Decision for dispute CAC-UDRP-102465

Case number	CAC-UDRP-102465
Time of filing	2019-04-30 12:12:48
Domain names	novartisfiscal.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	Novartis AG

Complainant representative

Organization	BrandIT GmbH

Respondent

Name	Shi Jiu Wei

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

Novartis AG has a strong presence in China where the Respondent is located.

NOVARTIS AG´s official websites are as follows:
- Global Website for NOVARTIS: https://www.novartis.com
- Local Website for NOVARTIS in China: https://www.novartis.com.cn/

The Complainant NOVARTIS AG is the owner of the registered trademark NOVARTIS as a word and figure mark in several classes in numerous of countries all over the world including in China.

Trademark registration of NOVARTIS AG in China is as follows:

Trademark: NOVARTIS
Reg. no: 663765
First use in commerce: 1996

The disputed domain name is being used for the commercial gain of the Respondent.

FACTUAL BACKGROUND

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

I. LANGUAGE OF PROCEEDINGS DECISION:

Since the language of the Registration Agreement of the disputed domain name <novartisfiscal.com> is Chinese according to the applicable Registrar, the language of the proceeding shall be English.

R e a s o n i n g :

The disputed domain name includes the Complainant's trademark NOVARTIS in its entirety combined with a generic English term "fiscal", which is closely related to the Complainant's business activities. Both words are correctly spelled and the Complainant is a global company whose business language is English, the main website operated by the Complainant is in English (see www.novartis.com) while 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 China.

II.THE BRAND NOVARTIS

Novartis AG (hereinafter referred to as Complainant) is the proprietor of the NOVARTIS trademarks. Novartis is a global healthcare company based in Switzerland that provides solutions to address the evolving needs of patients worldwide (see www.novartis.com). Novartis manufactures drugs such as clozapine (Clozaril), diclofenac (Voltaren), carbamazepine (Tegretol), valsartan (Diovan) and many others.

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 in China under Reg. no: 663765 since 1996.

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).

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 China.

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

The Complainant has a strong presence in China where the Respondent is located.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The Respondent never accessed the online platform.

In order that neither the written notice of the Complaint nor the advice of delivery thereof was returned to the Czech Arbitration Court even though the Respondent has been contacted through the contact form on the disputed site and the CAC received a confirmation that the e-mail sent to 52835783@qq.com had been relayed and the e-mail notice sent to

postmaster@novartisfiscal.com had been as well returned back undelivered and the e-mail address is in permanent fatal errors, the CAC shall decide the dispute based upon the complaint.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is confusingly similar to a trademark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

The disputed domain name, which was registered on March 13, 2019 according to the WHOIS, incorporates the Complainant's well-known, registered trademark NOVARTIS and combined with a generic term "fiscal", which is closely related to the Complainant's business activity.

The addition of the gTLD ".com" does not add any distinctiveness to the disputed domain name.

The term "NOVARTIS" is distinctively recognizable in the disputed domain name, the disputed domain name should be considered as confusingly similar to the trademark NOVARTIS.

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

The Panel has not found that the Respondent is commonly known by the disputed domain name or that it has interest over the disputed domain name or the major part of it. When entering the terms "novartisfiscal" in the Google and Baidu (the leading search engine in China) search engines, the returned results all point to the Complainant and its business activity.

The Respondent could have easily performed a similar search before registering the disputed domain name and would have quickly learnt that the trademarks are owned by the Complainant and that the Complainant has been using its trademarks in China. The Respondent has not by virtue of the content of the website, nor by its use of the disputed domain name shown that he has been commonly known by the disputed domain name.

By the time the Complainant sent out the cease-and-desist letter on March 22, 2019, the Respondent was not using the disputed domain name to offer goods or services on the website. The website associated to the disputed domain name was described as "might be temporarily down or it may have moved permanently to a new web address."

The Panel found out that the access of the website associated to the disputed domain name was blocked for being potentially dangerous and might "try to transfer dangerous software to your device (viruses, malware)".

By proceeding with access, it could be observed that the Respondent was using the disputed domain name to associate to an active website, presumably for lottery but disguising itself as a news website: although the heading of the website is "" which means "attention to breaking news", and the content seems to be a collection of news articles, numerous evidences show that these are only made for the purpose of covering the real intention of lottery – the tag of this website is "" and in the bottom of page there is also a term "", which are very likely names for lottery. When searched in Google these terms, the returning result all point to lottery-related websites and content (translation provided by Google Chrome).

