ADMINISTRATIVE PANEL DECISION
Case No. DCN-1800802

Complainant: NOVARTIS AG
Complainant’s representative: BrandIT GmbH
Respondent: 孙启峰
Domain Name: novartispharmaceuticals.cn
Registrar: 阿里云计算有限公司（万网）Alibaba

1. Procedural History

The Complaint was filed with the Hong Kong International Arbitration Centre (the “Centre”) on February 5, 2018. On February 6, 2018, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same date, the Registrar transmitted by email to the Centre its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Centre verified that the Complaint satisfied the formal requirements of the CNNIC Domain Name Dispute Resolution Policy (the “Policy”), the Rules of Procedure under the Policy (the “Rules”), and the Centre’s Supplemental Rules (the “Supplemental Rules”).

In accordance with Article 5 of the Rules, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on February 12, 2018.

On February 12, 2018, the Centre sent an email communication to the parties in both Chinese and English regarding the language of the proceeding. It noted that the Complainant had requested English be the language of the proceeding in its Complaint on February 5, 2018. The Respondent did not file any submission regarding the language of the proceeding.

In accordance with Article 17 of the Policy, the due date for Response was March 5, 2018. No Response was received by that date. Accordingly, the Centre notified the Respondent’s default on March 6, 2016.

On March 16, 2018, the Centre appointed Mr. Douglas Clark as the sole panelist for arbitrating this case. The Panel considered its constitution to be proper, and subsequently submitted an acceptance notice as well as a statement of impartiality and independence.

2. Factual background
The Complainant is a Swiss pharmaceutical company that has its headquarters in Basel, Switzerland. One of its business operations include manufacturing drugs such as Lamisil, Ritalin and Clozaril.

The Complainant owns several International trademark registrations for the word mark “NOVARTIS”, including class 41 and 42, registered under the number No. IR666218 on 31 October 1996; class 1, 2, 3, 4, 5, 7, 8, 9, 10, 14, 16, 17, 20, 22, 28, 29, 30, 31, 32, 40, 42, registered under No. IR663765 on 1 July 1996; class 41 and 42, registered under No. IR1155214 on 24 January 2013.


The Respondent is individual.

The disputed domain name was registered on 14 July 2017.

The disputed domain name resolves to a page that appears to be advertising the disputed domain name for sale.

3. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

i. Identical or Confusingly Similar

The Complainant contends that the disputed domain name and the trademark NOVARTIS are confusingly similar. The disputed domain name contains NOVARTIS in its entirety as the distinctive part of the disputed domain name. The additional English word “pharmaceutical” refers to the main production of the Complainant’s business; such addition increase the confusing similarity between the disputed domain name and the Complainant’s trademark.

ii. No rights or legitimate interests

The Respondent has no connection with the Complainant or any of its affiliates and has never sought to obtain any trademark registrations for NOVARTIS. It, therefore, has no rights or legitimate interests in the disputed domain name.

iii. Registered or used in bad faith
The Complainant submits that before registration of the disputed domain name, the Respondent knew of the Complainant’s right in the NOVARTIS trademark given its worldwide reputation. The Respondent acquired the disputed domain name to disrupt the business of the Complainant and to improperly benefit from the Complainant’s right.

B. Respondent

The Respondents did not reply to the Complainant’s contentions.

4. Findings

A. Language of proceedings

Article 8 of the Rules provides that:

“Unless otherwise agreed by the Parties or determined in exceptional cases by the Panel, the language of the domain name dispute resolution proceedings shall be Chinese. The Panel may order that any documents submitted in languages other than Chinese be wholly or partially translated into Chinese.”

The Complainant requested the language of the proceeding be English on the grounds that: (1) it conducts its business primarily in English and it would be unduly burdensome on the Complainant should the proceeding be conducted in Chinese; (2) the fundamental principle of the domain name dispute mechanism is to allow for disputes to be resolved by fair and expedient means – translating the complaint would add time and cost to the proceedings; (3) panels should not put an excessive burden on the parties.

As noted, above, the Centre wrote to the Respondent specifically in relation to the language of proceedings in Chinese and English seeking its response on this issue. The Respondent did not respond to the Complainant’s request.

The final determination of the language of the proceeding lies with this Panel. Article 31 of the Rules gives the Panel a broad discretion with regard to the conduct of the proceeding, bearing in mind that the proceeding shall take place with due expedition and reasonable expense.

