

## **ADMINISTRATIVE PANEL DECISION**

**Novo Nordisk A/S v. Kamile Nina**

**Case No. D2022-4061**

### **1. The Parties**

The Complainant is Novo Nordisk A/S, Denmark, represented by Zacco Denmark A/S, Denmark.

The Respondent is Kamile Nina, United Kingdom.

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

The disputed domain name <buysaxendaonline.com> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 28, 2022. On October 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (Privacy Service Provided by Withheld for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 31, 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 amendment to the Complaint on November 2, 2022.

The Center verified that the Complaint together with the amendment to the Complaint 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 November 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 23, 2022. On November 7, 2022, three email communications were received from the Respondent with the same content, namely, “Please kindly let me know what should be done to resolve this issue. The domain is buysaxendaonline. You talked about saxenda. Note that this domain has been up for roughly two years. Kindly let us know if hat to do”. On November 16, 2022, the Center sent the Parties a “Possible Settlement” email. On November 18, 2022, the Complainant sent an email to the Respondent, indicating the suspension will be requested only if the transfer

will be free of charge. The Respondent did not submit any Response. Accordingly, the Center notified the Commencement of Panel Appointment Process on November 24, 2022.

The Center appointed Peter Burgstaller as the sole panelist in this matter on November 30, 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 and is represented around the world (Annex 1 to the Complaint).

The Complainant is the owner of various trademark registrations containing the mark SAXENDA; it holds registrations around the world, *inter alia*:

- European Union, Reg. No. 12254025, registered March 19, 2014, in class 5;
- International Trademark, Reg. No. 1189843, registered October 25, 2013, in class 5;
- United Kingdom, Reg. No. UK 912254025, registered March 19, 2014, in class 5; (Annexes 2, 3.1 and 3.2 to the Complaint).

The disputed domain name was registered on September 22, 2020.

The disputed domain name resolved to a website on which SAXENDA products were offered for sale (Annexes 5.1, 5.2 to the Complaint).

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

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

The Complainant is a global healthcare company with close to 100 years of innovation and leadership in diabetes care. The company also has leading positions within obesity, haemophilia care, growth hormone therapy and hormone replacement therapy. Headquartered in Denmark, the Complainant employs approximately 50,000 employees in 80 countries, and markets its products in more than 170 countries. The annual turnover was EUR 18,9 billion in 2021.

The Complainant holds around 30 trademark registrations worldwide containing the mark SAXENDA. The disputed domain name is confusingly similar to the Complainant's registered mark SAXENDA since it incorporates the mark combined with the generic and descriptive terms "buy" as prefix and "online" as suffix.

Moreover, the Respondent has no rights or legitimate interests in respect of the disputed domain name since it did not receive any license or consent, express or implied, to use the Complainant's trademark in a domain name or in any other manner from the Complainant, nor has the Complainant acquiesced in any way to such use or application by the Respondent. At no time did the Respondent have authorization from the Complainant to register the disputed domain name. Further, the Respondent did thus not use the disputed domain name as a trademark, company name, business or trade name prior to the registration of the disputed domain name, nor is the Respondent otherwise commonly known in reference to the name or does make a legitimate noncommercial or fair use of the disputed domain name.

Finally, the Respondent has registered the disputed domain name in bad faith and is using the disputed domain name in bad faith for addressing a website through which the Complainant's SAXENDA products are offered to consumers. By doing this the Respondent intentionally attempts to attract for commercial gain, internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's mark

as to the source, sponsorship, affiliation or endorsement of the Respondent's website.

There is also a record connected to the disputed domain name which shows that it can be used as email address; this, in combination with the fact that when trying to visit the website under the disputed domain name, there is a security-warning which indicates that the disputed domain name may be used to disseminate malware or similar security threats.

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions. However, three emails were received from the Respondent with the same content: "Please kindly let me know what should be done to resolve this issue. The domain is buysaxendaonline. You talked about saxenda. Note that this domain has been up for roughly two years. Kindly let us know if hat to do".

## **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, the Complainant must prove that:

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

### **A. Identical or Confusingly Similar**

The Complainant submitted evidence, which incontestably and conclusively establishes rights in the trademark SAXENDA.

The disputed domain name is confusingly similar to the Complainant's registered trademark SAXENDA since it entirely contains this mark and only adds the terms "buy" as prefix and "online" as suffix.

It has long been established under previous UDRP decisions that where the relevant trademark is recognizable within the disputed domain name the mere addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) will not prevent a finding of confusing similarity under the first element of the Policy (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#))).

