ADMINISTRATIVE PANEL DECISION
Case No. DCN-2000960

Complainant: Novartis AG
Respondent: Guo Yanyong / 郭延勇
Domain Name: “novartis.org.cn”
Registrar: 22net, Inc. / 浙江贰贰网络有限公司

1. Procedural History

A complaint was filed by the Complainant on 22 July 2020 to the Hong Kong International Arbitration Centre ("HKIAC"), a domain name resolution service provider authorized by China Internet Network Information Centre ("CNNIC"), in accordance with the China ccTLD Dispute Resolution Policy (CNDRP) and the China ccTLD Dispute Resolution Policy Rules ("Rules of CNDRP") both issued by CNNIC and took effect on 18 June 2019, the HKIAC Supplemental Rules for CNDRP and Rules of CNDRP ("Supplemental Rules") issued by HKIAC with effect on 9 August 2019. The Complainant chose to have the case decided by a single member panel.

On 22 July 2020, HKIAC sent a new Case Notification email to 22net, Inc., the registrar of the disputed domain name ("the Registrar") with copy to CNNIC.

All correspondence issued by HKIAC are in both Chinese and English.

The Registrar responded on 23 July 2020, disclosing details of the registrant of the domain name at issue and that the domain name at issue was created on 23 June 2019.

On 25 July 2020 the Respondent sent a short email to HKIAC asking for a copy of the Complaint in Chinese.

A Notification of Deficiencies of the Complainant was sent by HKIAC to the Complainant on 4 August 2020. The duly amended Complaint was sent to HKIAC by the Complainant on 6 August 2020.

The Respondent was formally notified of the Complaint on 6 August 2020 and the Complainant’s application for the language of the proceedings to be in English. The Respondent was required to respond to the choice of language and to file a response to the Complaint, on or before 26 August 2020, pursuant to CNDRP. A copy of the Complaint together with the supporting materials were sent to the Respondent with copy to Complainant and CNNIC. The Respondent was also given a link to a sample Response as well as the terms of CNDRP, the Rules of CNDRP and the Supplemental Rules in both Chinese and English. The Respondent responded to HKIAC on the same day, repeating his
email of 25 July 2020. HKIAC wrote back within the same day pointing out that the Complainant had applied for the language of the proceedings to be in English and that the Respondent should respond to the Complainant’s application. He was also reminded of Article 8 of the Rules of CNDRP.

HKIAC indicated to the parties on 27 August 2020 that it did not receive a Response from the Respondent.

On 31 August 2020, HKIAC informed the parties that Ms. Dora Chow has been appointed as the Panelist.

The Panel issued Administrative Panel Order No 1 on 3 September 2020, giving the Respondent 7 days to give reasons to substantiate his request for a Chinese version of the Complaint and that the deadline to render a decision will be extended by 7 days. The Respondent did not respond to the aforesaid Administrative Panel Order No 1.

2. **Factual background**

The Complainant is Novartis AG, of 4002, Basel, Switzerland. The authorized representative of the Complainant is BRANDIT GambH of Bellerivestrasse 36, 8008 Zürich, Switzerland.

The Respondent is Guo Yanyong / 郭延勇, of Jining Psychiatric Hospital, No. 1 Jidai Road, Jining City, Shandong / 山东济宁市济临路1号济宁市精神病防治院

The domain name at issue is <novartis.org.cn>, registered by Respondent with 22net, Inc. / 浙江贰贰网络有限公司 of 11th Floor, Building 2, Hangzhou Internet Innovation and Entrepreneurship Park, 176 Zixia Street, Xihu District, Hangzhou, Zhejiang Province (310030), China.

3. **Parties’ Contentions**

A. **Complainant**

The Complainant’s contentions may be summarized as follows:

The Novartis Group is one of the biggest global pharmaceutical and healthcare groups. It provides solutions to address the evolving needs of patients worldwide by developing and delivering innovative medical treatments and drugs. Novartis AG (the "Complainant"), created in 1996 through a merger of two other companies Ciba-Geigy and Sandoz, is the holding company of the Novartis Group.

