Decision for dispute CAC-UDRP-102301

Case number	CAC-UDRP-102301
Time of filing	2019-01-11 11:08:44
Domain names	novartis-web.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	Novartis AG

Complainant representative

Organization	BrandIT GmbH

Respondent

Name	Feras Farhan

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Respondent registered the disputed domain name <novartis-web.com> on September 13, 2018.

The Complainant provided lists of registrations of the trademark “NOVARTIS” to prove ownership of it worldwide, including Jordan, where the Respondent is located according to the WHOIS registration details for the disputed domain name.

It serves no useful purpose with such a famous mark to recite the various registration numbers, dates and classes. One registered in Jordan will suffice by way of example, No. 150203 for “NOVARTIS” registered on November 8, 2016 in class 42 under the Nice Classification System, a class which includes biological and chemical research activities that are core to the Complainant’s business.

The example mentioned predates the Respondent’s registration of the disputed domain name by two years.

The Complainant further introduced evidence of its registration and use of the domain names <novartis.com> and <novartis.net>.

To substantiate further the notoriety of its brand related to the circumstances of this case, the Complainant provided evidence of its local presence in Jordan.

FACTUAL BACKGROUND

The Complainant is a global pharmaceuticals and healthcare company based in Switzerland and operating in 155 countries, with a turnover in 2017 of $49.1 billion and a history going back more than 150 years.

The Respondent registered the disputed domain name <novartis-web.com> on September 13, 2018.

The Complainant states that it has not found the Respondent to be known by the disputed domain name.

The Complainant avers that it has no relationship with the Respondent and that the Respondent benefits from no authorization of any kind to make use of the Complainant's trademark including applying for registration of a domain name incorporating the trademark.

By email dated November 26, 2018 to the contact email address for the Respondent contained in the WHOIS information for the disputed domain name, the Complainant sent him a cease-and-desist letter. Two reminder emails were sent to the Respondent subsequently, the last on December 12, 2018 indicating that the Complainant would initiate what is the current proceeding.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

I. LANGUAGE OF PROCEEDINGS REQUEST

If the language of the registration agreement of the disputed domain name <novartis-web.com> is a language other than English according to the applicable registrar, the Complainant hereby files a language of proceeding request that the language of the proceeding should be English based on the following facts:

The website associated with the Disputed Domain Name is operated in English;

The disputed domain name includes the Complainant's trademark "NOVARTIS" with an English word "web". The Complainant is a global company whose business language is English and the main website operated by the Complainant is in English (see <www.novartis.com>).

The Respondent has chosen to register the disputed domain name under the Top-Level Domain name ".com" which is a commercial TLD, applicable to a broader audience than merely Jordan. A more suitable TLD if only addressing the Jordanian market would be the <.jo> extension.

The above facts show that the Respondent obviously understands English. The proceeding language should accordingly be in English.

II. LEGAL GROUNDS

1) The trademark "NOVARTIS" is owned by a renowned health care company operating in some 155 countries reaching around 1 billion people. In its various registrations, both word and figurative. It is thus a well-known mark worldwide, including in Jordan where the Respondent is located.

2) The Respondent bears no relationship to the trademark or the Complaint. He is not commonly known by the disputed domain name and has no right or legitimate interest in it or the major part of it, that is, the "NOVARTIS" element.

3) The inclusion of "NOVARTIS" in the disputed domain name makes it confusingly similar to the Complainant's trademark. This position has been upheld by numerous Panels, including in proceedings brought by the Complainant based on its trademark, such as WIPO case No. D2016-1688, Novartis AG v. Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org, / Sergei Lir regarding the domain name <novartis-bio.com>.

4) As regards the UDRP criterion of registration and use in bad faith, the Respondent must have been aware of the Complainant's famous mark at the time of registration. In terms of use, the website associated with the disputed domain name is a login portal which is likely phishing for internet users' valuable data: that is, by collecting such data unlawfully and possibly for other, fraudulent purposes.

