

IN THE MATTER OF A COMPLAINT PURSUANT TO THE CANADIAN
INTERNET REGISTRATION AUTHORITY DOMAIN NAME DISPUTE
RESOLUTION POLICY

Domain Name: novozymes.ca
Complainant: Novozymes A/S
Registrant: Tom Zhu
Registrar: Go Daddy Domains Canada Inc.
Panel: Sharon Groom
Service Provider: Resolution Canada, Inc.

DECISION

A. The Parties

1. The Complainant, Novozymes A/S is a corporation located in Denmark.
2. The Registrant for the domain name is Tom Zhu located in Toronto, Canada.

B. The Domain Name and Registrar

3. The disputed domain name is novozymes.ca. The Registrar for this domain name is Go Daddy Domains Canada Inc. The disputed domain name was registered on January 3, 2014.

C. Procedural History

4. This is a proceeding under the Canadian Internet Registration Authority (“CIRA”) *Domain Name Dispute Resolution Policy* (Version 1.3) (the “Policy”) and the CIRA *Domain Name Dispute Resolution Rules* (Version 1.4) (the “Rules”).
5. The history of the proceeding as provided by the dispute resolution provider, Resolution Canada, Inc., is that the Complainant filed a complaint against the Registrant with Resolution Canada, Inc. requesting that the current registration of the domain name novozymes.ca be transferred to Novozymes A/S. The Complaint was dated February 27, 2014 and amended March 4, 2014.

6. Resolution Canada, Inc. served notice of the Complaint on the Registrant as required by s. 4.3 of the Rules. Service of the Complaint was made by e mail on March 4, 2014.

7. The Registrant was given twenty days to file a response and no response was filed.

8. The Complainant has elected to proceed before a single panellist.

D. Panellist Impartiality and Independence

9. As required by s. 7 of the Rules, the panellist has submitted to Resolution Canada, Inc. a declaration of impartiality and independence in relation to this dispute.

E. Canadian Presence Requirements

10. The Complainant, Novozymes A/S is a company incorporated under the laws of Denmark. However it owns Canadian trade-mark registrations incorporating the mark NOVOZYMES, which is included in the disputed domain name, including registration no. 605,671 for the mark NOVOZYMES, which was registered on March 18, 2004, registration no. 608,332 for the mark NOVOZYMES design which was registered on April 22, 2004, and registration no. 759,908 for the mark NOVOZYMES design which was registered February 19, 2010. As such it meets the Canadian Presence Requirements under s. 2(q) of the CIRA *Canadian Presence Requirements for Registrants*, Version 1.3.

F. Factual Background

11. The Complainant manufactures, develops and sells various biotechnological products including enzymes, in Canada, the USA and Europe. It has also registered a number of domain names incorporating the word NOVOZYMES, including novozymes.com, which it registered on August 18, 1999.

12. The disputed domain name novozymes.ca was registered on January 3, 2014. The Complainant has provided evidence indicating that the domain name redirects to websites of companies competing with the Complainant by selling enzymes.

13. The website www.sedo.com advertises that the domain name novozymes.ca is for sale for \$2,000.00 USD.

G. CIRA Domain Name Dispute Resolution Policy

14. Under s. 4.1 of the Policy it requires that the Complainant establish that:

a) The registrant's dot ca domain name is Confusingly Similar to a Mark in which the Complainant had Rights prior to the date of registration of the domain name and continues to have such Rights;

(b) The Registrant has registered the domain name in bad faith as described in section 3.5; and

(c) The Registrant has no legitimate interest in the domain name as described in section 3.4.

15. The Complainant must establish points (a) and (b) above on the balance of probabilities and for point (c) it must provide some evidence that the Registrant has no legitimate interest in the domain name.

H. Analysis

Confusingly Similar

16. The Complainant has to show that it has rights in a mark (and continues to have these rights) that is confusingly similar to the domain name and that these rights pre-date the date of registration of the disputed domain name.

17. The date of registration of the domain name is January 3, 2014, therefore this is the relevant dates for this analysis.

18. The Complainant registered its mark NOVOZYMES in Canada in 2004 and has provided affidavit evidence supporting its continued use. The mark NOVOZYMES therefore satisfies the definition of a "mark" in s. 3.2(a) of the Policy.