The Complainant’s products are manufactured and sold in many regions worldwide including China. The Complainant has a strong presence in China where the Respondent is located.
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/office-locations?tid=All&name_list=CN
- Local Website for NOVARTIS in China: www.novartis.com.cn

The Complainant is the owner of the well-known trademark NOVARTIS registered as both a word and device mark in several classes worldwide, including China. The vast majority of the Complainant’s trademark registrations significantly predate the registration of the Disputed Domain Name. Namely, the Complainant’s trademark registrations in China applying to the present proceedings include the following earlier rights:

Overview of trademark registrations:

IR = International Registration

<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 (inc. 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 (inc. China)</td>
</tr>
<tr>
<td>NOVARTIS</td>
<td>IR1155214</td>
<td>41; 42</td>
<td>24.01.2013 (inc. China)</td>
</tr>
</tbody>
</table>

Moreover, previous UDRP panels have stated that the NOVARTIS trademark is well-known (Inter alia Novartis AG v. Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org, / Sergei Lir, WIPO Case No. D2016-1688).

The Complainant owns numerous domain names composed of either its trademark NOVARTIS alone, including <novartis.com.cn> (created on 20 Aug 1999) and <novartis.com> (created on 2 April 1996) or in combination with other terms, e.g. <novartispharma.com> (created on 27 October 1999). The Complainant uses these domain names to promote the NOVARTIS mark with related products and services.

The Complainant enjoys a strong presence online also via its official social media platforms.
A. **Identical or confusingly similar**

The domain name **novartis.org.cn** (hereinafter referred to as the “Disputed Domain Name”), which was registered on 23 Jun 2019 according to the WHOIS, incorporates the Complainant’s well-known, distinctive trademark NOVARTIS in its entirety, which is closely related to the Complainant and its business activities. The addition of the ccTLD “.org.cn” does not add any distinctiveness to the Disputed Domain Name. See as an example the *WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition* (“WIPO Overview 3.0”), paragraph 1.11. 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 same reasoning should apply in the current case and the Disputed Domain Name should be considered as identical to the trademark NOVARTIS.

B. **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;**

The Complainant and the Respondent have never had any previous relationships, nor has the Complainant ever granted the Respondent with any rights to use the NOVARTIS trademark in any forms, including the Disputed Domain Name.

The Complainant has not found that the Respondent is commonly known by the Disputed Domain Name or that it has interest over the Disputed Domain Name. When searched for “Novartis” in the Google and Baidu (the leading search engine in China) search engines, the returned results all pointed to the Complainant and its business activities.

The Respondent could have easily performed a similar search before registering the Disputed Domain Name and would have quickly learnt that the trademarks are owned by the Complainant and that the Complainant has been using its trademarks in China and many other countries worldwide. However, the Respondent still chose to register the Disputed Domain Name as such.

Furthermore, the Respondent has chosen the ccTLD “.org.cn”, a ccTLD designating China, while the Complainant owns its official domain name **novartis.com.cn** for the Chinese market. Therefore, it is very likely that the Disputed Domain Name will create confusion among Internet users who look for information about the Complainant and its business activities in China.
The nature of the Disputed Domain Name cannot be considered as fair use, which is supported by WIPO Overview 3.0, para.2.5.1:

“Generally speaking, UDRP panels have found that domain names identical to a complainant’s trademark carry a high risk of implied affiliation.

[...]

At one end, certain geographic terms (e.g., <trademark-usa.com>, or <trademark.nyc>), [...] are seen as tending to suggest sponsorship or endorsement by the trademark owner.”

The absence of fair use is further evidenced by the fact that the Respondent has been passively holding the Disputed Domain Name. By the time the Complainant prepared this Complaint on 21 July 2020, the Disputed Domain Name did not resolve to any active websites. The Respondent has not been using the Disputed Domain Name for any bona fide offering of goods or services.

From the Complaint’s perspective, the Respondent deliberately chose the ccTLD “.org.cn” and chose to use the well-known, distinctive trademark NOVARTIS as the body of the Disputed Domain Name, very likely with the intention to benefit from the Complainant’s worldwide renown and to confuse Internet users as to the source or sponsorship.

For the foregoing reasons, it shall be concluded that the Respondent has no right nor legitimate interest in respect of the Disputed Domain Name.

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

i. THE DOMAIN NAME WAS REGISTERED IN BAD FAITH

It should be highlighted that most of Complainant’s trademark registrations predate the registration of the Disputed Domain Name and the Respondent has never been authorized by the Complainant to register the Disputed Domain Name. Considering the renown of the Complainant and its trademark NOVARTIS, and the overall composition of the Disputed Domain Name, i.e. using the term “Novartis” in connection with the ccTLD “.org.cn” which is closely relate to the Complainant and its business activities, it follows that incorporating the well-known trademark
NOVARTIS in the Disputed Domain Name is a deliberate and calculated attempt to improperly benefit from the Complainant’s rights and reputation.

