Decision for dispute CAC-UDRP-102174

Case number	CAC-UDRP-102174
Time of filing	2018-09-24 10:59:26
Domain names	novatriis.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	Novartis AG

Complainant representative

Organization	BrandIT GmbH

Respondent

Name	Ladonna Compton

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings.

IDENTIFICATION OF RIGHTS

The Complainant - a well known global healthcare company based in Switzerland - is the registered owner of a large number of trademarks in numerous of countries all over the world, i.e. trademarks egistered in United States of America NOVARTIS (Reg. no: 4986124 / Reg. no: 2997235).

The Complainant has registered also a number of domain names containing the term “NOVARTIS”, for example, <novartis.com> (created on April 2, 1996) and <novartis.net> (created on April 25, 1998).

FACTUAL BACKGROUND

The Complainant contends due to extensive use, advertising and revenue associated with its trademarks worldwide, the Complainant enjoys a high degree of renown around the world, including in the United States, where the Respondent is located.

The Complainant points out previously successfully challenged several NOVARTIS domain names through UDRP proceedings. In these proceedings Panels have confirmed that NOVARTIS is a well-known worldwide trademark and is directly connected to the Complainant’s activities in the pharmaceutical business (WIPO cases: D2016-1688; D2016-0552;

D2015-1989; D2015-1250).

The Complainant asserts that the Complainant has never granted the Respondent any right to use the NOVARTIS trademark within the domain name, nor is the Respondent affiliated to the Complainant in any form.

The Complainant points out that the Respondent has sent a fraudulent e-mail to a third party from the e-mail address rupam_s.chowdhury@novatriis.com on July 19, 2018, impersonating personnel from the Complainant and asking for invoices. Such conduct shows, the Complainant set forth that the Respondent registered the disputed domain name for the purpose of sending phishing e-mails instead of bona fide offering of goods or services.

The Complainant also shows that the Respondent registered the disputed domain name with a privacy shield, and at the time of preparing the Complaint, the disputed domain name is not active.

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

According to paragraph 4(a) of the Policy the Complainant must prove for the requested transfer of the disputed domain name under the top-level domain (dot)com that:

(i) the domain names are 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 domain names; and

(iii) the domain names has been registered and is being used in bad faith.

Without a doubt the Complainant complies with all these requirements:

1.

The Complainant is the proprietor of trademark rights in respect of the expression <NOVARTIS>

The disputed domain name which was registered on July 19, 2018, incorporates a typo variant of the Complainant's well-known, registered trademark NOVARTIS. The addition of the gTLD ".com" does not add any distinctiveness to the domain name.

For these reasons the disputed domain name and the trademarks <NOVARTIS> are at least confusingly similar and the Panel considers that the condition set out by paragraph 4(a)(i) of the Policy has been met by the Complainant.

2.

The Respondent has no rights or legitimate interests in the disputed domain name

Paragraph 4(c) of the Policy sets out examples of what a respondent may demonstrate to show that it has rights or legitimate interests in respect of a domain name. Any of the following circumstances, in particular, but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(c) if:

(i) before any notice to the Respondent, the Respondent uses or made 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 noncommercial 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.

As a general point a Respondent who does not respond to a complaint is unlike to prepare oneself for a bona fide offering of goods or services under the domain name or to prepare a legitimate non-commercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademarks at issue.

Accordingly, on the evidence available to it, the Panel considers that the condition set out by paragraph 4(c) of the Policy have been met by the Complainant.

3.

The Respondent has registered and used the domain name in bad faith

Paragraph 4(b) of the Policy enumerates four circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of domain names in bad faith. These circumstances are non-inclusive, while several other indicators can establish bad faith:

"(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location."

In this case it is obvious to the Panel that the Respondent has never used the disputed domain name nor intended to use the disputed domain name in a legitimate way as the Respondent registered the disputed domain name with a privacy shield. The Panel also cannot imagine how the Respondent could use the disputed domain name in a legitimate way.

Considering all circumstances the Panel finds that the condition set out by paragraph 4(a) of the Policy have been met by the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **NOVATRIIS.COM**: Transferred

PANELLISTS

Name	**Prof. Dr. Lambert Grosskopf, LL.M.Eur.**

DATE OF PANEL DECISION 2018-11-04

Publish the Decision