

## **ADMINISTRATIVE PANEL DECISION**

Novartis AG v. 周君 (Zhou Jun)

Case No. D2022-2979

### **1. The Parties**

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

The Respondent is 周君 (Zhou Jun), China.

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

The disputed domain name <sandoz.ltd> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on August 11, 2022. On August 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 16, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name, which differs from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on August 16, 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 in English on August 17, 2022.

On August 16, 2022, the Center sent an email communication to the Parties in English and Chinese regarding the language of the proceeding. On August 17, 2022, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint and the amended Complaint satisfy 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 in English and Chinese of the Complaint, and the proceeding commenced on August 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 11, 2022. The Respondent did not submit

any response. Accordingly, the Center notified the Respondent's default on September 12, 2022.

The Center appointed Joseph Simone as the sole panelist in this matter on September 27, 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, Novartis AG, is a global healthcare company established in Switzerland in 1996. The company is now a leading player in its field.

Sandoz, the Complainant's generic pharmaceuticals division, has a 120-year history and is recognized as a global leader in generic pharmaceuticals.

Sandoz's global product portfolio comprises approximately 1,100 molecules, which accounted for sales of USD 9.6 billion in 2014. Sandoz is one of the world's leaders in the production of biosimilars, as well as in generic anti-infectives, ophthalmics and transplantation medicines.

The Complainant has an extensive global portfolio of trade marks containing the term "sandoz", including the following:

- International Trade Mark Registration for SANDOZ No. 585033 in Classes 1, 2, 3, 5, 10, 17, 19, 29, 30, 31 and 32 extended to China, registered on March 31, 1992;
- European Union Trade Mark Registration for SANDOZ No. 003070422 in Classes 1, 5, 10, 42 and 44, registered on February 4, 2005; and
- China Trade Mark Registration for SANDOZ No. 227512 in Class 5, registered on May 30, 1985.

The Complainant also owns the domain name <sandoz.com>.

The disputed domain name was registered on October 4, 2021.

Screenshots provided by the Complainant indicate that, at the time the Complaint was filed, the disputed domain name resolved to an inactive page.

At the time of drafting of this Decision, the disputed domain name continued to resolve to the same inactive page.

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

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

The Complainant asserts that it has prior rights in the SANDOZ trade marks and that it is a leading player in its field of business.

The Complainant further asserts that the disputed domain name is identical or confusingly similar to the Complainant's SANDOZ trade marks.

The Complainant also asserts that it has not authorized the Respondent to use the SANDOZ trade mark and there is no evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services.

The Complainant further asserts that there is no evidence suggesting that the Respondent has any connection to the SANDOZ trade mark in any way, and that there is no plausible good faith reason for the Respondent to have registered the disputed domain name, especially after considering the relevant circumstances. The Complainant therefore concludes that the registration and any use of the disputed domain name whatsoever must be in bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **A. Language of the Proceeding**

In accordance with paragraph 11(a) of the Rules:

"[...] the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding."

In this case, the language of the Registration Agreement for the disputed domain name is Chinese. As such, the default language of the proceeding should in principle be Chinese.

However, the Complainant filed the Complaint in English, and requested that English be the language of the proceeding, asserting *inter alia* that:

- The Complainant will be disproportionately prejudiced if the proceeding is conducted in Chinese as it will incur substantial expenses and delays for the translation of documents; and
- English is the primary language for international relations and it is one of the working languages of the Center.

The Respondent was notified in both Chinese and English of the language of the proceeding and the Complaint, and the Respondent did not comment on the language of the proceeding or submit any response.

After considering the relevant circumstances, the Panel has determined that the language of the proceeding shall be English, and has issued this decision in English. The Panel further finds that this determination will not cause any prejudice to either Party and will ensure that the proceeding is not unduly delayed.

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

The Panel acknowledges that the Complainant has established rights in the SANDOZ trade marks in many jurisdictions around the world.

Disregarding the generic Top-Level Domain ("gTLD") ".ltd", the disputed domain name incorporates the Complainant's trade mark SANDOZ in its entirety.