There is no evidence showing that the Respondent is using the disputed domain name in connection with a bona fide offering of goods or services, neither is it making a legitimate, non-commercial or fair use of the disputed domain name.

Taking into account of the above, the Respondent shall be considered as having no right nor legitimate interest in respect of the disputed domain name.

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).

THE DISPUTED DOMAIN NAME WAS REGISTERED IN BAD FAITH

The Complainant's trademarks predate the registration of the disputed domain name and the Respondent has never been authorized by the Complainant to use these trademarks nor to register the disputed domain name.

The Respondent has chosen to incorporate the well-known, registered trademark NOVARTIS in the disputed domain name combined with the generic term "fiscal" as a postfix, which relates closely to the Complainant's business activities. From the Panel's perspective, it is very likely that the Respondent should have the trademark in mind when he registered the disputed domain name and registered it only for the purpose to mislead Internet users.

THE DISPUTED DOMAIN NAME IS BEING USED IN BAD FAITH

The Respondent has associated the disputed domain name with an active website which later turned out to be very likely a lottery site, disguised as a website for the collection of news articles. Since the disputed domain name incorporates the well-known, registered trademark NOVARTIS in its entirety with a generic, descriptive term "fiscal", it is reasonable to infer that the Respondent intends to benefit from the reputation of the Complainant's trademark and generate more traffic to its own website associated to the disputed domain name. Moreover, when consumers see this website under such domain name, it is very likely that they will be confused and be lead to think that the website is in some way related to the Complainant and the Complainant's trademark.

Therefore, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

Secondly, the Panel found out that the Complainant tried to contact the Respondent on March 25, 2019 through a cease-and-desist letter. Since the Respondent was using privacy shield service, the Complainant contacted the WHOIS server "HKDNS" as indicated in the "Registrant email" in the WHOIS. In the cease-and-desist letter, the Complainant advised the Respondent that the unauthorized use of its trademarks within the disputed domain name violated their trademark rights and the Complainant requested a voluntary transfer of the disputed domain name.

On March 26, 2019, HKDNS confirmed that the cease-and-desist letter was forwarded to the Registrant and suggested that the Registrant can also be reached by filling a contact form on the Registrar's website. The Complainant has followed such instruction and has sent reminders on April 3 2019 and April 10, 2019, despite of which the Respondent has simply disregarded communication from the Complainant.

The failure of a respondent to respond to a cease-and-desist letter, or a similar attempt at contact, has been considered relevant in a finding of bad faith.

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

The trademark NOVARTIS is a well-known trademark worldwide, including in China where the Respondent is located. Its registration predates the registration of the disputed domain name. There is no evidence showing that the Respondent is using the disputed domain name in connection with a bona fide offering of goods or services, neither is it making a legitimate, non-commercial or fair use of the disputed domain name.Taking into account of the above, the Respondent shall be considered as having no right nor legitimate interest in respect of the disputed domain name.

The Respondent bears no relationship to the trademarks or the Complainant; it is not commonly known by the disputed domain name nor that has it interest over the disputed domain name or the major part of it. The Panel found out that the access of the website associated to the disputed domain name was block for being potentially dangerous and might “try to transfer dangerous software to your device (viruses, malware)”. Taking into account of the above, the Respondent shall be considered as having no right nor legitimate interest in respect of the disputed domain name.

The Respondent has chosen to incorporate the well-known, registered trademark NOVARTIS in the disputed domain name combined with the generic term “fiscal” as a postfix, which relates closely to the Complainant’s business activities. From the Panel’s perspective, it is very likely that the Respondent had the trademark in mind when he registered the disputed domain name and registered it only for the purpose to mislead Internet users. The Respondent has been using the disputed domain name for its own commercial gain. The disputed domain name is registered under privacy shield, additional elements of bad faith.

The Respondent has never replied to communication from the Complainant, even though the Complainant tried to contact the Respondent through a cease-and-desist letter. The failure of the Respondent to respond to a cease-and-desist letter, or a similar attempt at contact, has been considered relevant in a finding of bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **NOVARTISFISCAL.COM**: Transferred

PANELLISTS

Name	**JUDr. Vojtěch Trapl**

DATE OF PANEL DECISION 2019-07-20

Publish the Decision