Considering the facts that:

- The Respondent very likely knew about the Complainant and its trademark when it registered the Disputed Domain Name;
- The Complainant’s trademark NOVARTIS is a distinctive, well-known trademark worldwide, including China where the Respondent resides;
- The Respondent has failed in presenting a credible evidence-backed rationale for registering the Disputed Domain Name,

the Disputed Domain Name shall be deemed as registered in bad faith, which is supported by WIPO Overview 3.0, para. 3.1.1.: 

“If on the other hand circumstances indicate that the respondent’s intent in registering the disputed domain name was in fact to profit in some fashion from or otherwise exploit the complainant’s trademark, panels will find bad faith on the part of the respondent. While panel assessment remains fact-specific, generally speaking such circumstances, alone or together, include: (i) the respondent’s likely knowledge of the complainant’s rights, (ii) the distinctiveness of the complainant’s mark, ... (vii) failure of a respondent to present a credible evidence-backed rationale for registering the domain name,...”

and para.3.1.4:

“Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith.”

ii. THE DOMAIN NAME IS BEING USED IN BAD FAITH

Firstly, as noted in the previous paragraphs, the Disputed Domain Name did not resolve to any active websites, which constitutes passive holding/non-use of the Disputed Domain Name.

Secondly, the Complainant has tried to reach the Respondent by a cease-and-desist letter sent on 7 May 2020 to the Respondent’s email guoyanyong@gmail.com as provided in the WHOIS. However, until the time the Complainant prepared this Complaint, it has not received any response from the Respondent.
In terms of paragraph 4(b)(iv) of the Policy, the above facts demonstrate the Respondent’s use of the Disputed Domain Name in bad faith. See “Dr. Martens” International Trading GmbH and “Dr. Moertens” Marketing GmbH v. Godaddy.com, Inc., WIPO Case No. D2017-0246:

“The Domain Name was not resolving to an active website at the time of filing. However, the consensus view amongst WIPO panellists is that ‘the apparent lack of so-called active use (e.g., to resolve to a website) of the domain name without any active attempt to sell or to contact the trade mark holder (passive holding), does not as such prevent a finding of bad faith. The panel must examine all the circumstances of the case to determine whether the respondent is acting in bad faith. Examples of what may be cumulative circumstances found to be indicative of bad faith include the complainant having a well-known trade mark, no response to the complaint having been filed, and the registrant’s concealment of its identity’.”

Thirdly, as the Respondent has been passively holding the Disputed Domain Name, Internet users who look for the Complainant’s website and/or information about the Complainant are likely to be led into believe that this is the Complainant’s official website while it has been inactive, which could damage the Complainant’s reputation and/or disrupt the Complainant’s normal business operation.

**SUMMARY**

- NOVARTIS is a well-known, distinctive trademark worldwide, including China where the Respondent resides.
- Complainant’s trademarks registration predates the registration of the Disputed Domain Name.
- Respondent has no rights in the mark NOVARTIS, bears no relationship to the Complainant, and is not commonly known by the Disputed Domain Name - accordingly it has no legitimate interest in the Disputed Domain Name.
- It is highly unlikely that Respondent was not aware of Complainant’s prior rights in the trademark NOVARTIS at the time of registering the Disputed Domain Name, given the Complainant’s worldwide renown.
- Respondent has been passively holding the Disputed Domain Name.
- Respondent has not responded to Complainant’s cease-and-desist letter.

Consequently, the Respondent should be considered to have registered the Disputed Domain Name identical to the Complainant’s well-known, distinctive trademark NOVARTIS. The Complainant has not found that the Respondent is of any legitimate right or interest in using the Disputed Domain Name, but rather registered and has been using the Disputed Domain Name in bad faith.
B. Respondent

The Respondent did not file a Response.

4. Findings

A. Language of proceedings

According to Article 8 of the Rules of CNDRP, “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 in Chinese. The Panel may order that any documents submitted in languages other than Chinese be wholly or partially translated into Chinese.”

In this case, the Complainant filed its Complaint in English and requested that the language of the proceedings be in English based on 3 reasons. Firstly the Complainant proved that the Respondent had registered many English domain names such as <3d4medicine.com>, <anesthesiology.cn>, <attendingdoctor.com>, <pharmacology.cn>. This demonstrated the fact that the Respondent understands English. Although the Complainant’s headquarter is based in Switzerland, it operates its official web site www.Novartis.com in English. The translation of the Complaint from English to Chinese would (a) cause unnecessary delay and (b) incur high costs.

