Decision for dispute CAC-UDRP-100863

Case number	**CAC-UDRP-100863**
Time of filing	**2014-11-12 12:10:21**
Domain names	**novonordisk.xyz**

Case administrator

Name	**Lada Válková (Case admin)**

Complainant

Organization	**Novo Nordisk A/S**

Complainant representative

Organization	**Wallberg IP Advice**

Respondent

Name	**yang yi**

OTHER LEGAL PROCEEDINGS

The Panel is not informed of other pending or decided legal proceedings relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant holds trademark registrations worldwide in the sign NOVO NORDISK and brings evidence for the registration and renewal of this mark in classes 5 and 10 in China.

Apart from the trademark registration, Complainant states that it has a strong internet presence. Apart from its main homepage www.novonordisk.com, it notes that it is holder of numerous other domain names containing the NOVO NORDISK trademark as second level domains.

FACTUAL BACKGROUND

Novo Nordisk A/S is a global healthcare company with almost 90 years of innovation and leadership in diabetes care. The company has leading positions within haemophilia care, growth hormone therapy and hormone replacement therapy.

Headquartered in Denmark, Novo Nordisk employs approximately 40.700 employees in 75 countries, and markets its products in more than 180 countries. The Annual turnover was 11.2 billion Euro in 2013, as further substantiated in Annex 1 submitted by the Complainant.

PARTIES CONTENTIONS

The arguments raised by the Respondent will be set out below, where the Panel assesses whether the Complainant shows that the three criteria of the UDRP are met.

The Respondent filed a response, but he did not address the three criteria on which the Complaint is based.

In his response, translated from Chinese by a software application, the Respondent alleges an invasion of his privacy. He questions why the Complainant did not register the domain name, as the .xyz domain already opened 9 months ago. He indicates that domain names and trademarks are the different types of intellectual property rights, so that no conflict is possible. He finally states that domain names and trademarks can simultaneously exist in different countries.

RIGHTS

The Respondent's domain name, novonordisk.xyz, fully incorporates the NOVO NORDISK trademark owned by the Complainant. The only difference with the Complainant's trademark is the addition of the top level domain designation ".xyz" which does not take away the identity or confusing similarity (Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455).

Therefore, the Complainant has, to the satisfaction of the Panel, shown the domain name is identical 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

It is upon the Complainant to show that the Respondent does not have rights or legitimate interests in the contested domain name. Since it is difficult to prove a negative fact, the Complainant's initial burden on this element is light and a prima facie showing on 4(a)(ii) of the Policy is sufficient (Neusiedler Aktiengesellschaft v. Kulkarni, WIPO Case No. D2000-1769; De Agostini S.p.A. v. Marco Cialone, WIPI Case No. DTV2002-0005).

In the opinion of the Panel, the Complainant has prima facie shown that the Respondent does not have rights or legitimate interests in the sense of Paragraph 4(a) of the Policy, as the Complainant holds that:

- the Respondent has not received any license or consent, express or implied, to use the Complainant's trademark NOVO NORDISK, in a domain name or in any other manner from the Complainant;
- the Complainant has not acquiesced in any way to such use or application by the Respondent;
- the Respondent did not have the authorization to register the disputed domain name;
- the Respondent did not use the domain name as a trademark, company name, business or trade name prior to the registration of the disputed domain name, nor is the Respondent otherwise commonly known in reference to the domain name.

The Respondent does not formally contest the abovementioned elements. He is also not able to show that there are circumstances, in the sense of Paragraph 4(c) of the Policy, which demonstrate his rights or legitimate interests in the domain name. In similar circumstances, Panels considered that no bona fide or legitimate use of the disputed domain name could be claimed (BHP Billiton Innovation Pty Ltd. V. OS Domain Holdings IV LLC, WIPO D2008-0488).

Furthermore, the fact that the domain name has been registered on 21 September 2014 and has not been put in use ever since as the Respondent seems to indicate, is a strong and persuasive evidence for the lack of rights or legitimate interests.

In consideration of the abovementioned reasons, the Complainant has, to the satisfaction of the Panel, shown that the Respondent does not have rights or legitimate interests in respect of the domain name (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

The Respondent must have been aware of the well-known trademark and reputation of the Complainant at the moment of registration of the domain name. It can reasonably be excluded that the Respondent created a fantasy name, which

happened to consist of the sign NOVO NORDISK.

Registration of a well-known trademark by a party with no connection to the owner of the trademark and no authorization and no legitimate purpose to utilize the mark reveals bad faith (The Caravan Club v. Mrgsale, NAF Case No. NAF/FA95314). The Panel notes that the apparent lack of active use does not as such prevent a finding of bad faith (Telstra Corporation Limited v. Nuclear Marshmallows, WIPO D2000-0003).

Paragraph 4 (b)(i) of the Policy refers to “circumstances indicating” that the Respondent acquired a domain name to sell, rent or otherwise transfer it to the owner of the trademark. Although no evidence was offered as to an asking of a price or a direct offer to sell the domain name, the Panel is satisfied that the overall circumstances indicate that the Respondent intended ultimately to sell or transfer the Domain Names to the Complainant (Arthur Guiness Son & Co (Dublin) Limited v. Tim Healy/BOSTH, WIPO D2001-0026). In particular, the Panel refers to the annex submitted by the Complainant titled “List of other domains owned by Respondent” which shows that the Registrant of the disputed domain name has registered at least 826 domain names, most of which are .xyz domains, including Novartis.xyz and Ritzcarlton.xyz. This pattern of conduct reinforces the finding that this domain name has been registered and is being used in bad faith.

The Complainant has, to the satisfaction of the Panel, shown that 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 Complainant requests that English is the language of the administrative proceedings. The Respondent indicates that he does not know English. The language of the registration agreement is Chinese.

Article 11 (a) of the Rules provide in that regard that “unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceedings 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”.

In the circumstances of these administrative proceedings, the Panel determines that the language of the proceeding shall be English given that the Respondent registered several hundred domain names under the .xyz toplevel domain written in Latin script, which indicates that the Respondent is knowledgeable in Latin script based languages. Furthermore, the procedure against the same Respondent in NAF URS n°1409001582246 was also conducted in English and did not give rise to any objections from the Respondent. Therefore, the request to change the language of the proceedings by the Complainant is granted.

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

The Respondent has registered and used a domain name that is identical to the Complainant’s trademarks, in respect of which the Respondent has no rights or legitimate interests and which is registered and 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. **NOVONORDISK.XYZ**: Transferred

PANELLISTS

Name	**Tom Heremans**

DATE OF PANEL DECISION 2015-01-02

Publish the Decision