Decision for dispute CAC-UDRP-102522

Case number	CAC-UDRP-102522
Time of filing	2019-06-10 09:53:58
Domain names	novarttis.com

Case administrator

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

Complainant

Organization	Novartis AG

Complainant representative

Organization	BrandIT GmbH

Respondent

Name	Delia Spurgeon

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 Complainant is the proprietor of a number of trade marks, such as US mark 4986124 'NOVARTIS' (registered 28 June 2016) in various classes including class 5 (pharmaceutical products), and a range of marks across numerous jurisdictions, primarily registered in 1996 (at its foundation).

FACTUAL BACKGROUND

The Complainant is a healthcare/pharmaceutical company with its seat in Basel, Switzerland. It operates globally, including in the United States of America. It took on its current form and name in 1996, following a merger of two predecessor entities, and has been active since then. It operates a website at domain names including <NOVARTIS.COM> (since 1996).

The Respondent is an individual, with an address in Kentucky in the United States of America, who registered the disputed domain name on 15 April 2019.

PARTIES CONTENTIONS

No administratively compliant response has been filed. The CAC is unaware of whether written and e-mail notices were received by the Respondent or not, and the Respondent never accessed the online platform.

The Complainant contends that this is a case of 'typosquatting' and that the criteria set out in the Policy are applicable; it also makes submissions regarding 'phishing' associated with the disputed domain name. Reference is made to various decisions under the Policy, including past decisions resulting from its own complaints. It requests that the disputed domain name be transferred to itself.

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).

Disregarding the generic TLD .com, in accordance with usual practice under the Policy, it can be observed that the only difference between the mark in which the Complainant has rights (NOVARTIS) and the remaining text in the disputed domain name (NOVARTTIS) is the additional letter T. While not identical, the disputed domain name can be held to be confusingly similar to the mark. Moreover, the Panel is not able to identify any further meaning, which might serve to dispel or mitigate confusion, relating to the term NOVARTTIS.

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).

The Complainant declares that it has not granted any permission to the Respondent, and that the Respondent is not affiliated to it (the Complainant).

The Respondent, having failed to participate in the present proceedings, has not identified any rights or legitimate interests. The disputed domain name is currently suspended and so there is no available evidence of the operation of a website that might indicate the presence of such rights or legitimate interests. Indeed, the alleged use of the disputed domain name for fraudulent purposes (discussed further under bad faith, below) suggests quite the opposite. The Respondent, appearing to be an individual in the United States, is not known to have any connection with the Complainant's goods and services.

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).

In its submission, the Complainant refers to the case as one of 'passive holding', relying upon the well-known early decision under the Policy in WIPO Case No. D2000-0003 Telstra v Nuclear Marshmallows. The Panel can apply the structure deployed in the Telstra decision and subsequently, Considering (i) the degree of distinctiveness or reputation of the complainant’s mark, the Panel is satisfied that the mark is distinctive and enjoys an obvious reputation. Regarding (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, the Panel notes that the Respondent has not participated in proceedings. Regarding (iii) the respondent’s concealing its identity or use of false contact details, the Panel notes the initial use of a privacy protection service, and cannot determine whether the contact details provided are accurate. Finally, regarding (iv) the implausibility of any good faith use to which the domain name may be put, the Panel has not identified any such use.

The Complainant's mark is very well-known (as other Panels have held, e.g. CAC Case 102493, Novartis AG v li dong qun, <HBNOVARTIS.COM>; WIPO Case No. D2016-0552, Novartis AG v. Hoang Le, <NOVARTIS.ONLINE>), and so it would be very surprising for a registrant to identify text such as that in the disputed domain name, and register such a domain name, without knowledge of the Complainant's fame, name, and activities.

The Panel notes the Complainant’s submissions regarding the use of the disputed domain name for the purposes of sending deceptive e-mails. The use of domain names in association with fraudulent activities conducted through email is well established as within the scope of the Policy; see e.g. WIPO Case No. D2009-1014, Prudential Assurance Company Limited

v. Domain Place, <prudentialserv.com>. It is noted in the WIPO Jurisprudential Overview, version 3.0, at paragraph 3.4, that bad faith regarding the use of a domain name can be found in relation to uses other than websites, such as where a respondent uses a domain name 'to send deceptive emails, e.g., to obtain sensitive or confidential personal information from prospective job applicants, or to solicit payment of fraudulent invoices by the complainant's actual or prospective customers.' The Complainant has provided what appears to be an example of this last point (although not wholly clear, as it is a PDF version of an e-mail thread without the relevant headers and without further explanation; the Complainant points out, albeit in another Annex rather than addressed directly to the panel, that the offending e-mail was forwarded to it by a client). This evidence indicates that the disputed domain name was used to send an e-mail to a third party, purporting (falsely) to originate from an employee of the Complainant, asking for funds to be transferred to a bank account not under the control of the Complainant.

The Panel also notes, and places due weight upon, the sending of various 'cease and desist' letters by the Complainant's representative to the Respondent, which do not appear to have been acknowledged or answered.

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.

The Panel notes that, where allegations are made regarding the use of a disputed domain name in e-mail, a comprehensive account of such use (including, for instance, headers or information on the configuration of servers) makes such a case more persuasive.

PRINCIPAL REASONS FOR THE DECISION

In the absence of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name. On the other hand, it is clear that the Complainant has rights in respect of the trade mark and company name NOVARTIS, and that the disputed domain name is confusingly similar to this mark (differing only by one character). In light of the evidence presented by the Complainant, the Panel finds that the disputed domain name was registered and is being used in bad faith, including through its use in association with the sending of fraudulent e-mails purporting to emanate from the Complainant. The requirements for the acceptance of a Complaint under paragraph 4 of the Policy have therefore been met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **NOVARTTIS.COM**: Transferred

PANELLISTS

Name	**Prof Daithi Mac Sithigh**

DATE OF PANEL DECISION 2019-07-09

Publish the Decision