1. Procedural History

On January 27, 2017, the Complainant submitted a Complaint in English language in respect of the Disputed Domain Name <Novartis-bio.cn> to Hong Kong International Arbitration Centre ("HKIAC") and elected the case to be dealt with by one single panelist according to the CNNIC ccTLD Dispute Resolution Policy ("Policy") implemented by CNNIC on 21 November 2014.

On February 1, 2017, HKIAC sent a New Case Notification to Registrar to the Registrar to verify and confirm registration information. On the same day, HKIAC transmitted the Receipt of Complaint to the Complainant. The Registrar replied HKIAC to confirm that the registrant of the Disputed Domain Name is same as the Respondent. The Registrar also confirmed that the Policy shall apply.

On February 3, 2017, HKIAC confirmed receipt of the case filing fee from the Complainant. On the same day, HKIAC transmitted the Complaint to the Respondent by email and informed the Respondent of the 20-day period i.e. February 23, 2017 to file a Response. However, no Response has been filed.

On February 24, 2017, HKIAC informed the Complainant and copied the Respondent on the Respondent’s default to respond to the Complaint.

On March 2, 2017, HKIAC informed the parties of the appointment of Mr. William Law as the sole panelist and the decision would be rendered on or before March 16, 2017.

All the communications dispensed by HKIAC to the concerned parties are both in Chinese and English during the whole proceeding.
Language of proceedings

In relation to the language of the proceeding, the Complainant mainly contended that (1) the content in the Disputed Domain Name is displayed in English; and (2) the high cost of translation that will result disproportionate burden to the Complainant and contrary to purpose of the Policy.

HKIAC has been candid enough that all the correspondences to the Respondent and Complainant were sent in both Chinese and English. Had the Respondent contested and requested the Complaint and the present proceeding be maintained in Chinese, the Panelist would have no doubt to adhere to Chinese, which is familiar to the Respondent. However, the Respondent default in filing a Response. I have also considered the language of the content on the website of the Disputed Domain to look for some direction of the underlying services or goods provided, evidence (Attachments 9.2 and 9.3) shows that the content of the Disputed Domain is totally in English providing pharmaceutical products and/or services. The WHOIS record shows the registrant’s address is in Russia.

The Policy does allow panelist to take a broad view in deviating the language of the proceedings from Chinese, which is the language of the proceeding under the Policy. The Complainant submitted that the content in the Disputed Domain Name is totally displayed in English, which implies the Respondent is able to understand the language. In addition, it would be quite inconvenient for the Complainant to translate the Complaint into Chinese. I cannot rule out a possibility that the default is due to that the Respondent, with address in Russia, did not understand the Complaint which is written in English. However, if this is the case, the Respondent would have raised to HKIAC in the bilingual email communication and notifications. The evidence before me tells that it was the case which the Respondent failed to file any response despite the various notifications by HKIAC. I therefore rule that this proceeding and the decision would be conducted in English, notwithstanding that of the Policy; and I do not see how the Respondent’s right will be detrimental or prejudiced had the proceedings been conducted in either Chinese or English.

2. Factual background

Novartis AG (hereinafter referred to as Complainant) is the proprietor of the NOVARTIS trademarks. Novartis is a global healthcare company based in Switzerland that provides solutions to address the evolving needs of patients worldwide (please see, https://www.novartis.com). Novartis manufactures drugs such as clozapine (Clozaril), diclofenac (Voltaren), carbamazepine (Tegretol), valsartan (Diovan) and many others.

Complainant products are available in more than 180 countries and they reached nearly 1 billion people globally in 2015. About 123 000 people of 144 nationalities work at Novartis around the world.
Complainant is the owner of the registered well-known trademark NOVARTIS as a word and figure mark in several classes in numerous of countries all over the world including in China. (See the overview of the registered trademarks below). Complainant has a strong presence in China where the Respondent is doing business with the Disputed Domain Name. The below link connects customers to the official local sales and service locator and to the official websites of the Complainant:
- Global Website for NOVARTIS; https://www.novartis.com/about-us/contact/officelocations?tid=All&name_list=CN
- Local Website for NOVARTIS in the China: see www.novartis.com.cn

For more information about the Complainant, please see Attachment 5 as well as Complainant’s Annual report for 2016 available at:


Overview of trademark registrations:

