Decision for dispute CAC-UDRP-101316

Case number	CAC-UDRP-101316
Time of filing	2016-10-21 08:56:59
Domain names	novonordisk.net

Case administrator

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

Complainant

Organization	Novo Nordisk A/S

Complainant representative

Organization	Wallberg IP Advice

Respondent

Name	shilirong shilirong

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 claims that it has worldwide trademark registrations for NOVO NORDISK and submits evidence of the following two Chinese trademarks:
- Registered trademark with registration number 786062 for NOVO NORDISK in class 5 for, inter alia, pharmaceuticals, medicinal and veterinary preparations, valid from November 15, 1995 until November 13, 2015 on the basis of a 10 years renewal certificate;
- Registered trademark with registration number 790429 for NOVO NORDISK in class 10 for medical, dental and veterinary apparatus and instruments, valid from October 28, 2005 until October 27, 2015 on the basis of a 10 years renewal certificate.

FACTUAL BACKGROUND

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

1. Novo Nordisk A/S is a global healthcare company with almost 90 years of innovation and leadership in diabetes care. The company also has leading positions within hemophilia 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.

2. The Complainant holds trademark registrations worldwide of the trademark that is relevant to this case, namely NOVO NORDISK.

3. The Complainant has a strong Internet presence achieved by its main homepage at <www.novonordisk.com>. The Complainant does however own numerous other domain names including domain names containing the NOVO NORDISK trademark as second level domains.

3. The Complainant has recently become aware of the registration of the disputed domain name <novonordisk.net>. The Registrant registered the disputed domain name on March 23, 2016. The disputed domain name resolves to an active website.

4. The disputed domain name is identical to the trade mark NOVIO NORDIK in which the Complainant holds rights. The disputed domain name incorporates the Complainant´s registered trademark in full. Also, the Complainant asserts that it is an established and recognized principle under the UDRP that the presence of the top level domain designation - in this case .net - is irrelevant in the comparison of a domain name and a trademark.

5. The Respondent has not received any license or consent, express or implied, to use the trademark NOVO NORDISK in a domain name or in any other manner from the Complainant, nor has the Complainant acquiesced in any way to such use or application by the Respondent. At no time did the Respondent have authorization from the Complainant to register the disputed domain name. Further, to the best knowledge of the Complainant, the Respondent has no legitimate right in the disputed domain name. The Respondent did thus not use the disputed 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 name. Also, to the best knowledge of the Complainant, the Respondent has no legitimate interest in the disputed domain name. It is thus evident that the Respondent does not “make a legitimate noncommercial or fair use of the domain name, without intent (...) to tarnish the trademark or service mark at issue”.

6. The Complainant claims that because of the distinctive nature and global use of the trademark NOVO NORDISK, is inconceivable that the Respondent registered the disputed domain name without knowledge as to the existence of the Complainant’s trademark at the time the Respondent registered the disputed domain name. The disputed domain name is used for a website that offers various types of online gambling. It is thus evident that the Respondent makes use of the disputed domain name for commercial gain, and the use of the disputed domain name for such activities is detrimental to the reputation of the trademark NOVO NORDISK and tarnishes the goodwill attached to the trademark.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

RIGHTS

The Complainant did not, to the satisfaction of the Panel, shown that 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

In view of the finding of the Panel that the Complainant did not show that it can rely on a trademark or service mark in which the Complainant has rights, there was no need to establish if the Complainant met the second element of paragraph 4(a) of the Policy.

BAD FAITH

In view of the finding of the Panel that the Complainant did not show that it can rely on a trademark or service mark in which the Complainant has rights, there was no need to establish if the Complainant met the third element of paragraph 4(a) 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

The Respondent did not reply to the Complainant's contentions. However, the consensus view of UDRP panels is that the Respondent's default does not automatically result in a decision in favour of the Complainant. The Complainant must still establish each of the three elements required by paragraph 4(a) of the Policy. Although the Panel may draw appropriate inferences from a respondent's default, paragraph 4 of the Policy requires the Complainant to support its assertions with actual evidence in order to succeed in these proceedings. Paragraph 14(b) of the Rules provides that, in the absence of exceptional circumstances, the Panel shall draw such inferences as it considers appropriate from a failure of a party to comply with a provision or requirement of the Rules. The Panel finds that in this case there are no such exceptional circumstances.

According to paragraph 4(a)(I) the Complainant has the burden of proof to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. Although the Complainant alleged that it holds trademark registrations worldwide in NOVO NORDISK, it only submitted evidence of such trademarks in the Respondent's country of residence, the People's Republic of China. The evidence submitted shows, however, that the registrations the Complainant relies on, were renewed until October and November 2015. As the Complainant did not show that it has a trademark or service mark in which it holds rights at the moment of this decision, the Complainant failed to meet the requirement of paragraph 4(a)(I) of the Policy.

Considering that the three elements of paragraph 4(a) of the Policy cumulate, so that the Complaint must be rejected if one of the elements is not met, the Panel does not need to establish if the Complainant satisfied the requirements of paragraph 4(a)(ii) and 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **NOVONORDISK.NET**: Remaining with the Respondent

PANELLISTS

Name	**Alfred Meijboom**

DATE OF PANEL DECISION 2016-12-01

Publish the Decision