19. The Complainant has "rights" in this mark as it is the party that has used and registered it in Canada. These rights predate the date of registration of the disputed domain name as the word mark was registered in 2004, which is well prior to the relevant date of 2014.

20. The Complainant has thus established rights in the mark NOVOZYMES since prior to the registration date of the domain name, and has demonstrated that it continues to have these rights. The question then is whether this mark is confusingly similar to the domain name novozymes.ca. The test for this is whether the domain name in question so nearly resembles the mark in appearance, sound or in the ideas suggested by it as to be likely to be mistaken for the mark.

21. In this case the domain name consists solely of the entire mark NOVOZYMES. Therefore I find that the domain name is likely to be mistaken for the Complainant's mark as it incorporates the whole of the Complainant's mark. Therefore the Complainant has established, on a balance of probabilities, the facts required to support the requirements of s. 4.1(a) of the Policy.

Legitimate Interest

22. Section 3.4 provides six possible ways in which a Registrant may have a legitimate interest in a domain name, which shall be discussed below.

23. In this case the domain name is used to redirect customers to websites of Complainant's competitors. The Registrant does not make use of the domain name as a trade-mark. Therefore, the domain name has not been used in good faith by the Registrant as a mark and s. 3.4(a) is not satisfied.

24. Also, the Registrant has not registered the domain name in good faith in association with any wares, services or business, where the domain name is clearly descriptive of the character or quality of the wares, services or business. Nor is the domain name the generic name of any wares, services or business offered by the Registrant. Therefore the Registrant's use is not legitimate according to s. 3.4(b) or (c).

25. The Registrant was not using the domain name in good faith in association with criticism, review or news reporting (s. 3.4(d)). The domain name is not the legal name or a name, surname or other reference by which the Registrant was commonly identified (s. 3.4(e)), nor is it the geographical name of the location of the Registrant's place of business (s. 3.4(f)).

26. Therefore, none of the criteria in section 3.4 have been satisfied and the panel finds that the Complainant has provided some evidence that the Registrant has no legitimate interest in the domain name.

Bad Faith

27. The Complainant has to show, on the balance of probabilities, that the domain name was registered in bad faith. Section 3.5 deals with the grounds which constitute bad faith and it must be noted that these are not exhaustive; it is open to the panel to find other grounds which lead to a conclusion of bad faith conduct.

28. Under s. 3.5(a), bad faith will be presumed where the Registrant registered or acquired the domain name primarily for the purpose of selling the registration to the Complainant, or the Complainant's licensee or competitor, in excess of the Registrant's actual costs in registering the domain name or acquiring the registration.

29. The Complainant has submitted evidence demonstrating that the domain name was for sale for a sum in excess of the Registrant's costs in registering it. The fact that the Registrant has been using the domain name to redirect users to websites of companies competing with the Complainant by selling enzymes, suggests that the Registrant is aware of the Complainant and that the mark NOVOZYMES is used by the Complainant to sell such products. Therefore it appears that the Complainant, or one of its competitors, would have been the intended purchaser of the domain name.

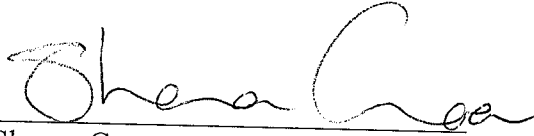
30. Therefore, on the balance of probabilities, it appears that the Registrant registered the domain name primarily for the purpose of selling, renting, licensing or otherwise transferring the Registration to the Complainant, and that the criteria set out in s. 3.5(a) have therefore been met.

I. Conclusion and Decision

31. In conclusion, the panel finds that the Complainant does have rights in the mark NOVOZYMES which predate the registration of the domain name. It also finds that the domain name is confusingly similar to the Complainant's mark and that the Registrant has no legitimate interest in the domain name. Finally, it finds that the Complainant has shown, on the balance of probabilities, that the Registrant registered the domain name in bad faith.

32. The panel therefore orders, pursuant to paragraph 4.3 of the Policy, that the registration of the domain name novozymes.ca be transferred to the Complainant, Novozymes A/S.

Dated April 22, 2014

A handwritten signature in cursive script, appearing to read "Sharon Groom", written in black ink.

Sharon Groom