ADMINISTRATIVE PANEL DECISION
Case No. DCN-1900914

Complainant: Novartis AG
Respondent: 徐彬轩
Domain Name: <novartis.hk.cn>
Registrar: Chengdu West Dimension Digital Technology Co., Ltd.

1. Procedural History

On 12 July 2019, the Complainant filed a Complaint in English in respect of the domain name <novartis.hk.cn> (the “disputed domain name”) with Hong Kong International Arbitration Centre (“HKIAC”) pursuant to the CNNIC ccTLD Dispute Resolution Policy implemented by CNNIC on 21 November 2014 (“2014 CNDRP”). The Complainant elected to have the case decided by a single member panel and requested that the language of the proceedings be English. On 15 July 2019, HKIAC acknowledged receipt.

On 15 July 2019, HKIAC sent an email to the Registrar requesting verification of the disputed domain name registration information. On 22 July 2019, the Registrar replied to HKIAC disclosing details for the Respondent. On the same day, HKIAC forwarded this information to the Complainant and invited the Complainant to submit an amended Complaint. On 24 July 2019, the Complainant filed an amended Complaint.

On 9 September 2019, HKIAC sent an email to the Complainant advising that on 18 June 2019, CNNIC released a new version of the CNNIC ccTLD Dispute Resolution Policy (“2019 CNDRP” or “CNDRP”) and the China ccTLD Dispute Resolution Policy Rules (the “2019 CNDRP Rules”). The HKIAC Supplemental Rules for CNNIC CNDRP (the “2019 HKIAC Supplemental Rules”) were subsequently approved by CNNIC and became effective on 9 August 2019. According to Article 22 of the 2019 CNDRP Policy: “this Policy shall be implemented from 18 June 2019. The former CNNIC ccTLD Dispute Resolution Policy (effective as of 21 November 2014) ceases effect simultaneously”. Given that the Complainant had filed the Complaint and amended Complaint in accordance with the 2014 CNDRP and Rules, HKIAC invited the Complainant to submit a revised Complaint in accordance with 2019 CNDRP and Rules. On 19 September 2019 the Complainant filed a revised Complaint.

On 30 September 2019, HKIAC sent an email in Chinese and English to the Respondent regarding the language of the proceeding. The Respondent did not comment on the Complainant’s language request.
HKIAC verified that the further revised Complaint complied with the 2019 CNDRP and Rules. On 30 September 2019, HKIAC sent an email in Chinese and English to the Respondent forwarding the further revised Complaint and notifying the commencement of proceedings. In accordance with the CNDRP, the CNNIC ccTLD Dispute Resolution Policy Rules (the “Rules”) and the HKIAC Supplemental Rules for CNNIC CNDRP (the “Supplemental Rules”), the Respondent had twenty (20) days to submit a Response (that is, on or before 20 October 2019). The Respondent did not file any Response. Accordingly, on 22 October 2019, HKIAC notified the Respondent’s default.

On 5 November 2019, HKIAC informed the parties of the appointment of Prof. Matthew Kennedy as sole panelist in this dispute.

2. Factual background

The Complainant is a global healthcare company based in Switzerland. Its products are sold in approximately 155 countries, including China. The Complainant holds multiple trademark registrations including international trademark registrations numbers 663765 and 666218, both for NOVARTIS, registered on 1 July 1996 and 31 October 1996, respectively, both designating multiple jurisdictions, including China, and both specifying goods and services in multiple classes. Those trademark registrations remain current. The Complainant also registered domain names, including <novartis.com> and <novartis.com.cn>, registered on 2 April 1996 and 20 August 1999, respectively, which it uses in connection with its global and Chinese websites, respectively.

The Respondent is an individual resident in China. According to evidence provided by the Complainant, the Respondent’s contact email address is associated with over 2400 domain name registrations.

The disputed domain name was registered on 19 March 2019. It formerly resolved to a landing page from which members could gain access to gambling websites. The Complainant sent a cease-and-desist letter to the Respondent on 13 May 2019, followed by reminders on 24 May 2019 and 31 May 2019. Since at least 11 July 2019, the disputed domain name has not resolved to any active website; rather, it is passively held.

3. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

i. The disputed domain name is identical with, or confusingly similar to, the Complainant’s NOVARTIS mark.

ii. The Respondent has no rights or legitimate interests in respect of the disputed domain name or major part of the disputed domain name. The Complainant has never granted the Respondent any right to use the NOVARTIS trademark within the disputed domain name, nor is the Respondent affiliated with the Complainant in any form.
iii. The Respondent has registered or has been using the disputed domain name in bad faith. The disputed domain name incorporates the well-known distinctive NOVARTIS trademark in its entirety. It is reasonable to infer that the Respondent intended to benefit from the reputation of the Complainant’s trademark and generate more traffic to his own website.