<table>
<thead>
<tr>
<th>Trademark</th>
<th>Reg. No</th>
<th>Class:</th>
<th>Date of Registration</th>
</tr>
</thead>
<tbody>
<tr>
<td>NOVARTIS</td>
<td>IR666218</td>
<td>41; 42</td>
<td>31.10.1996 (incl. China)</td>
</tr>
<tr>
<td>NOVARTIS</td>
<td>IR663765</td>
<td>01; 02; 03; 04; 05; 07; 08; 09; 10; 14; 16; 17; 20; 22; 28; 29; 30; 31; 32; 40; 42</td>
<td>01.07.1996 (incl. China)</td>
</tr>
<tr>
<td>NOVARTIS</td>
<td>IR1155214</td>
<td>41; 42</td>
<td>24.01.2013 (incl. China)</td>
</tr>
</tbody>
</table>

See Attachment 6.1 – 6.3. for trademark registrations extracts and Attachment 6.4. for a list with some Novartis trademarks and application in the world.

These trademark registrations predate the registration of the Disputed Domain Name. Due to extensive use, advertising and revenue associated with its trademarks worldwide, Complainant enjoys a high degree of renown around the world, including in China, where the Respondent offers its business. Complainant has previously successfully
challenged several NOVARTIS domain names through UDRP processes see among others the following WIPO cases: D2016-1688; D2016-0552; D2015-1989; D2015-1250.

Please note that in the case No. D2016-1688, Novartis AG v. Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org, / Sergei Lir regarding the domain name <novartis-bio.com>, the Panel confirmed that NOVARTIS is a well-known worldwide trademark as follows:

“When the disputed domain name was registered by the Respondent in June 2016, the trademark NOVARTIS was already well-known worldwide and directly connected to the Complainant’s activities in the pharmaceutical business”

Complainant has registered a number of domain names under generic Top-Level Domains ("gTLD") and country-code Top-Level Domains ("ccTLD") containing the term “NOVARTIS”, for example, <novartis.com> (created on April 02, 1996), <novartis.net> (created on April 25, 1998), <novartis.com.cn> (created on August 20, 1999), and <novartis-bio.com> (created on June 30, 2016). Complainant uses these domain names to connect to a website through which it informs potential customers about its NOVARTIS mark and its products and services. See Attachment 7 for examples of Complainant’s domain name registrations.

3. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

i. The domain name is identical or confusingly similar to the Complainant’s name or mark in which the Complainant has civil rights and interests

The domain name www.novartis-bio.cn (hereinafter referred to as the “Domain Name”), which was registered on November 24, 2016, directly and entirely incorporates Complainant’s well-known, registered trademark NOVARTIS. The addition of the country code Top-Level Domain (gTLD) “.cn” does not add any distinctiveness to the Domain Name. The Domain Name incorporates the NOVARTIS trademark coupled with a hyphen and the term “bio”, which can be interpreted as an abbreviation of the term biological, which is closely connected to Novartis’ business. These references exaggerate the impression that Respondent is somehow affiliated with Complainant, and Respondent is somehow doing business in China using Complainant’s trademark. See as an example the WIPO Overview on Selected UDRP Questions, Second Edition ("WIPO Overview
2.0”), paragraph 1.2. as well as the International Business Machines Corporation v. Sledge, Inc. / Frank Sledge WIPO Case No. D2014-0581 where the Panel stated the following “In addition, it is generally accepted that the addition of the top-level suffix in the domain name (e.g., “.com”) is to be disregarded under the confusing similarity test”. The following should apply in the current case and the Domain Name should be considered as confusingly similar to the trademark NOVARTIS.

ii. The holder of the disputed domain name has no legitimate right or interest over the domain name or the major part of the domain name

Complainant has not found that Respondent is commonly known by the Domain Name or that it has interest over the Domain Name or the major part of it. The WHOIS information “Nizenkovskii Viktor” is the only evidence in the WHOIS record, which relates Respondent to the Domain Name. When entering the terms “NOVARTIS”, and “CHINA” in the Google search engine, the returned results point to Complainant and its business activity (see Attachment 8). The Respondent could easily perform a similar search before registering the Domain Name and would have quickly learnt that the trademarks are owned by Complainant and that the Complainant has been using its trademarks in China. Respondent has not by virtue of the content of the website, nor by its use of the Domain Name shown that they will be used in connection with a bona fide offering of goods or services.

There is no evidence that Respondent has a history of using, or preparing to use, the Domain Name in connection with a bona fide offering of goods and services. It is clear that Complainant has become a distinctive identifier associated with the term “NOVARTIS” and that the intention of the Domain Name is to take advantage of an association with the business of Complainant.