The Complainant also referred to WIPO decisions D2015-1508 and D2015-0614 as well as DCN Case no 1700722 where the Complainant successfully asked for the language of the proceedings to be in English.

Since all HKIAC’s notifications to the Respondent were in both Chinese and English, the Respondent was aware a domain name dispute proceeding had been filed against him. The Respondent sent 2 short emails to HKIAC on 27 July 2020 and 6 August 2020 asking for the Complaint in Chinese (“the Request”). The Respondent didn’t respond to the Complainant’s application for the proceedings to be in English nor did he file a Response to the Complainant before the deadline of 26 August 2020.

On 3 September 2020, the Panel issued Administrative Panel Order No 1 (in both Chinese and English) giving the Respondent 7 days to give reasons to substantiate his Request. The Respondent did not respond to this Administrative Panel Order No 1.

The Panel notes that:

1) The disputed domain name is in English;
2) The Respondent had previously registered many other domain names in English;
3) The Respondent had been provided a link by HKIAC to a sample Response in Chinese;
4) The Respondent had been given the opportunity under the Administrative Panel Order No 1 to substantiate his Request but he failed to respond;
5) It would be costly and time consuming to translate the Complaint and its attachments into Chinese;
6) According to Article 31 of the CNDRP Rules, “in all cases, the Panel shall ensure 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. Further, the Panel shall ensure the proceeds take place with due expedition.”

Having considered the above carefully, the Panel believes this is an exceptional case under Article 8 of the Rules of CNDRP. Despite asking HKICA for the Complaint in Chinese on 25 July 2020 and 6 August 2020, the Respondent has chosen not to respond to the Complainant’s application for the language of the proceedings to be in English and the Complaint. Having considered Article 31 of the CNDRP the Panel rules that the choice of language of the proceedings is to be English. The Complaint filed in English together with its attachments will be accepted and this decision will be delivered in English.

B. Finding of the Case

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

“Novartis” is both the company name and the trade mark of the Complainant. The Complainant’s global official web site is www.novartis.com and its official web site for China is www.novartis.com.cn. The Complainant has registered “Novartis” as a registered trade mark in many countries of the world including China. The earliest International registration of “Novartis” which included China was Registration no IR663765 which took effect on 1 July 1996.

The disputed domain name “Novartis.org.cn” is made up of 3 parts, “Novartis”, “org” and “cn”. Since “org” is a generic top level domain and “cn” represents China, they are not to be considered. The Panel is satisfied that 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 under Article 8 (a) CNDRP.

Rights or Legitimate Interests of the Respondent

Evidence has shown that HKIAC had notified the Respondent of the proceedings. HKICA further provided the Respondent with links to a sample Response in both Chinese and
English. However no response was filed by the Respondent. There is no evidence that the Respondent has any right or legitimate interest in the disputed domain name.

The Panel is satisfied that the disputed domain name holder has no right or legitimate interest in respect of the domain name or major part of the domain name under Article 8 (b) CNDRP.

**Bad Faith**

The Complainant’s official web site for China is [www.novartis.com.cn](http://www.novartis.com.cn). This official web site was registered on 20 Aug 1999 and is very similar to the disputed domain name. Both shows the name “Novartis”, both are “.cn” but one incorporates “.com”, the other “.org”. “.com” and “.org” are both top level generic names, they do not form a distinctive part of a domain name. Hence it is easy for the public to confuse the disputed domain name with the Complainant’s official web site for China.

The Panel further notes that :

(a) The Respondent registered the disputed domain name 21 years after the Complainant registered [www.novartis.com.cn](http://www.novartis.com.cn).
(b) “Novartis” is a made up word and it is also a well known trade mark in the world including China;
(c) The Respondent had not shown any right or legitimate interest in the disputed domain name.

Based on the foregoing, it is highly unlikely that the Respondent was not aware of the Complainant’s reputation in “Novartis” at the time of registering the disputed domain name. Due to the similarity between the Complainant’s official web site in China and the disputed domain name, there is a good chance the general public will be (i) confused between the two domain names and (ii) be misled into believing that the disputed domain name belongs to the Complainant. The above falls within Article 9 (c) CNDRP and amounts to bad faith. The Panel is satisfied that the disputed domain name holder has registered or has been using the domain name in bad faith under Article 8 (c) CNDRP.

5. **Decision**

Since Article 8 (a), (b) and (c) CNDRP have all been satisfied, it follows that the remedy sought by the Complainant is to be granted. The disputed domain name <novartis.org.cn> is to be transferred to the Complainant.

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Dora Chow  
Sole Panelist  

Dated: 17 September 2020