

ADMINISTRATIVE PANEL DECISION

Novartis AG v. Rajesh H Tiwari, Elderwellness
Case No. D2022-0431

1. The Parties

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

The Respondent is Rajesh H Tiwari, Elderwellness, India.

2. The Domain Name and Registrar

The disputed domain name <sandozbiologics.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 8, 2022. On February 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 9, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed 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 10, 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 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 7, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 9, 2022.

The Center appointed Richard C.K. van Oerle as the sole panelist in this matter on March 16, 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. Sandoz is the generic pharmaceuticals division of the Complainant.

The Complainant has used the NOVARTIS trade mark for decades and is the owner of numerous SANDOZ trade mark registrations in India, in particular the following:

- Indian trade mark SANDOZ n° 1704440, dated June 27, 2008, covering goods in class 5;
- Indian trade mark SANDOZ n° 1199548, dated May 19, 2003, covering goods in class 10;
- Indian trade mark SANDOZ n° 2338100, dated May 25, 2012, covering services in class 44.

The registrations have been duly renewed and are still valid. These registrations will hereinafter jointly be referred to in singular as the "Trade Mark".

The disputed domain name <sandozbiologics.com> was registered on October 14, 2021 and resolves to the Registrar's parking page displaying commercial links targeting, among others, the Complainant's field of activity.

5. Parties' Contentions

A. Complainant

The Complainant states, in summary and in so far as relevant, the following.

The Complainant was created in 1996 through a merger of Ciba-Geigy and Sandoz. The Complainant and its predecessor companies trace roots back more than 250 years, with a rich history of developing innovative products. Its products are available in about 155 countries, including India, and reached nearly 1 billion people globally in 2017. About 126,000 people of 145 nationalities work at the Complainant around the world. India hosts one of the three global drug development centres for the Complainant worldwide.

Sandoz is the generic pharmaceuticals division of the Complainant, active as a pioneer and a global leader in biosimilars, that have been used in clinical practice for 15 years and are available in 100 countries with over 730 million patient-days of experience.

Sandoz is also active in India, where the Respondent is located, with multiple offices and manufacturing sites. Sandoz Private Limited is a Private incorporated on March 30, 1995. It is classified as Non-governmental company and is registered at Registrar of Companies, Mumbai.

The Complainant is of the opinion that the disputed domain name is confusingly similar to its SANDOZ Trade Mark because the disputed domain name replicates the Trade Mark in its entirety. The addition of the generic term "biologics" is not sufficient to avoid confusing similarity between the disputed domain name and the Complainant's Trade Mark.

Furthermore, the Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Respondent is not affiliated with the Complainant in any way nor has it been authorized by the Complainant to use the Trade Mark, nor to seek registration of any domain name incorporating the said mark. Furthermore, the Respondent cannot claim prior rights or legitimate interests in the disputed domain name. The registration of the Trade Mark preceded the registration of the disputed domain name for years. The Respondent is not commonly known by the disputed domain name or the name "Sandoz", in accordance with paragraph 4(c)(ii) of the Policy. The Complainant asserts that the Respondent has never used and does not intend to use the disputed domain name in connection with a *bona fide* offering of goods

or services, as in the present case the Respondent is not promoting the Complainant's products but the disputed domain name redirects Internet users to a parking page with pay-per-clicks, displaying commercial links directly targeting the Complainant's field of activity, which are likely to generate revenues. Hence, it cannot be inferred that the Respondent is making a legitimate noncommercial or fair use of disputed domain name without intent for commercial gain by misleading consumers, in accordance with paragraph 4(c)(iii) of the Policy.

The Respondent cannot assert that, before any notice of this dispute, it was using, or had made demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services, in accordance with paragraph 4(c)(i) of the Policy.

The Complainant sent a cease-and-desist letter to the Respondent, asserting its trade mark rights and requesting the Respondent to transfer the disputed domain name, on October 27, 2021. Considering that the Respondent's details were not disclosed, the letter was sent to the Respondent through the Registrar. Despite having sent multiple reminders, the Complainant never received any response neither from the Registrar nor from the Respondent to its request. UDRP panels have repeatedly stated that when respondents do not avail themselves of their rights to respond to the complainant, it can be assumed that respondents have no rights or legitimate interests in the disputed domain name.

Finally, given the Complainant's goodwill and renown worldwide, and the nature of the disputed domain name which is virtually identical to the Trade Mark, with the addition of the term "biologics", it is not possible to conceive a plausible circumstance in which the Respondent could legitimately use the disputed domain name, as it would invariably result in misleading diversion and taking unfair advantage of the Complainant's rights.

The Complainant considers that the disputed domain name has been registered and is being used in bad faith.

The Complainant is well known throughout the world, including India where the Respondent is located, and it owns several Indian registrations for the Trade Mark, making it unlikely that the Respondent was not aware of the Complainant's rights in the Trade Mark.

The composition of the disputed domain name <sandozbiologics.com> incorporating the Complainant's Trade Mark in its entirety with the addition of the term "biologics" relating directly to the Complainant's field of activity, and associating it to a parking page with commercial links, clearly demonstrates that the Respondent registered the disputed domain name based on the attractiveness of the Complainant's Trade Mark, in order to divert Internet traffic to its illegitimate website.

The Complainant's Trade Mark registrations significantly predate the registration date of the disputed domain name. A quick trade mark search or a simple search via Google or any other search engine using the keyword "sandoz", would have revealed to the Respondent the existence and use of the Trade Mark. The Respondent's failure to do so is a contributory factor to its bad faith.

In the absence of any license or permission from the Complainant to use its widely known Trade Mark, no actual or contemplated *bona fide* or legitimate use of the disputed domain name could reasonably be claimed.