The Panel therefore finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in establishing its rights in the SANDOZ trade marks and in demonstrating that the disputed domain name is identical or confusingly similar to its trade marks.

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

Pursuant to paragraph 4(c) of the Policy, the complainant is required to establish a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such *prima facie* case is made out, the respondent bears the burden of producing evidence in support of its rights or legitimate interest in the disputed domain name. If the respondent fails to do so, the complainant may be deemed to have satisfied paragraph 4(a)(ii) of the Policy. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.1.

The Complainant asserts that it has not authorized the Respondent to use its trade marks and there is no evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services.

Thus, the Complainant has established its *prima facie* case with satisfactory evidence.

The Respondent did not file a response and has therefore failed to assert factors or put forth evidence to establish that it enjoys rights or legitimate interests in the disputed domain name. As such, the Panel concludes that the Respondent has failed to rebut the Complainant's *prima facie* showing of the Respondent's lack of rights or legitimate interests in the disputed domain name, and that none of the circumstances of paragraph 4(c) of the Policy is applicable in this case.

Therefore, there is no evidence adduced to show that the Respondent, prior to the notice of the dispute, has used or has demonstrated its preparation to use the disputed domain name in connection with a *bona fide* offering of goods or services. There is also no evidence adduced to show that the Respondent has been commonly known by the disputed domain name or the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

Further, the disputed domain name is identical to the Complainant's trade mark and as such the Panel finds there is a likelihood of implied affiliation. See [WIPO Overview](#), section 2.5.1.

Accordingly, and based on the Panel's findings below, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name pursuant to paragraph 4(a)(ii) of the Policy.

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

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered as evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant (the owner of the trade mark or service mark) or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the respondent registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) circumstances indicating that the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

The examples of bad faith registration and use set forth in paragraph 4(b) of the Policy are not exhaustive of all circumstances in which bad faith may be found. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). The overriding objective of the Policy is to curb the abusive registration of domain names in circumstances where the registrant seeks to profit from and exploit the trade mark of another party. See *Match.com, LP v. Bill Zag and NWLAWS.ORG*, WIPO Case No. [D2004-0230](#).

For the reasons discussed under this and the preceding heading, the Panel believes that the Respondent's conduct in this case constitutes bad faith registration and use of the disputed domain name.

When the Respondent registered the disputed domain name, the SANDOZ trade marks were already widely known and directly associated with the Complainant's activities. UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely known trade mark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

Given the extensive prior use and fame of the Complainant's marks, in the Panel's view, the Respondent should have been aware of the Complainant's marks when registering the disputed domain name.

The Respondent has provided no evidence to justify its use of the term "sandoz" in the disputed domain name. As such, it would be unreasonable to conclude that the Respondent – at the time of the registration of the disputed domain name – was unaware of the Complainant's trade mark.

The Complainant's registered trade mark rights in SANDOZ for its products and services predate the registration date of the disputed domain name by at least four decades. A simple online search (*e.g.*, via Google and Baidu) for the term "sandoz" would have revealed that it is a world-renowned brand.

The Panel is therefore of the view that the Respondent registered the disputed domain name with full knowledge of the Complainant's trade mark rights.

As the disputed domain name resolves to an inactive website, it is necessary to consider whether the currently inactive status of the disputed domain name prevents a finding of bad faith under the doctrine of passive holding. The factors usually considered material to such an assessment have been set out in various prior UDRP decisions, including in *Johnson & Johnson v. Daniel Wistbacka*, WIPO Case No. [D2017-0709](#). Each of these factors suggests the Respondent's passive holding of the disputed domain name satisfies the UDRP's requirements for determinations of bad faith. Specifically: (i) the Complainant's SANDOZ mark is distinctive and well established, (ii) the Respondent has failed to submit a response to the Complaint or provide any evidence of good-faith use, (iii), and considering the foregoing, there is no conceivable good faith use to which the Respondent could put the disputed domain name.

The Panel therefore finds that the Respondent has registered and is using the disputed domain name in bad faith.

## 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 <sandoz.ltd> be transferred to the Complainant.

*/Joseph Simone/*

**Joseph Simone**

Sole Panelist

Date: October 11, 2022