The website

Respondent is using the above Domain Name to attract internet users to its website where they commercialize drugs under the name of the Complainant. On their web site, Respondent states “© 2016 NOVARTIS-BIO™”. Respondent has connected the Domain Name to a website which has the look and feel of an official Novartis website in English characters, however, the Complainant has not authorized in any way the Respondent to use any of its intellectual property rights. Respondent’s layout including a stylized NOVARTIS logo appears prominently on the website (see top center of the website). Moreover, the use of the word NOVARTIS (i) in the Domain Name, (ii) in the email address of novartis.bio.hgh@gmail.com which is added as contact email on the website and (iii) also in the text of the website multiple times in bold letters further create the impression that here is some official or authorized link with the Complainant for the
purposes of selling drugs. In addition, the website requests sensitive information (email address, name) from internet users for purposes of contacting the Respondent.

In the light of the Oki Data Americas, Inc. v. ASD, Inc. WIPO Case No. D2001–0903, the use of a trademark as a domain name by an authorized or non-authorized third party is only to be regarded as a bona fide offering of goods or services within the meaning of paragraph 4(c) of the Policy if the following conditions are satisfied:

- the respondent must use the site to sell only the trademarked goods; otherwise, it could be using the trademark to bait Internet users and then switch them to other goods;

- the site must accurately disclose the registrant’s relationship with the trademark owner; it may not, for example, falsely suggest that it is the trademark owner, or that the website is the official site, if, in fact, it is only one of many sales agents;

- the respondent must not try to corner the market in all domain names, thus depriving the trademark owner of reflecting its own mark in a domain name.

As mentioned previously, the Respondent fails on at least three of these tests, namely:

1. First, Respondent does not publish a disclaimer on the challenged page. On the webpage connected to Disputed Domain Name the Respondent has added a text at the bottom that states “© 2016 NOVARTIS-BIO™! This is not a disclaimer that describes the non-existent relationship with the Complainant. It only points out that Respondent provides online sales services under the registered trademarks. Hence, it does not cure bad faith. It rather proves that the Respondent had prior knowledge of the Complainant’s trademark;

2. Secondly, the Respondent is depriving the Complainant of reflecting its own mark in the Domain Name in China; and,

3. Thirdly, the Respondent presents themselves as the trademark owner by adopting a website that looks official by using the Complainant’s name.

Respondent’s use of the Domain Name creates an overall impression that they are the Complainant. In the present case, Respondent’s conduct does not meet all the Oki Data criteria. It is undeniable that Respondent was aware of Complainant’s mark prior to the acquisition of the Domain Name and the establishment of Respondent’s website, see Annex 9.1. for a copy of Respondent’s website. Respondent has made no claims to neither having any relevant prior rights of its own, or to having become commonly known by the Domain Name.
In addition, the website invites visitors to contact Respondent via its link PARTNERSHIP hereby users disclose their personal information to Respondent such as NAME and E-MAIL, potentially as part of Respondent’s phishing scheme, as Attachment 9.2. shows. Reference is made to the WIPO Case No. D2015-1024 Steven Madden, Ltd. v. Daniel Monroy where Respondent collected personal information from Internet users visiting the website (name, surname, phone number, email address, age, birth date, country, shoe size, etcetera) through filling a form, where the Panel noted that: “users presumably would not provide such data unless they believe they are dealing with Complainant or with a representative of Complainant....since personal data are a valuable commodity, eliciting such data as described is not a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers, pursuant to Policy paragraph 4(c)(iii)”. In the current case, this founding shall apply declaring that Respondent’s attempt to “phish” for users’ personal information is neither a bona fide offering of goods and services nor a legitimate noncommercial or fair use pursuant to Policy.

iii. The holder of the disputed domain name registers or uses the disputed domain name in bad faith

The Domain Name is registered in bad faith:

It has to be highlighted that Complainant’s trademarks predate the registration of the Domain Name, moreover, the active business presence of the Complainant in China market in the last years shows that it seems to be unlikely that the Respondent was not aware of the unlawful registration of the Domain Name.

The Domain Name is being used in bad faith

There is no doubt that many Internet users attempting to visit the Complainant’s website have ended up on the webpage set up by the Respondent. In this regard, the disputed domain name directs towards a website which displays the Complainant’s logo NOVARTIS, general information, images of drugs, vacancies and even a verification process where the Internet users could verify Respondent’s products using a so-called unique code.

The fraudulent website commercializes drugs under the name of Complainant and therefore impersonates the Complainant. In this sense, it is likely the Respondent uses the disputed domain name to sell their products (e.g. under the Complainant’s NOVARTIS trademark without any authorization that could be hazardous to people’s health (please see Annex 9.3 with an example of the products offered by Respondent at the website). It is more likely than not, that the Respondent’s primary motive in
registering and using the disputed domain name was to capitalize on or otherwise take advantage of the Complainant’s trademark rights, through the creation of initial interest of confusion.