Neither can the Respondent assert that it has made, or that it is currently making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain, in accordance with paragraph 4(c)(iii) of the Policy.

There is little doubt in this case that, at all times, the Respondent was not aware that SANDOZ enjoyed a substantial reputation worldwide. In light of this knowledge, the Respondent used the disputed domain name to direct Internet users and generate more traffic to a parking page displaying commercial links that are likely

to generate revenues. The Respondent is thus intentionally attempted to attract Internet users to its website for commercial gain by creating likelihood of confusion with the Trade Mark as to the affiliation or endorsement of either the Respondent or its website in accordance with paragraph 4(b)(iv) of the Policy. In doing so, the Respondent is taking undue advantage of the Trade Mark to generate profits.

Additionally, the Respondent has not replied to any cease-and-desist letters and reminders the Complainant sent. Such behaviour has already been considered as an inference of bad faith by previous UDRP panels.

Finally, given the Complainant's goodwill and renown worldwide, and the nature of the disputed domain name which is confusingly similar to the Trade Mark, it is not possible to conceive a plausible circumstance in which the Respondent could legitimately use the disputed domain name, as it would invariably result in misleading diversion and taking unfair advantage of the Complainant's rights.

Bad faith has also been found where a domain name is so obviously connected with a well known trade mark that its very use by someone with no connection to the trade mark suggests opportunistic bad faith.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See, section 2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

A. Identical or Confusingly Similar

The Panel confirms that the Complainant has satisfied the threshold requirement of having trade mark rights regarding the SANDOZ Trade Mark. Although not identical, the disputed domains name fully incorporate the Trade Mark SANDOZ. The addition of the term "biologics" does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's Trade Mark.

The applicable Top Level Domain ("TLD") in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. ([WIPO Overview 3.0](#), section 1.11.1)

The Panel therefore finds that the disputed domain name is confusingly similar to the Trade Mark. The requirements of paragraph 4(a)(i) of the Policy are fulfilled.

B. Rights or Legitimate Interests

The overall burden of proof on this element rests with the Complainant. However, it is well established by previous UDRP decisions that once a complainant establishes a *prima facie* case that a respondent lacks rights or legitimate interests in a domain name, the burden of production shifts to the respondent to rebut the complainant's contentions. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (*Danzas Holding AG, DHL Operations B.V. v. Ma Shikai*, WIPO Case No. [D2008-0441](#); [WIPO Overview 3.0](#), section 2.1 and cases cited therein).

The Respondent has not submitted a response to the Complaint, in the absence of which the Panel may accept all reasonable inferences and allegations in the Complaint as true. See *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#). Regardless, the Panel has carefully reviewed the record in this case, and finds nothing therein that would bring the Respondent's registration and use of the disputed domain name within any of the "safe harbors" of paragraph 4(c) of the Policy.

In the light of the evidence submitted by the Complainant, it is clear to the Panel that the Complainant has earlier and lawful rights in the SANDOZ Trade Mark. Therefore, the Panel finds on the current record that the Complainant has proved rights in the SANDOZ Trade Mark and established a *prima facie* case that the Respondent does not have rights or legitimate interests in the disputed domain name for the purposes of the Policy.

The Panel is convinced that the Respondent must have been aware of the Complainant's registered Trade Mark, and that the Respondent has deliberately used the SANDOZ Trade Mark in the disputed domain name in order to divert Internet users to a parking page with pay-per-clicks which are likely to generate revenues.

The Panel believes that this does not constitute a *bona fide* offering of goods or services under the Policy.

In the circumstances the Respondent has not produced any evidence of its rights or legitimate interests in the disputed domain name and the Complainant is entitled to succeed on the second element of the test in paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Complainant's case summarised in sections 5A above is, in the Panel's opinion, well made out.

The Panel refers to its considerations under section 6B and adds the following.

Based on the information and the evidence provided by the Complainant, the Panel finds that at the time of registration of the disputed domain name, the Respondent was or should have been aware of the Complainant's Trade Mark. The Complainant has been very well known as a global healthcare company for a long time, and since a trade mark register search, or even a simple online search prior to the registration of the disputed domain name would have informed the Respondent of the existence of the oldest Trade Mark and the Complainant's extensive use of the Trade Mark as a source identifier.

Moreover, the construction of the disputed domain name itself strongly suggests that the Respondent was aware of the Complainant's Trade Mark. The disputed domain name replicates the Trade Mark in its entirety, with the addition of the term "biologics", being the description of a major activity of the business unit of the Complainant called Sandoz. The term "biologics" directly targets the Complainant's field of activity, thus Internet users are likely to believe that the disputed domain name is related to or endorsed by the Complainant and that it will direct them to an official website providing information on the products.

Based on the information and the evidence provided by the Complainant, the Respondent has never used and does not intend to use the disputed domain name in connection with a *bona fide* offering of goods or services, as in the present case the Respondent is not promoting the Complainant's products but the disputed domain name redirects Internet users to a parking page with pay-per-clicks, displaying commercial links directly targeting the Complainant's field of activity, which are likely to generate revenues.

Furthermore, the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good faith use, or to this Complaint is further evidence of bad faith, given all the circumstances of the case (see [WIPO Overview 3.0](#), section 3.2).

Based on the evidence and circumstances of this case, the Panel concludes that the requirement of registration and use of the disputed domain name in bad faith under paragraph 4(a)(iii) of the Policy has been fulfilled.

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 disputed domain name, <sandozbiologics.com>, be transferred to the Complainant.

/Richard C.K. van Oerle/

Richard C.K. van Oerle

Sole Panelist

Date: March 23, 2022