Decision for dispute CAC-UDRP-101136

Case number	**CAC-UDRP-101136**
Time of filing	**2015-12-14 11:22:16**
Domain names	**buysaxenda.com**

Case administrator

Name	**Lada Válková (Case admin)**

Complainant

Organization	**Novo Nordisk A/S**

Complainant representative

Organization	**Wallberg IP Advice**

Respondent

Organization	**Secure Web**

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The word SAXENDA is registered by the Complainant as a word trademark in many countries. It is inter alia registered as an international word mark N° 1189843 on 25 October 2013 for goods and services of class 5.

FACTUAL BACKGROUND

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

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 haemophilia care, growth hormone therapy and hormone replacement therapy.

Headquartered in Denmark, Novo Nordisk employs approximately 41.000 employees in 75 countries, and markets its products in more than 180 countries. The Annual turnover was 88.8 billion USD in 2014. Novo Nordisk's B shares are listed on NASDAQ OMX Copenhagen (Novo-B). Its ADRs are listed on the New York Stock Exchange (NVO).

The Complainant holds around 30 trademark registrations worldwide of the trademark SAXENDA.

Saxenda® is registered and is used for a liraglutide 3 mg, a once-daily human GLP-1 analogue for the treatment of obesity.

The Complainant has a strong Internet presence, its main homepage being www.novonordisk.com. The Complainant owns numerous other domain names as well, including domain names containing the trademark SAXENDA as second level domains such as in saxenda.com.

The Registrant registered the disputed domain name on 2 March 2015 with KEY-SYSTEMS GMBH. The domain name resolves to an active website.

The Complainant claims that the contested domain name is confusingly similar to the trade mark SAXENDA, in which the complainant holds rights. The domain name incorporates the complainants registered trademark combined with the generic and descriptive prefix “buy”. The Complainant claims that for the purpose of a UDRP proceeding, when a well-known and invented mark is combined with a common noun or adjective, that combination constitutes a domain name which is confusingly similar to an invented and well known mark.

Also, the Complainant asserts that it is an established and recognized principle under the UDRP that the presence of the .com top level domain designation is irrelevant in the comparison of a domain name to a trademark.

The Claimant furthermore contends that the Respondent has not received any license or consent, express or implied, to use the Complainant´s trademark SAXENDA, 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.

Furthermore, according to the Complainant, the Respondent has no legitimate right in the contested domain name. The Respondent did thus 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 name. On the contrary it is evident from the content of the Respondent's website that the inclusion of the Complainants trademark SAXENDA in the domain name is done deliberately and with specific reference to this mark. According to the Complainant, the Respondent intentionally attempts to attract Internet users to the Respondent’s website by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation or endorsement of the Respondent’s website

The Complainant claims that this is done for commercial gain. The website contains a tab entitled “Buy Saxenda Online” which leads to a section of the website with a link to the website http://www.dokteronline.com/en/saxenda/3330// where one can allegedly order Saxenda. Dokter Online runs an affiliate program, and the Complainant claims that the Respondent participates in this program and thus earns a pay-per-click or pay-per-order revenue

Also, according to the Complainant, the Respondent has no legitimate interest in the contested domain name. The Complaint asserts that it is evident from the wording of the website that the inclusion of the Complainants trademark SAXENDA in the domain name is done deliberately and with specific reference to this mark, and that the inclusion of the term “buy” indicates that you can order the Complainant´s product Saxenda on or via the website. The website contains a link to the website, but there is no product by that name yet, and further once the product will be put on the market it will not presented as a pill, but as a substance that has to be injected using an injection pen.

According to the whois information the Registrant uses the company Secure Web located in Panama as proxy for the registration, and it is not clear from the website www.buysaxenda.com in which country the “real” Registrant is located. However, since the Complainant´s mark SAXENDA is registered worldwide, because of the distinctive nature of the Complainant´s trademark SAXENDA, and because of the specific content of the web site, the Respondent had positive knowledge as to the existence of the Complainant’s trademark at the time the Respondent registered the domain name.

Finally, the Complainant reiterates that the Respondent uses the domain name in bad faith, namely to divert Internet traffic to Respondent's website. By doing this the Respondent intentionally attempts to attract for commercial gain, Internet users to the Respondent’s website by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation or endorsement of the Respondent’s website.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

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

In its Complaint, the Complainant requested that English be the language of the administrative proceedings, cf. Rules Paragraph 11(a), claiming that the Respondent has registered a domain name that is identical to the Complainant´s trademark with the addition of the English term "buy". The comprehensive text of the website under the disputed domain name is in English and the website includes a link to the English language version of website www.dokteronline.com. Both factors clearly indicate that the Respondent knows English. Therefore, the panel finds that pursuant to paragraph 11(a) of the Rules the language of this proceeding shall be English.

PRINCIPAL REASONS FOR THE DECISION

1. The Domain Name is confusingly similar to the SAXENDA trademarks of the Complainant

The contested domain name is confusingly similar to the SAXENDA trademarks, in which the complainant holds rights. The domain name incorporates the Complainant's registered trademark, combined with the generic and descriptive prefix “buy”. When a trademark is combined with a common noun or adjective, that combination constitutes a domain name which is confusingly similar to that trademark.

The presence of the .com top level domain designation is irrelevant in the comparison of a domain name to a trademark.

The Panel finds that the Complainant established that the disputed domain name www.buysaxenda.com is confusingly similar to its prior SAXENDA trademarks.

2. The Respondent does not have rights or legitimate interests in respect of the Domain Name

The Respondent has not received any license or consent, express or implied, to use the complainant´s trademark SAXENDA, 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.

Furthermore, the Complainant sufficiently establishes that the Respondent has no rights in the contested 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 name. It is clear from the content of the Respondent's website that the inclusion of the Complainant's trademark SAXENDA in the domain name is done deliberately and with specific reference to this mark, for commercial gain.

The Complainant also sufficiently shows that the Respondent has no legitimate interest in the contested domain name. The Complaint successfully asserts that it is evident from the wording of the website that the inclusion of the Complainant's trademark SAXENDA in the domain name is done deliberately and with specific reference to this mark, and that the inclusion of the term “buy” indicates that you can order the Complainant´s product Saxenda on or via the website, which is not the case and cannot be the case because the product Saxenda has not been put on the market yet.

3. The Domain Name was registered and is being used in bad faith

According to the whois information the Registrant uses the company Secure Web located in Panama as proxy for the registration, and it is not clear from the website www.buysaxenda.com in which country the “real” Registrant is located. However, since the Complainant´s trademark SAXENDA is registered worldwide, because of the distinctive nature of the Complainant´s trademark SAXENDA, and because of the specific content of the web site, the Respondent had positive knowledge as to the existence of the Complainant’s trademark at the time the Respondent registered the domain name.

Finally, the Complainant has sufficiently established that the Respondent also uses the domain name in bad faith, namely to divert Internet traffic to Respondent's website. By doing this, the Respondent intentionally attempts to attract for commercial gain, Internet users to the Respondent’s website by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation or endorsement of the Respondent’s website.

Accordingly, the Complainant has shown, to the satisfaction of the Panel, that the 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. **BUYSAXENDA.COM**: Transferred

PANELLISTS

Name	**Tom Heremans**

DATE OF PANEL DECISION 2016-01-21

Publish the Decision