This is the case at present: The prefix "buy" together with the suffix "online" do not prevent the confusing similarity of the disputed domain name towards the Complainant's registered trademark SAXENDA.

Finally, it has also long been held that the generic Top-Level Domain ("gTLD") (*i.e.*, ".com") is generally disregarded when evaluating the confusing similarity of a disputed domain name.

The Panel therefore finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

### **B. Rights or Legitimate Interests**

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with

relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element (see section 2.1 of the [WIPO Overview 3.0](#)). Here, the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which has not been rebutted by the Respondent.

Furthermore, the nature of the disputed domain name, comprising the Complainant's distinctive mark in its entirety together with the prefix "buy" and the suffix "online", cannot be considered fair use as it falsely suggest an affiliation with the Complainant that does not exist (see section 2.5 of the [WIPO Overview 3.0](#)).

Noting the above and all of the evidence put forward by the Complainant in the Complaint, as well as the Complainant's contentions that the Respondent has no rights or legitimate interests in the disputed domain name, that the Respondent has no connection or affiliation with the Complainant, and the Respondent has not received any license or consent, express or implied, to use the Complainant's trademark SAXENDA in a domain name or in any other manner, it is undeniable for this Panel that the conditions set out in paragraph 4(a)(ii) of the Policy have been met by the Complainant.

This finding does not change by the fact that the Respondent sent emails on November 7, 2022, stating: "Please kindly let me know what should be done to resolve this issue. The domain is buysaxendaonline. You talked about saxenda. Note that this domain has been up for roughly two years. Kindly let us know if hat to do". – It is on the contrary: by choosing not to respond to the Complainant's contentions or provide any evidence of rights or legitimate interests in the disputed domain name, these informal emails rather strengthen the impression that the Respondent has no rights or legitimate interests in the disputed domain name.

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

As stated in many decisions rendered under the Policy (e.g. *Robert Ellenbogen v. Mike Pearson*, WIPO Case No. [D2000-0001](#)) both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainant must show that:

- the disputed domain name was registered by the Respondent in bad faith, and
- the disputed domain name is being used by the Respondent in bad faith.

(i) The Complainant has rights and is the owner of the well-known and highly distinctive registered trademark SAXENDA, which is registered and used in many jurisdictions, long before the registration of the disputed domain name.

It is inconceivable for this Panel that the Respondent registered and used the disputed domain name without knowledge of the Complainant's rights, which leads to the necessary inference of bad faith. This finding is supported by the fact that the disputed domain name incorporates the Complainant's trademark SAXENDA entirely together with the prefix "buy" and the suffix "online".

In fact, the use of the terms "buy" and "online" as prefix/suffix in connection with the mark SAXENDA rather strengthen the impression that the disputed domain name is in some way connected to the Complainant or the Complainant's services or products, and at least the Respondent may be seen to free ride on the reputation of the Complainant and its trademark SAXENDA.

Therefore, the Panel is convinced that the disputed domain name was registered in bad faith by the Respondent.

(ii) Furthermore, the disputed domain name is actively used in bad faith: It resolves to a website where the Respondent offers SAXENDA products as well as provides information about the SAXENDA medication. Thereby the Respondent has attempted to attract Internet users to a website supposedly providing SAXENDA products by the Complainant, obviously for commercial gain.

Moreover, Panels have consistently found that the mere registration of a domain name incorporating a distinctive mark in its entirety plus descriptive terms (as in the present case) by an unaffiliated entity can by itself create a presumption of bad faith (see section 3.1.4 of the [WIPO Overview 3.0](#)).

The Panel also concludes bad faith use, putting emphasis on the following:

- the Complainant's trademark SAXENDA is distinctive and well-known in the health sector;
- the Respondent has failed to present any evidence of any good faith use with regard to the disputed domain name;
- the disputed domain name incorporates the Complainant's trademark in its entirety together with the terms "buy" as prefix and "online" as suffix, and is thus suited to divert or mislead potential web users from the website they are actually trying to visit (the Complainant's site); and,
- given the overall circumstances and the composition of the inherently misleading disputed domain name, there is no conceivable plausible reason for good faith use with regard to the disputed domain name.

Taking all these facts and evidence into consideration this Panel finds that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) 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 disputed domain name <buysaxendaonline.com> be transferred to the Complainant.

*/Peter Burgstaller/*

**Peter Burgstaller**

Sole Panelist

Date: December 14, 2022