

ADMINISTRATIVE PANEL DECISION

Novartis AG v. Fair Play, Chezman Clothing
Case No. D2023-3948

1. The Parties

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

The Respondent is Fair Play, Chezman Clothing, Ghana.

2. The Domain Name and Registrar

The disputed domain name <sarndoz.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on September 21, 2023. On September 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 23, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 September 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 18, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 19, 2023.

The Center appointed Masato Dogauchi as the sole panelist in this matter on October 27, 2023. 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 large healthcare company based in Switzerland that provides products for nearly one billion customers in about 140 countries. The generic pharmaceuticals division of the Complainant is Sandoz which, with a history of more than 120 years, is producing and marketing high-quality affordable medicines worldwide.

The Complainant has registered its SANDOZ trademark, including:

- Swiss trademark Registration SANDOZ No. 511037, registered on May 14, 2003;
- International trademark Registration SANDOZ No. 804247, registered on June 3, 2003;
- Ghanaian trademark SANDOZ No. 2008044415, registered on September 9, 2015.

In addition, the Complainant owns several domain names that incorporate the trademark SANDOZ, such as <sandoz.com> registered on January 6, 1993, and <sandoz.uk.com> registered on May 29, 2008.

The disputed domain name was registered on September 1, 2023. It resolves to inactive website, but one of the Complainant's clients received a phishing email sent from the email address "[...]@sarndoz.com" impersonating the Complainant's employee. The Complainant sent a cease-and-desist letter to the Registrar requesting to put the disputed domain name on status "ClientHold" and deactivate the email services set up for the disputed domain name on September 20, 2023.

5. Parties' Contentions

A. Complainant

The Complainant's contentions are divided into three parts as follows:

First, the Complainant asserts that the disputed domain name is confusingly similar to its SANDOZ trademark. The word "sarndoz" in the disputed domain name is an obvious misspelling of the Complainant's SANDOZ trademark which does not have the letter "r" between letters "a" and "n". Such mere addition of the letter "r" should not prevent any likelihood of confusion. Also, the generic Top-Level Domain ("gTLD") ".com" should be disregarded in the confusing similarity test.

Second, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant confirms that the Respondent is not affiliated with the Complainant in any way nor has he been authorized by the Complainant to use and register its SANDOZ trademark, or to seek registration of any domain name incorporating the same mark. The fact that the disputed domain name resolves to an inactive page should be considered that the Respondent is not doing a *bona fide* offering of goods or services by using the disputed domain name. Moreover, the Respondent did not demonstrate legitimate interests in respect of the disputed domain name.

Third, the Complainant asserts that the disputed domain name has been registered and is being used in bad faith. The Complainant contends that, because the Complainant's trademark has been used globally for years, the Respondent should have known the trademark and it should be considered implausible for the Respondent was unaware of the trademark at the time of its registration of the disputed domain name. Therefore, the bad faith registration should be found in this case. With regard to the bad faith use, the Complainant contends that the fact that, although the disputed domain name resolves to an inactive website, at least one phishing email was dispatched from the email address of "[...]@sarndoz.com" requesting \$ 397,785.25 payment should be considered enough to show the Respondent's bad faith use of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

In accordance with the Rules, paragraph 15(a), a panel shall decide a case on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable. Since the Respondent has not made any substantive arguments in this case, the following decision is rendered on the basis of the Complainant's contentions and other evidence submitted by the Complainant.

In accordance with the Policy, paragraph 4(a), in order to qualify for a remedy, the Complainant must prove each of the following:

- (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 in respect of 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 Panel finds that the Complainant has rights in the SANDOZ trademark.

The word "sarndoz" is found in the disputed domain name, which is different from the Complainant's SANDOZ trademark in that the letter "r" is added between the letter "a" and the letter "n". This is a typical example of typosquatting, because the word "sarndoz" would confuse Internet users seeking or expecting the Complainant's official website and Internet users would believe that the contents on the page resolved by the disputed domain name are made by the Complainant. See section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). And, the term ".com" represents one of the gTLDs, which can be disregarded in the determination of the confusing similarity between the disputed domain name and the Complainant's SANDOZ trademark.

Therefore, the Panel finds that the disputed domain name, being a typosquatted version of the Complainant's SANDOZ trademark, is confusingly similar to the trademark in which the Complainant has rights.

The above requirement provided for in paragraph 4(a)(i) of the Policy is accordingly satisfied.

B. Rights or Legitimate Interests

The Panel finds that the Respondent is not affiliated with the Complainant or has been authorized or licensed to use the Complainant's SANDOZ trademark and that there is no evidence that shows the Respondent is commonly known by the name "sarndoz". The Panel also finds that the disputed domain name has been used as an email address from which at least one fraudulent email was dispatched. Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. See section 2.13 of the [WIPO Overview 3.0](#). Since the Respondent did not reply to the Complainant's contentions in this proceeding, the Panel finds on the available record that the Complainant has established an un rebutted *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. See section 2.1 of the [WIPO Overview 3.0](#).

The above requirement provided for in paragraph 4(a)(ii) of the Policy is accordingly satisfied.

C. Registered and Used in Bad Faith

With regard to the requirement that the Respondent registered the disputed domain name in bad faith, since the Complainant is a global healthcare company and its generic pharmaceuticals division named Sandoz of the Complainant and Sandoz's products are famous worldwide, it is highly unlikely that the Respondent would not have known of the Complainant's right in its SANDOZ trademark at the time of registration of the disputed domain name. And, the way of the use of the disputed domain name also points to the Respondent's knowledge of the Complainant's SANDOZ trademark. Therefore, it is found that the Respondent registered the disputed domain name in bad faith.

With regard to the requirement that the Respondent is using the disputed domain name in bad faith, the fact that the disputed domain name resolves to an inactive website does not prevent a finding of bad faith use. Rather, the fact that the disputed domain name has been used as an email address from which fraudulent emails have been dispatched is enough to show that the Respondent's use of the disputed domain name is in bad faith. See, section 3.4 of the [WIPO Overview 3.0](#).

The Respondent did not reply to the Complaint in this proceeding.

The Panel finds that the disputed domain name has been registered in bad faith and is being used in bad faith. The above requirement provided for in paragraph 4(a)(iii) of the Policy is accordingly satisfied.

In conclusion, all three cumulative requirements as provided for in paragraph 4(a) of the Policy are determined to be satisfied.

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 <sarndoz.com> be transferred to the Complainant.

/Masato Dogauchi/

Masato Dogauchi

Sole Panelist

Date: November 1, 2023