Decision for dispute CAC-UDRP-102980

Case number	**CAC-UDRP-102980**
Time of filing	**2020-03-19 10:30:57**
Domain names	**novartisimmunologyprizes.org**

Case administrator

Name	**Šárka Glasslová (Case admin)**

Complainant

Organization	**Novartis AG**

Complainant representative

Organization	**BRANDIT GmbH**

Respondent

Organization	**li ying liu**

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant owns a large portfolio of word and figurative trade marks consisting of the name NOVARTIS in multiple classes and numerous countries around the world, including the Chinese trade mark NOVARTIS, registration number 663765, first registered on 26 May 1997 in international classes 01-05, 07-10, 14, 16, 17, 20, 22, 28-32, 40 and 42. These trade mark registrations predate the registration of the disputed domain name. Furthermore, the Complainant owns multiple domain names consisting of the name NOVARTIS, including <novartis.com>, registered on 02 April 1996, and <novartis.net>, registered on 25 April 1998, which are connected to the Complainant's official global website.

The Panel notes that previous panels have found the Complainant's trade mark NOVARTIS to be well-known worldwide (see WIPO Case No. D2016-1688, Novartis AG v. Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org/Sergei Lir <novartis-bio.com>). The Panel accepts that the Complainant's trade mark NOVARTIS is well-known around the world, including in China, where the Respondent is located.

FACTUAL BACKGROUND

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

The Complainant, Novartis AG, is a global healthcare company and medical drugs manufacturer based in Switzerland that provides solutions to address the needs of patients worldwide. 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 for Novartis around the world.

The Complainant has a strong presence in China, where the Respondent is located. Customers can access a local sales and service locator, and to the official websites of the Complainant, through the following links:

- Global Website for NOVARTIS: https://www.novartis.com
- Local Website for NOVARTIS in China: https://www.novartis.com.cn.

The Respondent registered the disputed domain name <novartisimmunologyprizes.org> on 27 January 2020. As at the date of this decision, the disputed domain name resolves to an error page with the message "No input file specified" and is inactive. The Complainant submitted evidence that the disputed domain name previously resolved to an active website containing gambling information and links to other gambling sites.

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 trade mark 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 notes that the CAC was not able to ensure that written notice of the Complaint was delivered to the Respondent by postal service because the destination country of the Respondent did not provide delivery services at the relevant time under the constraints imposed by the COVID-19 pandemic. Furthermore, the notices sent by the CAC to the e-mail addresses goucai003@aliyun.com and postmaster@novartisimmunologyprizes.org went undelivered as these e-mail addresses had permanent fatal errors. The CAC could find no further e-mail address on the website accessed through the disputed domain name.

Paragraph 2(a) of the Rules for Uniform Domain Name Dispute Resolution Policy ("UDRP Rules") requires the Provider "to employ reasonably available means calculated to achieve actual notice to Respondent". The Panel believes that, if the CAC sent the Complaint by all means anticipated by paragraph 2(a)(ii) of the UDRP Rules, including electronically to the e-mail address identified by the Respondent when registering the disputed domain name, then the CAC complied with the requirements of the UDRP Rules as to notice. The UDRP Rules do not require that these notices actually have to be delivered to the Respondent. According to the case administrator, ICANN expressly confirmed that UDRP proceedings can continue as they normally would even if a postal mail notice may not have been delivered due to unforeseen circumstances.

The Panel is therefore 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

With regard to the first UDRP element, the Panel finds that the disputed domain name <novartisimmunologyprizes.org> is confusingly similar to the Complainant's trade mark NOVARTIS. Indeed, the disputed domain name incorporates the Complainant's well-known and distinctive trade mark in its entirety. The addition of the generic and descriptive terms "Immunology" and "prizes" is not sufficient to alter the overall impression of the designation as being connected to the Complainant's trade marks. The Panel notes in this connection that the term "immunology" is closely related to the Complainant's business activities. The addition of these generic and descriptive terms does not therefore prevent the likelihood of confusion between the disputed domain name and the Complainant, its trade mark, and its associated domain names. The Panel follows in this respect the view established by numerous other decisions that a domain name that wholly incorporates a Complainant's trade mark may be sufficient to establish confusing similarity for the purposes of the UDRP (see, for example, WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasiliy <porsche-autopartes.com>).

With regard to the second UDRP element, as at the time of this decision, the disputed domain name is not being used for any active website but resolves to an error page. A lack of content at the disputed domain has in itself been regarded by other panels as supporting a finding that the respondent lacked a bona fide offering of goods or services and did not make legitimate non-commercial or fair use of the disputed domain name (see, for example, Forum Case No. FA 1773444, Ashley Furniture Industries, Inc v. Joannet Macket/JM Consultants). The Complainant submitted evidence to show that the disputed domain name previously resolved to an active website displaying gambling information by linking to the domain <wsgc3.com>. Such use was not only unrelated to the Complainant or to immunology but amounted to an attempt misleadingly to divert consumers to gambling pages for commercial gain. Any such use could also not amount to non-commercial or fair use.

The Panel further finds that the Respondent is not affiliated with or related to the Complainant in any way and is neither licensed nor otherwise authorised by the Complainant to make any use of the Complainant's trade mark or to apply for or use the disputed domain name. The Whois information also does not suggest that the Respondent is commonly known by the disputed domain name <novartisimmunologyprizes.org>. Absent any response from the Respondent, or any other information indicating the contrary, the Panel therefore concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

With regard to the third UDRP element, the Panel accepts that there are numerous factors pointing towards the disputed domain name having been registered and used in bad faith. The Panel had already accepted above that the Complainant's trade mark is well-known worldwide, including in China, and distinctive. Furthermore, the Complainant adduces evidence to show that a Google and Baidu search of the name NOVARTIS and of the term "immunology" returned results all pointing to the Complainant and its business activities. Given the distinctiveness and reputation of the Claimant's trade mark, it is reasonable to infer that the Respondent registered and used the disputed domain name in full knowledge of the Complainant's trade mark.

The Panel accepts that the Respondent previously used the disputed domain name to attract and divert users to the gambling content on its website for commercial gain by creating a likelihood of confusion with the Complainant's trade mark as to the source, sponsorship, affiliation, or endorsement of its website and services, and therefore acted in bad faith.

At this point, the disputed domain name resolves to an error page and is inactive but, first, it is inconceivable that the Respondent could make any credible active use of the disputed domain name without taking unfair advantage of the Complainant's trade mark and creating a false impression of association with the Complainant; and, secondly, incorporation of a famous mark into a domain name, coupled with an inactive website, may itself be evidence of bad faith registration and use (see, for example, WIPO Case No. D2000-3, Telstra Corporation Limited v. Nuclear Marshmallows, and WIPO Case No. D2000-0400, CBS Broadcasting v. Dennis Toeppen). Furthermore, other panels have consistently found, and this Panel is inclined to follow the view, that registration of a domain name that is identical with or confusingly similar to a famous or widely-known trade mark (particularly domain names incorporating a complainant's trade mark plus a descriptive term that corresponds to that complainant's area of activity) by an unaffiliated entity can in itself create a presumption of bad faith.

Absent any response from the Respondent, or any other information indicating the contrary, the Panel therefore also accepts that the Respondent has registered and is using the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **NOVARTISIMMUNOLOGYPRIZES.ORG**: Transferred

PANELLISTS

Name	**Gregor Kleinknecht**

DATE OF PANEL DECISION 2020-05-06

Publish the Decision