5) Furthermore, the Respondent uses email <novartisweb@outlook.com>, which is very likely done in order to impersonate the Complainant.

6) The Complainant has not received any response from the Respondent to its cease and desist letter despite reminders. Decisions of Panels in previous proceedings have recognized such lack of response is relevant in determining the elements of lack of legitimate interest and presence bad faith under the UDRP.

Consequently, the Respondent should be considered to have registered the disputed domain name <novartis-web.com> which is confusingly similar to the Complainant's registered, well-known trademark "NOVARTIS" without any legitimate right or interest in having or using it but rather to have registered and to be using it in bad faith.

RESPONDENT: 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

1. Findings on the substance

Applying the three-part cumulative test under the UDRP in this uncontested case, the Panel:

(1) finds that the Complainant has by the documentary evidence it has adduced proven the worldwide fame of its trademark NOVARTIS and takes note also of the evidence showing Novartis AG's significant online presence employing the domain name <novartis.com> that it holds;

(2) finds that the disputed domain name is confusingly similar to the Complainant's trademark by reason of incorporation of the trademark in a <.com> registration as the dominant cognitive element and with addition of a hyphen and the generic word “web“ merely serving to form a variant of it;

(3) accepts the Complainant's conclusion that the Respondent is not known by the disputed domain name as well as its contention that no relationship exists between the Complainant and the Respondent, so justifying the inference that the Respondent lacks a right to employ the Complainant’s trademark in the disputed domain name or a legitimate interest in doing so;

(4) notes from the evidence provided of the Respondent’s website associated with the disputed domain name that the site consists solely in a login entry page and that (as revealed by cursory investigation conducted by the Panel under its general powers) <novartis.com> itself has a login facility;

(5) notes further the evidence showing the Respondent’s use of the <novartisweb@outlook.com> email address;

(6) considers on the basis of (4) and (5) that in the absence of any explanation from the side of the Respondent or appearing from the Case File, it is likely, as the Complainant contends, that the Respondent has sought through the registration and use of the disputed domain name to impersonate the Complainant for an improper purpose and thus finds sufficient indication in this case of bad faith on the Respondent’s behalf.

The Panel considers the Complainant‘s contention of phishing to be plausible but speculative since no evidence was

produced showing that this conduct did occur. Since the above finding of impersonation alone suffices to reach a finding on the UDRP criterion of bad faith, the Panel declines to make a specific finding on the phishing hypothesis. It also finds it unnecessary to consider Google searches the Complainant made on the disputed domain name, which, in any event, would require IT precautions to be taken first that are not reported in the Complaint. Lastly, the Panel notes that the Complainant sent a cease-and-desist letter to the Respondent prior to initiating this proceeding, but accords no particular importance to this preliminary communication in deciding this case.

On the basis of the above reasons, the Panel therefore upholds the Complaint and transfers the disputed domain name to the Complainant.

2. Procedure

The Complaint contained a request that English should be the language of this proceeding.

It is not necessary to decide on this request since, in accordance with paragraph 11 of the UDRP Rules, the response of the registrar of the disputed domain name, GoDaddy, to the CAC's Request for Verification confirms that the language of the registration agreement governing the disputed domain name is English. There are furthermore no circumstances disclosed in this proceeding that would militate against use of that language.

Comment: The Panel would recommend a Complainant itself to check the registrar's published registration agreement as a matter of course. In this case the agreement stipulates English always to be the controlling language. Such preparation will spare a Complainant the need to develop arguments for a non-existent contingency and the difficulties this may involve. The Panel noted for example that the global, multilingual resource the .com gTLD has become and the translingual nature of the word "web" seemed in the contentions made not to have received quite the acknowledgment they deserve.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **NOVARTIS-WEB.COM**: Transferred

PANELLISTS

Name	**Kevin J. Madders**

DATE OF PANEL DECISION 2019-02-24

Publish the Decision