names that contain terms in English, the Panel concludes that, in accordance with paragraph 11(a) of the Rules, it is appropriate that the language of the proceeding be English.
Therefore, the Panel has decided to accept Complainant's filing in English and issue a decision in English.

In the opinion of the Panel the disputed domain name is identical to Complainant's trademark (Policy, Par. 4 (a)(i)). Many UDRP decisions have found that a disputed domain name is identical or confusingly similar to a complainant's trademark where the disputed domain name incorporates the complainant's trademark or the principal part thereof in its entirety. Complainant has established that it is the owner of trademark registrations for NOVARTIS. The disputed domain name incorporates the entirety of the well-known NOVARTIS trademark as its distinctive element. The gTLD ".tech" in the disputed domain name may be disregarded.
The Panel notes that Complainant's registration of its trademark predates the creation date of the disputed domain name.

In the opinion of the Panel Complainant has made a prima facie case that Respondent lacks rights or legitimate interest in the disputed domain name. Complainant has not licensed or otherwise permitted Respondent to use its trademarks or to register the disputed domain name incorporating its marks. Respondent is not making a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademarks of Complainant. Respondent is not commonly known by the disputed domain name nor has it acquired trademark rights. Complainant has no relationship with Respondent.
Based on the undisputed submission and evidence provided by Complainant there is no website under the disputed domain name. Under these circumstances, the Panel finds that Respondent has no rights or legitimate interests in the disputed domain name (Policy, Par. 4 (a)(ii)).

The Panel finds that the disputed domain name has been registered and is being used in bad faith (Policy, Par. 4(a)(iii)). Complainant has rights in the NOVARTIS trademarks. Respondent knew or should have known that the disputed domain name included Complainant's well-known marks. The Panel notes that there is currently no active website at the disputed domain name. Such use of the disputed domain name does not prevent the Panel from finding registration and use in bad faith. The Panel further notes that the undeveloped use of the website at the disputed domain name which incorporates Complainant's trademark in its entirety indicates that Respondents possibly registered the disputed domain name with the intention to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the trademark of Complainant as to the source, sponsorship, affiliation, or endorsement of its website or location, which constitutes registration and use in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **NOVARTIS.TECH**: Transferred

PANELLISTS

Name	**Dinant T.L. Oosterbaan**

DATE OF PANEL DECISION 2019-11-07

Publish the Decision