Decision for dispute CAC-UDRP-102487

Case number	CAC-UDRP-102487
Time of filing	2019-05-13 11:43:22
Domain names	novartis-pharmalogistics.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	Novartis AG

Complainant representative

Organization	BrandIT GmbH

Respondent

Name	Lan Fred

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the registered well-known trademark NOVARTIS as a word and figure mark in several classes in numerous countries all over the world including the USA. The trademark registrations with the United States Patent and Trademark Office include: trademark 'NOVARTIS' (reg. no. 2997235; registered on September 20, 2005; first use in commerce: 1997); and trademark 'NOVARTIS' (reg. no: 4986124; registered on June 28, 2016; first use in commerce: 1996).

FACTUAL BACKGROUND

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

The Complainant is the proprietor of the NOVARTIS trademarks. The Complainant is a global healthcare company based in Switzerland that provides solutions to address the evolving needs of patients worldwide. The Complainant’s products are sold in about 155 countries and they reached nearly 800 million people globally in 2018. About 125,000 people of 145 nationalities work at Novartis around the world. The Complainant is the owner of the registered well-known trademark NOVARTIS as a word and figure mark in several classes in numerous countries all over the world including the USA. The

trademark registrations with the United States Patent and Trademark Office include: trademark 'NOVARTIS' (reg. no. 2997235; registered on September 20, 2005; first use in commerce: 1997); and trademark 'NOVARTIS' (reg. no: 4986124; registered on June 28, 2016; first use in commerce: 1996).

The disputed domain name was registered on April 15, 2019.

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

Paragraph 15(a) of the Rules for the UDRP ('the Policy') instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

(1) the domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
(2) Respondent has no rights or legitimate interests in respect of the domain name; and
(3) the domain name has been registered and is being used in bad faith.

In view of the Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory. See Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc., FA 95095 (FORUM July 31, 2000) (holding that the respondent’s failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); see also Talk City, Inc. v. Robertson, D2000-0009 (WIPO Feb. 29, 2000) (“In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.”).

Rights

The Complainant contends that it is the owner of the registered trademark 'NOVARTIS' in the U.S.A. (reg. no. 2997235

registered on September 20, 2005 and reg. no: 4986124 registered on June 28, 2016). The Panel notes that a trademark registration with the USPTO is sufficient to establish rights in that mark. As such, the Panel finds that the Complainant has established its rights in the mark 'NOVARTIS.'

The Complainant further contends that the disputed domain name is confusingly similar to its mark 'NOVARTIS' on the grounds that i) the disputed domain name incorporates entirely the Complainant's mark NOVARTIS with a symbol "-" and generic terms "Pharma" "Logistics", which are closely related to the Complainant's business activities; and the addition of the gTLD ".com" does not add any distinctiveness to the disputed domain name.

The Panel agrees with the Complainant, and thus it finds that the disputed domain name is confusingly similar to the Complainant's trademark NOVARTIS.

No rights or legitimate interests

Complainant must first make a prima facie case that Respondent lacks rights and legitimate interests in the disputed domain name under Policy paragraph 4(a)(ii), then the burden shifts to Respondent to show it does have rights or legitimate interests. See Croatia Airlines d. d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455 (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 Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP). See also Advanced International Marketing Corporation v. AA-1 Corp, FA 780200 (FORUM Nov. 2, 2011) (finding that a complainant must offer some evidence to make its prima facie case and satisfy Policy paragraph 4(a)(ii).

The Complainant contends that it has never granted the Respondent any right to use the NOVARTIS trademark within the disputed domain name, nor is the Respondent affiliated with the Complainant in any form; the Respondent is not commonly known by the disputed domain name; the Respondent was impersonating personnel from the Complainant in an attempt to induce the recipient to transfer money to a fraudulent bank account which does not constitute bona fide offering of goods or services; and the disputed domain name does not resolve to any active website which does not constitute bona fide offering of goods or services either.

The Panel finds that the Complainant has made out a prima facie case that arises from the considerations above. All of these matters go to make out the prima facie case against the Respondent. As the Respondent has not filed a Response or attempted by any other means to rebut the prima facie case against it, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

Bad faith

The Complainant contends that the Complainant's trademarks predate the registration of the disputed domain name; and it is inconceivable that the combination of a symbol "-", the generic terms "pharma" "logistics" and the well-known trademark NOVARTIS in the disputed domain name is not a deliberate and calculated attempt to improperly benefit from the Complainant's rights.

The Complainant further contends that the Respondent was impersonating personnel from the Complainant in an attempt to induce the recipient to transfer money to a fraudulent bank account; and thus it is inarguable that the disputed domain name was being used in bad faith. The Complainant has cited a prior WIPO UDRP decision which has supported the finding of bad faith in the Respondent's attempt to impersonate the Complainant and to deceive consumers. See Accor v. Shangheo Heo / Contact Privacy Inc., WIPO Case No. D2014-1471 ("the un-opposed allegation of phishing, and the evidence submitted in support of phishing, combined with the likelihood of confusion, is sufficient evidence of bad faith. …It seems likely, as Complainant alleges, that Respondent intentionally attempted to deceive consumers into providing personal and financial information, believing that Respondent was associated with the bona fide services offered by Complainant.").

The Panel agrees with the Complainant and finds that the above constitutes bad faith registration and use of the disputed

domain name.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

PANELLISTS

Name	**Mr. Ho-Hyun Nahm, Esq.**

DATE OF PANEL DECISION 2019-07-04

Publish the Decision