Decision for dispute CAC-UDRP-101654

Case number	CAC-UDRP-101654
Time of filing	2017-08-31 09:17:06
Domain names	novartisintl.com

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	Novartis AG

Complainant representative

Organization	BrandIT GmbH

Respondent

Organization	CCN World

OTHER LEGAL PROCEEDINGS

The Panel is not aware of other legal proceedings, pending or decided, which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several trademark registrations for the term “NOVARTIS” – all around the world – since 1996, including Pakistan trademark registration no. 134437 "NOVARTIS" dated 27.02.1996.

Likewise, the Complainant also owns several domain names consisting of the wording "NOVARTIS", all of them registered before the disputed domain.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

- The Complainant – a global healthcare company based in Switzerland – owns a portfolio of brands including Pakistan trademark registration no. 134437 "NOVARTIS", granted in class 5.

- The Complainant also owns of a portfolio of domain names including the wording "NOVARTIS" since 1996.

- “NOVARTIS” is a well-known worldwide trademark and such circumstance has been confirmed in several WIPO cases.

- The Respondent has registered the disputed domain name <NOVARTISINTL.COM> on June 9, 2017, which, as of this day, is connected to a website apparently promoting a healthcare related business.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

RIGHTS

In particular, the Panel finds that the disputed domain name is confusingly similar to the trademark “NOVARTIS” and to the relative domain names registered by the Complainant, which has proven to have prior rights since 1996.

The brand “NOVARTIS” is well-known in the pharmaceutical industry due to its wide use and the disputed domain consists of such trademark along with letters “Intl”, a clear abbreviation of the term “international”.

Given the above – and taking into account the nature and the dimension of the business carried out by the Complainant under the trademark “NOVARTIS” – the addition of such a generic and descriptive terms would not prevent a finding of confusing similarity under the first element of the UDRP. In this regard, the Panel would like to remind paragraph 1.11 (rather than par. 1.8) of the WIPO Overview of on WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0"), as well as WIPO decisions such as Al Jazeera Media Network v. Syed Hassan – Case No. D2015-2374 (“The additional word “international” is found not to be distinguishing in either instance but to enhance the confusing similarity because, in the context, the word pertains to the international reputation of the Complainant as evidenced by its role as an international broadcaster”), ALDI GmbH & Co. KG v. zhou xiaolei – Case No. D2014-0957 (““Intl” is the abbreviation of the English word “international”, which is a generic word and cannot distinguish the Disputed Domain Name and the Complainant's ALDI trademark”) and TÜV NORD AG v. TUV International – Case No. D2015-0622 (“The addition of the descriptive term "intl" – an abbreviation for "international" – does not serve to distinguish the disputed domain names from the Complainant's marks”).

The Panel believes the above cases are particularly fitting for the present dispute.

NO RIGHTS OR LEGITIMATE INTEREST

According to the information provided by the Complainant, the Respondent is not commonly known by the disputed domain name, nor it has interest over <NOVARTISINTL.COM> or the major part of it. Likewise, the Complainant neither licensed nor authorized the Respondent to make any use of its trademark “NOVARTIS”, or to apply for registration of the disputed domain name on behalf of the Complainant.

The Respondent did not file any response.

Since the disputed domain name currently redirects to a website which apparently promotes healthcare related business (namely dental care), the Panel shall assess whether the Respondent actually lacks rights or legitimate interests in <NOVARTISINTL.COM>. Indeed, the panel may draw inferences from the absence of a response (as it is in the present case), but will weigh all available evidence irrespective of whether a response is filed.

To demonstrate rights or legitimate interests in a domain name, non-exclusive respondent defences under UDRP paragraph 4(c) include the following:

(i) before any notice of the dispute, the respondent’s use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
(ii) the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or
(iii) the respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel believes that none of the above conditions are present in this case.

As for the prior use, or demonstrable preparations to use the domain name, there are no substantial evidences in this regard, considering that the website seems to consists of a mere template which bears a “NOVARTIS INTERNATIONAL” brand but no real contents: nothing in the “Our catalogue” page, nor in “Gallery”, “Certification” or “Contact Us”.

Furthermore, by writing the address indicated in the “Contact Us” page (Azam Tower, Khadim Ali Road, Sialkot - 51310 PAKISTAN) on Google, an identical website (http://www.scildanintl.com/ has been detected, run by the Respondent, which is a mirror image of the one connected to the disputed domain, but with another brand name (SCILDAN). Such circumstance lead to presume that the website at issue is does not really represent an evidence of a business-entity existence.

In addition, the Respondent is not commonly known by the disputed domain name, considering that there are no elements at all that link “Farhan Ikram Chattha” and/or “CCN World” with the name “NOVARISINTLS”.

Lastly, fair use shall surely be excluded whereas a Respondent’s use of a domain name falsely suggests affiliation with the trademark owner. In particular, where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner.

This is the case of the present dispute, considering that – given the nature of the disputed domain name – the verbal portion “intl” actually triggers an inference of affiliation with the Complainant’s business activity.

It is undeniable that an internet user approaching the website connected to <NOVARTISINTL.COM> may erroneously believe that the same is somehow associated with Complainant, especially taking into account the fact that dental and medical instruments are closely connected to healthcare products and services offered by the Complainant.

Given all the above, the Panel accepts the contentions of the Complainant that the Respondent has no rights or legitimate interests in <NOVARTISINTL.COM>.

BAD FAITH

The Panel finds that the Complainant successfully submitted prima facie evidence that the Respondent has made no use of, or demonstrable preparations to use, neither of the disputed domain name in connection with a bona fide offering of goods or services, nor is making a legitimate non-commercial or fair use of the disputed domain name.

On the contrary, Respondent is using the Domain Name to intentionally attempt to attract, for commercial gain, internet users to the website, by creating a likelihood of confusion with Complainant's trademarks as to the source, sponsorship, affiliation or endorsement of its website.

As indicated by an established case-law, "Based on the evidence presented to the Panel including […] the confusing similarity between the Complainant's trademark and the disputed domain name, the Respondent's failure to reply to the cease-and-desist letter, the failure of the Respondent to respond to the Complaint […] the Panel draws the inference that on balance the disputed domain name has been registered and is being used in bad faith" (WIPO case No. D2016-0456 Amis Paris v. Amiparis, Amipa).

Consequently, the Panel believes that the disputed domain name was registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **NOVARTISINTL.COM**: Transferred

PANELLISTS

Name	**Tommaso La Scala**

DATE OF PANEL DECISION 2017-09-27

Publish the Decision