In the WIPO case no. D2016-1688 AB Electrolux v. Guangzhou Nan Guang Electrical Appliances Co.Ltd. concerning the domain name zanussi-china.com with similar circumstances as the current case, the Panel noted that:

“The Respondent is using the Domain Name for a website with an orange and black livery, which displays the mark ZANUSSI in a large, black font in the banner and photographs of the Complainant’s group’s ZANUSSI products... The Panel accepts the Complainant’s evidence that the Respondent’s website is liable to mislead customers into believing that it is a website of the Complainant or authorized by it. This evidence is well-substantiated by the nature of the Domain Name, the absence of any statement that the Respondent is not authorized by the Complainant’s group, the prominent ZANUSSI mark in the banner, the orange and black livery, and the pictures of the Complainant’s group’s products. Furthermore, having regard to all the circumstances, the Panel considers that it was the Respondent’s intention so to mislead customers.”

Similar circumstances apply in the current case. Further, the Respondent has never been granted permission to register the Domain Name. The Respondent takes advantage of the NOVARTIS trademark by intentionally attempting to attract visitors 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 or location or a product or service on the Respondent’s website or location. The Respondent is thus not accurately disclosing its relationship with the trademark by falsely suggesting it is the trademark owner and its website is an official website. Obviously, the Respondent is making a non-legitimate use of the disputed domain name, with intent for commercial gain to misleadingly divert consumers from the Complainant’s official website. Similar to the WIPO case no D2014-0487 Aktiebolaget Electrolux v. electroluxmedellin.com, Domain Discreet Privacy Service / Luis Rincon where similar circumstances were at hand the Panel stated:

“The continuing use of the disputed domain name is clearly confusing to online users who will be attracted by the inclusion of the word ELECTROLX in the disputed domain name, and who will therefore believe that they are accessing a website that is in some way associated with or authorized by the Complainant. This is not the case, and the consumer confusion is further strengthened by the fact that there are services for Electrolux products advertised on the Respondent’s website without any disclaimer of association with the Respondent.”
From the Complainant’s point of view, the Respondent intentionally chose the Domain Name based on a registered and well-known trademark in order to generate more traffic to its own business. Nowhere does the Respondent disclaims on its website the non-existing relationship between itself and the Complainant. The Domain Name is currently connected to an online shop website where drugs are offered to the internet users, consequently, the Respondent is using the Domain Name to intentionally attempt to attract, for commercial gain, internet users to the website, by creating a likelihood of confusion with the Complainant’s trademark as to the source, sponsorship, affiliation or endorsement of its website. This conduct has been considered as bad faith under the Policy, and other WIPO decisions have also arrived to the same conclusion, as an example see Philip Morris Incorporated v. Alex Tsypkin, WIPO Case No. D2002-0946, in which the panel stated:

“It follows from what has been said about legitimacy that the Panel is satisfied that Respondent is using the disputed domain name intentionally to attempt to attract, for commercial gain, Internauts to his web site by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation or endorsement of his web site. Pursuant to Policy paragraph 4(b)(iv), this constitutes evidence of both bad faith registration and bad faith use, for the purposes of paragraph 4(a)(iii).

As a final point, it is important to point out that Respondent has been directly or indirectly involved in a pattern of registering domain names similar to the Disputed Domain Name with the aim to impersonate the Complainant and offer their products without Complainant’s authorization,; for instance the domain name www.novartis-bio.com which Complainant recovered through the following UDRP proceeding: No. D2016-1688, Novartis AG v. Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org, / Sergei Lir. In addition, Respondent is certainly also involved with the registration of the domain name www.novartis-bio.ru where not only the name of Mr. Sergei Lir (former owner of the domain name Novartis-bio.com) is indicated but also Respondent’s address in China is included (see Attachment 10 with an screen shot of www.novartis-bio.ru).

To summarize, NOVARTIS is a well-known trademark in the pharmaceutical industry including China where the website is operating as NOVARTIS. It is highly unlikely that Respondent was not aware of the rights Complainant has in the trademark and the value of said trademark, at the point of the registration. In addition, the Respondent does not meet the Oki Data principles on three elements, namely lack of a distinctive disclaimer and Respondent can be regarded to corner the market preventing Complainant from operating the Domain Name and they represent themselves as the trademark owner by displaying Complainant’s brand on the website. Consequently, Respondent should be considered to have registered and to be using the Domain Name in bad faith.
B. Respondent

The Respondent has not filed any submission within the prescribed time.

