Decision for dispute CAC-UDRP-102302

Case number	CAC-UDRP-102302
Time of filing	2019-01-15 16:04:58
Domain names	novartiserebates.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	Novartis AG

Complainant representative

Organization	BrandIT GmbH

Respondent

Name	Milen Radumilo

OTHER LEGAL PROCEEDINGS

The panel is not informed of other legal proceedings relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant, Novartis AG, is the owner of the several registered trademarks “NOVARTIS” as word and figurative trademarks in many territories all over the world, including in Romania where the Respondent is located.

The trademark registration in Romania concerns the mark “NOVARTIS”, which has been registered under number 663765 since July 1, 1996 for pharmaceutical products.

Due to extensive use, advertising and revenue associated with its trademarks worldwide, the Complainant enjoys a high degree of reputation around the world, including in Romania.

The Complainant has registered 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). The Complainant uses these domain names to connect to a website through which it informs potential customers about its products and services.

These facts are not contested by the Respondent.

FACTUAL BACKGROUND

Novartis is a global healthcare company based in Switzerland that provides medical solutions to address the evolving needs of patients worldwide (see <www.novartis.com>).

The Complainant's products are sold in about 155 countries and they reached nearly 1 billion people globally in 2017. About 126 000 people of 145 nationalities work at Novartis around the world.

The Complainant has a strong presence in Romania. The below links connect customers to the official local sales and service locator and to the official websites of the Complainant:

- Global Website for NOVARTIS: www.novartis.com
- Local Website for NOVARTIS in Romania: www.novartis.com.ro/

In October 2018, the Complainant realized that the disputed domain name had been registered on September 30, 2018, even though the Complainant did not grant any right to the Respondent to use the trademark names. The Complainant sent two cease and desist letters to the Respondent asking him to cease the use of the disputed domain name. The Respondent did not react to these letters, leading the Complainant to file this Complaint.

PARTIES CONTENTIONS

No administratively compliant Response has been filed by the Respondent.

RIGHTS

In order to determine whether the trademark "NOVARTIS" and the disputed domain name are confusingly similar in the sense of paragraph 4(a)(I) of the Policy, a comparison has to be made and the likelihood of the Internet user confusion should be determined. It should be taken into account that "NOVARTIS" is a distinctive and well-known trademark.

In this context, it is generally found that when a trademark constitutes the dominant or principal component of the domain name, the addition of a descriptive or other word to it is generally insufficient to avoid confusing similarity in the sense of paragraph 4(a)(I) of the Policy (BHP Billton Innovation Pty Ltd, BMA Alliance Coal Operations Pty Ltd. V. Cameron Jackson, WIPO D2008-1338; MasterCard International Incorporated v. Michael J Yanda, Indy Web Productions, WIPO D2007-1140).

In the present case, the Respondent has only added the term "erebates" to the well-known trademark "NOVARTIS", which creates confusion because the public may believe that it will obtain rebates or electronic rebates from "NOVARTIS".

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name to be 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

To determine whether the Respondent has rights or legitimate interests in the domain name, the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of proof shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name (Accor v. Eren Atesmen, WIPO D2009-0701; Malayan Banking Berhad v. Beauty, Success & Truth International, WIPO D2008-1393).

The Complainant argues that the Respondent is not affiliated with him nor authorized by him in any way, and he notes that the disputed domain name has been used for a page redirecting to other websites since its registration (either a pay-per-click website or to a scam website with potential high-risk security implications such as fraud). Based on these findings, it prima facie appears that the Respondent lacks rights or legitimate interests.

Paragraph 4(c) of the Policy provides that the following circumstances can demonstrate rights or legitimate interests in the domain name for the purpose of paragraph 4(a)(ii):

(i) before any notice to you of the dispute, your 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) you (as an individual, business, or other organisation) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
(iii) you are making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or tarnish the trademark or service mark at issue.

The Panel is of the opinion that these conditions have not been met in the present case.

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

1. THE DOMAIN NAME WAS REGISTERED IN BAD FAITH

The Respondent has never been authorized by the Complainant to use the “NOVARTIS” trademarks nor to register the disputed domain name. The Respondent seems to have registered the disputed domain name in the sole purpose of attracting more people to his websites.

2. THE DOMAIN NAME IS BEING USED IN BAD FAITH

Firstly, the Respondent has been using the disputed domain name to redirect randomly to different websites, including a pay-per-click website and a scam website with potential high-risk security implications (e.g. fraud, etc.). Thereby it appears that the Respondent has selected the well-known trademark “NOVARTIS”, to create potential for pay-per-click revenue from people who would not otherwise have visited the website. The Respondent even uses the Novartis logo in the browser tab, which is likely an effort to create the false impression among internet users that this is an official or authorized website of the Complainant.

The scam website is an even more clear evidence that the Respondent is trying to attract internet users to such websites by using the well-known trademark of the Complainant.

Secondly, the Complainant tried to contact the Respondent on November 27, 2018 through a cease-and-desist letter. Reminders were sent on December 5, 2018 and December 12, 2018, but the Respondent disregarded all communications from the Complainant. It has been mentioned in earlier cases that the failure of a respondent to respond to a cease and desist letter, or a similar attempt at contact, can be relevant in a finding of bad faith, e.g., WIPO Case No. D2000-1623, News Group Newspapers Limited and News Network Limited v. Momm Amed Ia; WIPO Case No. D2000-1598 Nike, Inc. v. Azumano Travel.

Thirdly, the Respondent has also been a respondent in a previous WIPO Case n.D2017-1107 Car & Boat Media v. Contact Privacy Inc. Customer 0142463834 / Milen Radumilothe), where he has been accused of registering domain name incorporating a registered trademark and “use of a webpage with links to various websites offering products and services competing with those of the Complainant” and “offer to sell the disputed domain name”. This fact shows that the Respondent has a history record of registering and using domain name in bad faith in a similar pattern.

Finally, the Respondent has been using a privacy shield to conceal his identity and has been actively offering the disputed domain name for sale to the public.

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

For the abovementioned reasons, it appears to the Panel that the Respondent has registered and used a domain name that is confusingly similar to the Complainant's trademarks, in which the Respondent has no rights or legitimate interest and which is registered and 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. **NOVARTISEREBATES.COM**: Transferred

PANELLISTS

Name	**Tom Joris Heremans**

DATE OF PANEL DECISION 2019-02-25

Publish the Decision