Accordingly, the Panel notes the following factors may affect its decision on language: first, the disputed domain name clearly has the English word pharmaceuticals on it. Second, the Respondent had been notified the Claimant’s case against it and was invited to make submissions by the Centre through emails in both English and Chinese to which it did not respond. Further, the Respondent replied to the Claimant’s cease and desist letter in English on 22 January 2018 requesting for a sum of money in exchange of the disputed domain name and the website under the disputed domain name is written mainly in English and offers the disputed domain name for sale. Both of these points show that the Respondent understands and is able to communicate in English.
The Panel is required to balance the questions of fairness to both parties with consideration of cost and expedition, taking into account all the relevant circumstances of the case. The fact that the merits are strongly in favour of the Complainant and the Respondent’s default in objecting to the Claimant’s language request are both strong factors to be considered. The Respondent has also defaulted in defending these proceedings and clearly has an understanding of English. The Panel therefore determines to accept the Complaint in English. It would have accepted any submissions from the Respondent in Chinese.

As the only pleading before the Panel is in English, the Panel will render its decision in English.

B. Substantive Issues

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

1. 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;
2. The disputed domain name holder has no right or legitimate interest in respect of the domain name or major part of the domain name;
3. 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 disputed domain name <novartispharmaceuticals.cn> is, other than the generic Top-level Domain (gTLD) “.cn”, confusingly similar to the Complainant’s trademark. The disputed domain name incorporates the Complainant’s NOVARTIS mark in full with the addition of a descriptive term that describes the Complainant’s business. The disputed domain name is therefore confusingly similar to the Complainant’s registered trademark.

The first part of Article 8 of the Policy is therefore satisfied.

Rights or Legitimate Interests of the Respondent

Article 10 of the policy provides that:

Before receiving the complaint, any of the following circumstances may be evidence of the rights to and legitimate interest in the domain name:

(i) Your use of the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services
(ii) You have been commonly known by the domain name, even if you have acquired no trademark or service mark rights;
(iii) You are making a legitimate noncommercial or fair use of the domain name, without intent of or commercial gain to misleadingly divert consumers.

The Complainant has established a prima facie case that the Respondent has no rights or legitimate interests in the domain name. The Respondent is neither associated with the Complainant nor authorized or licensed by it to use its trademark. There is no evidence to show that it has been commonly known by the domain name or the domain name was used for noncommercial purposes.

The Respondent has not responded to assert any rights or legitimate interests in the disputed domain name. Accordingly, none of the circumstances in Article 10 of the Policy are, therefore, present in this case.

The second part of Article 8 of the Policy is, therefore, satisfied.

**Registered or used in Bad Faith**

Under Article 8 of the Policy, the Claimant is required to prove the disputed domain name was either registered or used in bad faith. The Panel finds that the disputed domain name was registered in bad faith. It is therefore unnecessary to decide whether they were used in bad faith.

The Complainant Company was established in 1996. The Respondent is located in China where the Complainant has a presence and has been conducting businesses. The trademark of the Complainant, NOVARTIS, is a word that means "new skills" and the word pharmaceuticals describes the main production of the Complainant’s business. It is highly unlikely that the Respondent independently thought up the combination of the two without knowing the business. In fact, the Respondent would have been aware of the Complainant’s mark when carrying out a domain availability search on the website of the Respondent’s Registrar.

Further, the web page under the disputed domain name offers the disputed domain name for sale. This appears to be a pattern of conduct by the Respondent.

The registration of the disputed domain name in this case therefore fall with Article 9(iii) of the Policy that the disputed domain name holder has registered or acquired the domain name for the purpose of damaging the Complainant's reputation, disrupting the Complainant’s normal business or creating confusion with the Complainant’s name or mark so as to mislead the public.

The registration of the disputed domain name also falls within Article 9(1) of the Policy in that the Complainant has registered the domain name with the intention of selling it for unjustified benefits.

The third part of Article 8 of the Policy is, therefore, satisfied.
5. Decision

For all the foregoing reasons, in accordance with Article 14 of the Policy and Article 37 of the Rules, the Panel orders that the disputed domain name <novartispharmaceuticals.cn> be transferred to the Complainant.

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Panelist: Douglas Clark

Date: 4 April 2018