4. Findings

As to the case, Article 8 of CNDRP provides that a complaint against a registered domain name shall be supported if the following conditions are fulfilled:

i. The disputed domain name is identical with or confusingly similar to the Complainant's name or mark in which the Complainant has civil rights or interests;

ii. The disputed domain name holder has no right or legitimate interest in respect of the domain name or major part of the domain name;

iii. The disputed domain name holder has registered or has been using the domain name in bad faith.

Article 7 of CNDRP states that the complainant and the respondent shall bear the burden of proof for their own claims. With reference to the complaint and the attached documents, the Panel of this case considers that:-

*Identical or Confusing Similarity*

The distinctive part of <Novartis-bio.cn> is “Novartis”, which is identical to the registered trademarks of the Complainant in China and worldwide. The prior date of the international registration (01/07/1996), which extends to China, pre-dates the date of registration of the Disputed Domain Name (24/11/2016). The word “NOVARTIS” is an invented word which is highly distinctive, and has been marketing, advertising and promoting through various websites of the Complainant. “bio” is a common short name for “biological” or “biology” and it does not make the domain name more distinctive. As such, with no evidence to the contrary, I am satisfied that the Complainant has civil rights or interests in the mark, “NOVARTIS” and that the distinctive part of the Disputed Domain Name is identical to such mark.

*Rights or Legitimate Interests of the Respondent*

The Complainant, as the registrant of various trademark registrations, submitted that it has never authorized the Respondent to use any of its intellectual property. The Respondent has the burden of proof to establish that he has rights or legitimate interests in the Disputed Domain Name. However, since the Respondent defaulted in contesting
the Complainant’s allegations, with no evidence to the contrary, I accept the Complainant’s submissions that:

(1) the Respondent’s use of the Disputed Domain Name is not in connection with a bona fide offering of goods or services;

(2) the Respondent has not been commonly known by the Disputed Domain Name, but the Complainant; Further there has been no evidence to show that the Respondent has acquired any trademark or service mark rights and/or reputations in connection with the mark.

I am therefore satisfied that the Respondent has no rights or legitimate interest to register and use the Dispute Domain Name.

Bad Faith

I accept that the Complainant and the NOVARTIS are well-established marks among the relevant public, in particular in the pharmaceutical and medical industry. Had the Respondent conducted a simple search on popular internet search engines such as Google, the Respondent would very likely have been aware of the “NOVARTIS” mark and the Complainant’s business activity. The registration of the Disputed Domain Name by the Respondent is in bad faith in this regard.

In the circumstance where the name is a distinctive name with no ordinary or dictionary meaning in Chinese or English, it is likely that the Respondent was aware of the Complainant and its “NOVARTIS” trademark and nevertheless, chose to register the Disputed Domain Name. As such, without evidence to the contrary, I found that the Respondent has registered the Disputed Domain Name in bad faith.

The Disputed Domain Name is likely to mislead users into believing that the Disputed Domain Name and Website is the website for the Complainant’s operations and/or associated with the Complainant and their “NOVARTIS” and the device trademarks in order to commercialize the Respondent’s drugs. According to the Complainant, the Respondent used the Complainant’s trademark “NOVARTIS” in the Domain Name, email address and the text of the website without authorization. The front page of the www.novartis-bio.cn Website shows drugs bearing “NOVARTIS-BIO” mark and device identical to that of the Complainant. These products are not produced by the Complainant. The Respondent’s attempt to “phish” for Internet users’ personal information or sell illegitimate products is neither a bona fide offering of goods and services of the Complainant nor a legitimate non-commercial or fair use. As such, I am satisfied that the Respondent has registered and used the Disputed Domain Name in bad faith with an intention to create confusion amongst consumers to capitalize on or otherwise take advantage of the Complainant’s trademark rights.
5. Decision

In conclusion, the Complainant has satisfied all the 3 grounds laid down in Article 8. I therefore order that the Disputed Domain Name **be transferred** to the Complainant.

综上所述，专家认为本案投诉符合<<解决办法>>第八条规定的三个条件，即“被投诉的域名与投诉人享有民事权益的名称或者标志相同，或者具有足以导致混淆的近似性；被投诉的域名持有人对域名或者其主要部分不享有合法权益；被投诉的域名持有人对域名的注册或者使用具有恶意”。

专家组决定支持投诉人的投诉请求，本案争议域名转移给投诉人。

Panelist: William Law

Date: 10 March 2017