

## **ADMINISTRATIVE PANEL DECISION**

Novartis AG v. Super Privacy Service LTD c/o Dynadot / Milen Radumilo  
Case No. D2022-0406

### **1. The Parties**

The Complainant is Novartis AG, Switzerland, represented by Dreyfus & associés, France.

The Respondent is Super Privacy Service LTD c/o Dynadot, United States of America / Milen Radumilo, Romania.

### **2. The Domain Name and Registrar**

The disputed domain name <exjadedigital.com> (the “Domain Name”) is registered with Dynadot, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 4, 2022. On February 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On February 8, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on February 9, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on February 10, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on February 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 9, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 10, 2022.

The Center appointed Karen Fong as the sole panelist in this matter on April 13, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

The Complainant is a global healthcare company based in Switzerland. It uses innovative science and digital technologies to create transformative treatments in areas of great medical need. The Complainant's products are available in around 155 countries and reached nearly 1 billion people globally in 2017.

EXJADE is one of the pharmaceutical products manufactured by the Complainant. It is an iron chelator indicated for the treatment of chronic iron overload due to blood transfusions in patients. The trade mark EXJADE is registered in many territories including European Union Registration No. 2411544, registered on October 16, 2001 (the "Trade Mark").

The Respondent who is based in Romania registered the Domain Name on November 5, 2021. The Domain Name resolves to a pay-per-click webpage with links targeting the Complainant's field of activities (the "Website"). Further, an email server has been configured on the Domain Name.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that the Domain Name is confusingly similar to the Trade Mark, that the Respondent has no rights or legitimate interests with respect to the Domain Name, and that the Domain Name was registered and is being used in bad faith. The Complainant requests transfer of the Domain Name.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

##### **A. General**

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the Domain Name, the Complainant must prove each of the following, namely that:

- (i) The Domain Name is identical or confusingly similar to trade marks or service marks in which the Complainant has rights; and
- (ii) The Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) The Domain Name was registered and is being used in bad faith.

##### **B. Identical or Confusingly Similar**

The Panel is satisfied that the Complainant has established that it has rights to the Trade Mark.

The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the trade mark and the domain name to determine whether the domain name is

confusingly similar to the trade mark. The test involves a side-by-side comparison of the domain name and the textual components of the relevant trade mark to assess whether the mark is recognizable within the domain name.

In this case, the Domain Name contains the Trade Mark in its entirety together with the descriptive word “digital”. The addition of a descriptive term does not prevent a finding of confusing similarity under the first element, as made clear in section 1.12.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), since the Trade Mark is easily recognizable within the Domain Name.

For the purposes of assessing identity or confusing similarity under paragraph 4(a)(i) of the Policy, it is permissible for the Panel to ignore the generic Top-Level Domain which in this case is “.com”. It is viewed as a standard registration requirement.

The Panel finds that the Domain Name is confusingly similar to trade marks in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy therefore are fulfilled.

### **C. Rights or Legitimate Interests**

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in the domain name by demonstrating any of the following:

- (i) before any notice to it of the dispute, the respondent’s use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name, even if it has acquired no trade mark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established that, as it is put in section 2.1 of the [WIPO Overview 3.0](#), that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent does come forward with some allegations of evidence of relevant rights or legitimate interests, the panel weighs all the evidence, with the burden of proof always remaining on the complainant.

The Complainant contends that it is not affiliated with the Respondent and has not licensed or otherwise authorized the Respondent to use the Trade Mark or register the Domain Name or any domain name. It would not appear that the Respondent is commonly known by the Domain Name nor does it have any registered trade mark rights to the Domain Name. Further, the display of pay-per-click links on the Website does not constitute a *bona fide* offering of goods or services or legitimate noncommercial or fair use of the Domain Name.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not responded to these allegations and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the Domain Name.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

#### **D. Registered and Used in Bad Faith**

To succeed under the Policy, the Complainant must show that the Domain Name has been registered and is being used in bad faith. It is a double requirement.

The Panel is satisfied that the Respondent must have been aware of the Trade Mark when it registered the Domain Name particularly since the Trade Mark has no other meaning other than its significance as a trade mark belonging to the Complainant.

In the [WIPO Overview 3.0](#), section 3.2.2 states as follows:

“Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant’s mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant’s mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent’s claim not to have been aware of the complainant’s mark.”

The fact that there is a clear absence of rights or legitimate interests coupled with no explanation for the Respondent’s choice of the Domain Name is also a significant factor to consider (as stated in section 3.2.1 of [WIPO Overview 3.0](#)). In light of the above, the Panel finds that registration is in bad faith.

The Panel also finds that the actual use of the Domain Name is in bad faith. The Website is a pay-per-click site, which has been set up for the commercial benefit of the Respondent. It is highly likely that Internet users when typing the Domain Name into their browser, or finding them through a search engine would have been looking for a site operated by the Complainant rather than the Respondent. The Domain Name is likely to confuse Internet users trying to find the Complainant’s website. Such confusion will inevitably result due to the fact that the Domain Name contains the Complainant’s distinctive Trade Mark.

The Respondent employs the reputation of the Trade Mark to mislead users into visiting the Website instead of the Complainant’s site. From the above, the Panel concludes that the Respondent intentionally attempted to attract for commercial gain, by misleading Internet users into believing that the Respondent’s Website is that of or authorised or endorsed by the Complainant.

Further, the fact that an email server is configured to the Domain Name is also a good indicator that the Complainant’s apprehension that the Domain Name may be used to perpetuate phishing schemes and other email scams.

The Panel therefore concludes that the Domain Name was registered and is being used in bad faith under paragraph 4(b)(iv) of the Policy.

#### **7. Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name, <exjadedigital.com> be transferred to the Complainant.

*/Karen Fong/*

**Karen Fong**

Sole Panelist

Date: May 3, 2022