Decision for dispute CAC-UDRP-102542

Case number	CAC-UDRP-102542
Time of filing	2019-07-09 00:00:00
Domain names	novartis.live, novartis.life

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	Novartis AG

Complainant representative

Organization	BrandIT GmbH

Respondent

Organization	Chiaramonte

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner - among others - of the Italian trademark registration No. 663765 "NOVARTIS", filed in 1996 and duly renewed. A considerable list of other trademarks enclosed to the complaint demonstrates that "NORVARTIS" has been registered worldwide.

The Complainant also owns several domain names incorporating the wording "NOVARTIS", all of them registered since 1996 (e.g. <novartis.com> and <novartis.net>).

FACTUAL BACKGROUND

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

- The Complainant owns a portfolio of brands including the Italian trademark registration No. 663765 "NOVARTIS".

- Likewise, the Complainant is the owner of a portfolio of domain names including the wording "NOVARTIS" since 1996.

- The Respondent has registered the domain names <novartis.live> and <novartis.life> only last April 24, 2019. Such domains

entirely incorporate the Complainant's trademark and its domain names.

- According to the Complainant, the Respondent has no rights or legitimate interests in respect of the domain names and is not related in any way with the Complainant's business. In particular, the Complainant states that the Respondent is not affiliated with NOVARTIS AG, nor authorized by such company in any way. In addition, The Complainant affirms it currently does not carry out any activity for, nor has any business with the Respondent. Neither license nor authorization has been granted to the Respondent to make any use, or apply for registration of the disputed domain names by The Complainant.

- The Complainant contends that the disputed domain names <novartis.live> and <novartis.life> have been registered and used in bad faith, namely in a calculated attempt to improperly benefit from the Complainant's rights.

- The disputed domain names point to parking pages without any content and, despite a cease and desist letter sent by the Complainant's representative, the Respondent did not provide any explanation concerning the registration (and the passive use) of these disputed domain names.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names (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 names have been registered and are 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. The Complainant has, to the satisfaction of the Panel, shown that the disputed domain names are identical or confusingly similar to the Complainant`s trademarks (within the meaning of paragraph 4(a)(i) of the Policy). In particular, the Panel finds that the disputed domain name is identical to the Complainant's trademark "NOVARTIS", as well as to the relative domain names registered by NOVARTIS AG since 1996.

In this regard, it shall be reminded how several previous UDRP Panels have held that when a domain name entirely incorporates a complainant's registered trademark, this fact might be sufficient to establish confusing similarity for purposes of the Policy (see e.g. RapidShare AG, Christian Schmid v. InvisibleRegistration.com, Domain Admin, WIPO Case No. D2010-1059; Swarovski Aktiengesellschaft v. mei xudong, WIPO Case No. D2013-0150).

2. The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the domain names (within the meaning of paragraph 4(a)(ii) of the Policy).

The Panel finds that the Complainant successfully submitted prima facie evidence that the Respondent has made no use of, or demonstrable preparations to use, neither of the disputed domain names in connection with a bona fide offering of goods or services, nor is making a legitimate non-commercial or fair use of the disputed domain name, nor is commonly known under the disputed domain name. This prima facie evidence was not challenged by the Respondent, not even after the cease and desist letter received from the Complainant on April 24, 2019.

As a matter of fact, there are no arguments why the Respondent could have own rights or legitimate interests in the disputed domain name. "NOVARTIS" is a fancy word and it does not seem to have any other meaning than the business name of the Complainant. Therefore, the Panel accepts the contentions of the Complainant that the Respondent has no such rights or legitimate interests in <novartis.live> and <novartis.life>.

3. The Complainant has, to the satisfaction of the Panel, shown the domain names to have been registered and are used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

As prior WIPO UDRP panels have held, the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use (WIPO - D2000-0003 - Telstra Corporation Limited v. Nuclear Marshmallows and WIPO - D2000-0400 - CBS Broadcasting, Inc. v. Dennis Toeppen).

It is also undeniable that the failure of the Respondent to reply to a cease and desist letter may be further evidence of bad faith (see e.g. Coutts & Co. v. Sande Skalnik, Patrick Harding, WIPO Case No. D2015-1590; Citrix Systems, Inc. v. Domains by Proxy, LLC / Sirishareddy Idamakanti - Sirisha Idamaknti, WIPO Case No. D2015-0017; E. & J. Gallo Winery v. Oak Investment Group, WIPO Case No. D2000-1213; Encyclopaedia Britannica, Inc. v. John Zuccarini and The Cupcake Patrol a/ka Country Walk a/k/a Cupcake Party, WIPO Case No. D2000-0330) and, according to the Panel, the above actually applies in this case.

In the absence of a Response and given the reputation of the Complainant and its trademarks supported by the submitted evidence, the Panel infers that the Respondent had the Complainant's trademarks "NOVARTIS" in mind when registering <novartis.live> and <novartis.life>. Consequently, the Panel believes that the same were registered and are (passively) used in bad faith, in order to prevent the Complainant from reflecting the mark in the disputed domain names.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **NOVARTIS.LIVE**: Transferred
2. **NOVARTIS.LIFE**: Transferred

PANELLISTS

Name	**Tommaso La Scala**

DATE OF PANEL DECISION 2019-09-17

Publish the Decision