Decision for dispute CAC-UDRP-102829

Case number	CAC-UDRP-102829
Time of filing	2019-12-23 09:27:10
Domain names	novartisgroups.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	Novartis AG

Complainant representative

Organization	BRANDIT GmbH

Respondent

Organization	huang jing jing

OTHER LEGAL PROCEEDINGS

The panel is not aware of any other legal proceedings in connection to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of international trademark registration NOVARTIS designating inter alia China registration no: 663765 registered on 26 May 1997 in classes 1, 2, 3, 4, 5, 7, 8, 9. 10,14, 16, 17, 20, 22, 28, 29, 30, 31, 32, 40, 42.

FACTUAL BACKGROUND

The following facts were asserted by Complainant and not contested by Respondent:

The Complainant a global healthcare company based in Switzerland and is the proprietor of the NOVARTIS trademarks. The Complainant's products are sold in about 155 countries, reaching nearly 800 million people globally in 2018. About 125 000 people of 145 nationalities work at Novartis around the world. The Complainant has a strong presence in China where the Respondent is located and has an established Internet presence with its websites at < www.novartis.com> and specifically in China at < www.novartis.com.cn>.

The disputed domain name was registered on October 27, 2019.

Complainant relies on its rights in the NOVARTIS trademark established by ownership of its portfolio of trademark registrations and extensive global use of the mark on its pharmaceutical products.

Complainant submits that the disputed domain name is confusingly similar to its NOVARTIS trademark as it incorporates entirely the Complainant's well-known, distinctive trademark in its entirety in combination with a generic term "groups". The addition of the gTLD ".com" does not add any distinctiveness to the Disputed Domain Name. The Complainant refers to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0"), paragraph 1.11. as well as the International Business Machines Corporation v. Sledge, Inc. / Frank Sledge WIPO Case No. D2014-0581 where the Panel stated the following: "In addition, it is generally accepted that the addition of the top-level suffix in the domain name (e.g., ".com") is to be disregarded under the confusing similarity test".

The Complainant alleges that the Respondent has no rights or legitimate interests in the disputed domain name asserting that the Complainant has never granted the Respondent any right to use the NOVARTIS trademark within the Disputed Domain Name; that the Respondent is not affiliated to the Complainant in any form; that the Complainant has not found that the Respondent is commonly known by the Disputed Domain Name nor has Respondent any legitimate interest over the Disputed Domain Name or the major part of it as shown by the fact that searches using the GOOGLE and BAIDU search engines for the terms "Novartis" and "groups" returned results which all point to the Complainant and its business activities; on 17 December 2019, when this Complaint was being prepared the Dispute Domain Name redirected to active websites displaying gambling information which shows that the disputed domain name, which is confusingly similar to the Complainant's trademark is not being used for a bona fide offering of goods or services.

The Complainant submits that the disputed domain name was registered and is being used in bad faith.

The Complainant submits that the Respondent deliberately chose to use the term "groups" combined with its well-known, distinctive trademark NOVARTIS in order to confuse internet users who search for the Complainant and its associated entities, and to confuse them as to the source or sponsorship, and/or to attract internet traffic to its own gambling site by benefiting from the Complainant's global renown.

The Complainant alleges that the Respondent very likely knows about the Complainant and its trademark; the Complainant's trademark NOVARTIS is a well-known, distinctive trademark worldwide and in China where the Respondent resides; the Respondent has failed in presenting a credible evidence-backed rationale for registering the Disputed Domain Name.

Furthermore the Complainant alleges and has provided evidence that the Disputed Domain Name has been actively used to redirect to a website displaying gambling information. Additionally, the Complainant has tried to reach the Respondent by a cease-and-desist letter sent on 18 November 2019 to the email address provided on the active webpage as the Respondent was using privacy shield to conceal its identity. The cease and desist letter was also sent via the online contact form. Two reminders were sent on 03 December 2019 and 10 December 2019 and no response was received by the Complainant.

PARTIES CONTENTIONS

No administratively compliant response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name <novartisgroups.com> is identical or confusingly similar to the NOVARTIS trademark and 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

This Panel grants the Complainants requests that the language of the proceeding should be English based on the following facts which show that the Respondent obviously understands English so as to avoid any potential unfairness or unwarranted delay in ordering the Complainant to translate the Complaint.

The Disputed Domain Name redirects to a website where it displays English terms on its webpage, e.g. “Macau Online Entertainment”, “Live Casino”, “Computer Game” etc.

The Disputed Domain Name includes the Complainant’s trademark NOVARTIS in its entirety combined with a generic term “groups”, which is in the English language.

The Panel is satisfied that all procedural requirements under the UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

The Complainant has provided uncontested evidence of its rights in the NOVARTIS trademark though its above-mentioned trademark registrations and its extensive global reputation using the mark.

The disputed domain name is confusingly similar to its NOVARTIS trademark because consists of the Complainant’s well-known, distinctive trademark in its entirety in combination with a generic term “groups”. The Complainant’s trademark is the initial, only distinctive and dominant element of the Disputed Domain Name. In the circumstances of this Complaint, the addition of the gTLD “.com” does not add any distinctiveness to the Disputed Domain Name.

The Complainant has made out a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name asserting that the Complainant has never granted the Respondent any right to use the NOVARTIS trademark within the Disputed Domain Name; that the Respondent is not affiliated to the Complainant in any form; that the Complainant has not found that the Respondent is commonly known by the Disputed Domain Name; the Respondent is using the Complainant’s trademark without consent, to attract traffic to a gambling website which is a commercial enterprise which cannot be a bona fide offering of goods or services.

In such circumstances the burden of production shifts to Respondent to prove its rights or legitimate interests. Respondent has failed to respond to the Complaint and has therefore failed to discharge the burden. This Panel must therefore on the evidence find that the Respondent has no rights or legitimate interests in the disputed domain name.

In the absence of any Response or explanation, this Panel accepts the Complainant’s uncontested submissions and evidence and finds that the disputed domain name was registered and is being used in bad faith. On the balance of probabilities, the Respondent deliberately chose register and to use the disputed domain name which consists of the term “groups” combined with Complainant’s well-known, distinctive trademark NOVARTIS in order to confuse internet users and to attract and redirect internet traffic intended for the Complainant to the Respondent’s website by taking unauthorized predatory advantage of the Complainant’s mark and reputation. It is improbable that the registrant of the disputed domain name was not aware of the Complainant and its well-known trademark as the NOVARTIS when the disputed domain name was registered. The Complainant has an Internet presence and reputation worldwide and in China where the Respondent resides.

Furthermore, the evidence shows that the Disputed Domain Name has been actively used to redirect Internet traffic to a website displaying gambling information with no licence or authority from or connection with the Complainant. Additionally, the Complainant has tried to reach the Respondent by a cease-and-desist letter sent on 18 November 2019 to the email address provided on the active webpage as the Respondent was using privacy shield to conceal its identity. The cease and

desist letter was also sent via the online contact form. Two reminders were sent on 03 December 2019 and 10 December 2019 and no response was received by the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **NOVARTISGROUPS.COM**: Transferred

PANELLISTS

Name	**Mr James Jude Bridgeman**

DATE OF PANEL DECISION 2020-02-12

Publish the Decision