Decision for dispute CAC-UDRP-102772

Case number	CAC-UDRP-102772
Time of filing	2019-11-15 13:57:54
Domain names	novartiscenter.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	Novartis AG

Complainant representative

Organization	BRANDIT GmbH

Respondent

Organization	Terrific Pharmacy

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any 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 following International registered trademark, among others:

NOVARTIS, word mark, registered on November 29, 2016 under number 1349878 in use classes 9, 10, 41, 42, 44 and 45 and designated in respect of 60 territories including a designation relating to the African Intellectual Property Organization ("OAPI"). Said mark was registered by OAPI under number 96360 on December 22, 2017.

FACTUAL BACKGROUND

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

The Complainant, a global healthcare company based in Switzerland, is the proprietor of the NOVARTIS trademarks together with corresponding domain names including <novartis.com>, created on April 2, 1996 and <novartis.net>, created on April 25, 1998. The Complainant's products are sold in about 155 countries and they reached nearly 1 billion people globally in 2017. The Complainant employs about 126,000 people of 145 nationalities globally.

The Complainant has a strong presence in Cameroon and actively uses its NOVARTIS trademark there. It maintains an office in Douala, Cameroon, where the Respondent is based. The Complainant is a prominent employer in that location and has entered into a Memorandum of Understanding with the Ministry of Public Health of Cameroon to fight chronic diseases through the Complainant's low-cost drugs access program.

The disputed domain name was created on August 24, 2019. It is confusingly similar to the Complainant's distinctive NOVARTIS trademark as this term is identically recognizable therein and is combined with a generic term "center", which is closely related to the Complainant's business activities. The addition of the gTLD ".com" does not add any distinctiveness to the disputed domain name.

The Respondent has no rights or legitimate interests in the disputed domain name. 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.
In the absence of any license or permission from the Complainant to use such a widely-known trademark, no actual or contemplated bona fide or legitimate use of the disputed domain name could be claimed. The Complainant has not found that the Respondent is commonly known by the disputed domain name. When entering the terms "novartis center" in the Google search engine, the returned results all point to the Complainant and its business activities.

The disputed domain name resolved to a pay-per-click website advertising content linked to the Complainant and/or its competitors both when the Complainant issued a cease-and-desist letter to the Respondent on August 27, 2019 and when the Complaint was filed. There is no indication of the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services. On October 4, 2019, the Complainant received a response to its said cease-and-desist letter from an entity named "terrific pharmacy" asking for instructions as to what to do and stating that the writer did not use the disputed domain name. The Complainant searched against this name and the email address used in the reply and noted that the Respondent is very likely a pharmacy named "Terrific Pro Pharmacy" which offers certain pharmaceutical products for sale.

The Respondent's use of the disputed domain name in connection with a business concerned in the distribution of pharmaceutical products would unquestionably mislead Internet users who may believe that the Respondent and its website are authorized or in some way affiliated to the Complainant, which is not the case. There is no indication that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers.

The Respondent registered the disputed domain name in bad faith. The registration of the Complainant's well-known and distinctive NOVARTIS trademark predates the creation of the disputed domain name. It is inconceivable that the Respondent did not have such mark in mind when it registered the disputed domain name. The disputed domain name was registered only for the purpose of misleading Internet users.

The Respondent is using the disputed domain name in bad faith. The use of the disputed domain name in connection with pay-per-click advertising featuring the Complainant and its competitors constitutes bad faith as it seeks to attract, for commercial gain, Internet users to the Respondent's 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. It constitutes use of the disputed domain name in a manner devoid of any bona fide intent.

The Parties engaged in email correspondence in October 2019, in which the Respondent initially asked what it should do and why it should transfer the disputed domain name to the Complainant. However, the Respondent ultimately ceased to reply to further communications from the Complainant, despite receiving reminders.

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

The Panel is satisfied that the disputed domain name contains the Complainant's NOVARTIS trademark in its entirety coupled with the generic word "center". The addition of such word to the Complainant's mark does not avoid a finding of confusing similarity under the Policy. The Complainant's trademark is recognizable in the disputed domain name as the first and most dominant element thereof. The generic Top-Level Domain, in this case ".com", is typically disregarded for the purposes of the comparison exercise.

The Panel finds that the Complainant has made out a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain name. The Complainant asserts that it has never granted the Respondent any right to use its NOVARTIS trademark, that the Respondent is not affiliated to the Complainant in any form, that the Respondent could not claim any actual or contemplated bona fide or legitimate use of the disputed domain name due to the notoriety of the Complainant's mark and that the Respondent does not appear to be commonly known by the disputed domain name. The Respondent's use of the disputed domain name in connection with pay-per-click advertising, which references the Complainant and its competitors, cannot confer any rights or legitimate interests upon it.

The Respondent failed to file a Response in this case and accordingly has provided no submissions or evidence which would serve to rebut the Complainant's prima facie case. Accordingly, the Respondent having failed to rebut the Complainant's prima facie case, and there being no facts or circumstances on the present record indicating that the Respondent may otherwise have rights or legitimate interests in the disputed domain name, the Panel finds that the Respondent has no such rights or legitimate interests.

The Panel considers that the Complainant has established that the disputed domain name has been registered and is being used in bad faith. The disputed domain name contains the Complainant's distinctive NOVARTIS trademark. The record demonstrates that such mark is well-known and that the Complainant has a substantial presence in Cameroon, where the Respondent is located. Furthermore, and although this is not a prerequisite for a finding of registration and use in bad faith, the Panel notes that the Complainant's said NOVARTIS mark was registered with OAPI on December 22, 2017, such that it is in force in Cameroon. Said mark pre-dates the creation of the disputed domain name. In all of these circumstances, the Panel finds that it is inconceivable that the Respondent might have selected the disputed domain name in the absence of knowledge of the Complainant's mark and without intent to target it. The disputed domain name has been used in connection with pay-per-click advertising which references both the Complainant and its competitors. It is well-established in UDRP jurisprudence that such use constitutes use in bad faith.

In failing to file any Response, the Respondent has not availed itself of the opportunity to address the Complainant's contentions or to advance any explanation for the registration and use of the disputed domain name which might have indicated that its actions were in good faith. On the basis of the present record, and in the absence of such a Response, the Panel cannot conceive of any reasonable explanation which might have been tendered by the Respondent regarding 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. **NOVARTISCENTER.COM**: Transferred

PANELLISTS

Name	**Andrew Lothian**

DATE OF PANEL DECISION 2019-12-20

Publish the Decision