B. Respondent

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

4. Findings

A. Language of the Proceedings

Article 8 of the Rules provides that, “[u]nless 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.” This Rule does allow the Panel in some circumstances to determine that a language other than Chinese shall be the language of the proceedings. See, for example, Standard Life Employee Services Limited and Aberdeen Asset Management Plc v 申中朝, HKIAC Case no. DCN-1700750 (regarding Article 8 of the 2014 Rules which is unchanged in the 2019 Rules).

The Complainant requests that the Panel determine the language of the proceedings to be English. Its main arguments are that its own website is in English; that the Respondent’s website is partly in English; that the Respondent has registered numerous domain names containing English words; and that choosing Chinese as the language of the proceeding would cause unnecessary trouble and delay with no discernible benefit to the parties or the proceeding.

The Panel observes that the Complaint was filed in English. The Respondent is evidently familiar with English because he has chosen to register many domain names that incorporate English words. Moreover, despite having received notice of the Complaint and of the Complainant’s language request in Chinese, the Respondent has not expressed any interest in responding to the Complaint or in otherwise participating in this proceeding.

Article 31 of the Rules requires the Panel, inter alia, to “ensure that the parties are treated with equality and that each party is given a fair opportunity to present its case, give out its reasons and provide the evidence” and to “ensure that the proceedings take place with due expedition”. Given the circumstances in these proceedings, the Panel considers that requiring the translation of the Complaint into Chinese would create an unreasonable burden for the Complainant and unduly delay the proceedings, while rendering this decision in English does not create unfairness for either party.

Having considered all the circumstances above, the Panel determines that the language of these proceedings shall be English. The Panel would have accepted a Response in Chinese but none was filed.
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:

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

Based on the evidence submitted, the Panel finds that the Complainant has rights in the NOVARTIS mark.

The disputed domain name wholly incorporates the NOVARTIS mark with no additional element besides a Secondary Level Domain (“2LD”) suffix (".hk.cn"). Given that this additional element is a technical requirement of registration, it shall be disregarded unless it has some impact beyond its technical function, which is not the case here.

Therefore, the Panel finds that the disputed domain name is identical with or confusingly similar to a mark in which the Complainant has civil rights or interests.

Rights or Legitimate Interests of the Respondent

The disputed domain name, which wholly incorporates the Complainant’s NOVARTIS trademark and combines it with nothing more than a 2LD suffix, formerly resolved to a landing page that provided links to gambling websites. The Complainant submits that it has never granted the Respondent any right to use the NOVARTIS trademark within the disputed domain name, nor is the Respondent affiliated with the Complainant in any form. Nothing on the landing page indicated any reason to incorporate the NOVARTIS mark in the disputed domain name other than to confuse Internet users into believing that the landing page had some affiliation with the Complainant. The Respondent now holds the disputed domain name passively. These facts show that the Respondent’s use of the disputed domain name is not in connection with a bona fide offering of goods or services.

According to the Registrar’s WhoIs database, the Respondent’s name is “徐彬轩”, (XU Binxuan). There is no evidence that the Respondent has been commonly known by the disputed domain name nor a major part of it.
The Respondent was using the disputed domain name in connection with the supply of gambling services, either for his own commercial benefit, or the commercial benefit of the operators of the linked gambling websites, or both. That is not a legitimate noncommercial or fair use of the disputed domain name.

Based on the evidence, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no right or legitimate interest in respect of the disputed domain name or major part of the disputed domain name. The Respondent did not rebut that *prima facie* case because he did not allege any right or legitimate interest in the disputed domain name or a major part of it.

Therefore, the Panel finds that the disputed domain name holder has no right or legitimate interest in respect of the disputed domain name or major part of the disputed domain name.

**Bad Faith**

Article 9 of CDNRP provides certain examples of circumstances that may be evidence of the registration and use of a domain name in bad faith. The third circumstance is as follows:

“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”.

In the present case, the disputed domain name wholly incorporates the Complainant’s NOVARTIS trademark, with no additional element besides the 2LD suffix “.hk.cn”. The disputed domain name was registered in 2019, long after the Complainant obtained registration of its NOVARTIS trademark, including in China. NOVARTIS is a coined word. The Complainant has made extensive use of its NOVARTIS mark and acquired considerable reputation in it in the healthcare sector, including in China. This all gives rise to the inference that the Respondent was aware of the Complainant’s NOVARTIS trademark at the time that he registered the disputed domain name. The disputed domain name was used in connection with a landing page that provided access to gambling websites with no apparent connection to “novartis”. Therefore, the Panel finds that the Respondent has registered the disputed domain name for the purpose of creating confusion with the Complainant’s mark so as to mislead the public.

Therefore, the Panel finds that the disputed domain name holder has registered and has been using the disputed domain name in bad faith.

5. **Decision**

In conclusion, the Panel finds that the Complainant has satisfied all three elements laid down in Article 8 of CDNRP. Therefore, the Panel supports the Complaint and orders that the disputed domain name be transferred to the Complainant.
综上所述，专家组认为本案投诉符合《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，裁定本案争议域名转移给投诉人。

Panelist: Prof. Matthew Kennedy

Date: 15 November 2019