# Decision for dispute CAC-UDRP-103015

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| Case number | CAC-UDRP-103015 |
| Time of filing | 2020-04-15 10:28:05 |
| Domain names | novartistharma.com |

## Case administrator

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| Name | Šárka Glasslová (Case admin) |

## Complainant

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| Organization | Novartis AG |

## Complainant representative

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| Organization | BRANDIT GmbH |

## Respondent

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| Organization | Fundacion Comercio Electronico |

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the registered owner of many trademarks NOVARTIS in several classes and in numerous countries all over the world including in Panama, where the Respondent is located. Reference is made to national trademarks in Panama no. 80548 (Registration date: 25 April 1996, duly renewed) and no. 253960 (Registration date: 25 October 2016).

These trademark registrations predate the registration of the disputed domain name.

FACTUAL BACKGROUND

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

1. The Complainant is a global healthcare company based in Switzerland. Its products are sold in about 155 countries including Panama, where it has an active presence. About 125 000 people of 145 nationalities work with the Complainant.

2. It results from the registrar verification that the date of registration of the disputed domain name by the current registrant was February 7, 2020.

3. According to the undisputed evidence provided by the Complainant, the disputed domain name is offered for sale over the SEDO platform for a minimum price of 899 US$.

4. The disputed domain name redirects to various commercial websites.

5. The Complainant has tried to reach the Respondent by a cease-and-desist letter sent on 18 February 2020, without, however, receiving any reply from the Respondent.

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

1.
The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark, paragraph 4(a)(i) of the Policy

The Complainant's registered trademark NOVARTIS is identically included in the disputed domain name. It is the view of this Panel that the combination of the trademark NOVARTIS with the term "tharma" does not avoid the confusing similarity between the disputed domain name and the Complainant's trademark. The term "tharma" is an evident misspelling of the generic term "pharma" which describes the business, in which the Complainant is active with its trademark NOVARTIS.

It is acknowledged that where a trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) do not prevent a finding of confusing similarity under the first element (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, at section 1.8).

2.
In the absence of any Response, or any other information from the Respondent indicating the contrary, the Panel further holds that the Complainant successfully presented its prima facie case and that the Respondent has no rights or legitimate interests in respect of the disputed domain name pursuant to paragraph 4(a)(ii) of the Policy.

In particular, the Panel notes that there is no evidence in the record showing could lead the Panel to conclude that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy. In addition, it results from the Complainant's uncontested evidence that the Respondent has no connection or affiliation with

the Complainant who has not granted the Respondent any license or consent, express or implied, to use the Complainant's trademark in domain names or in any other manner. Furthermore, use of the disputed domain name for webpages with commercial content excludes any noncommercial use in the sense of paragraph 4(c)(iii) of the Policy from the outset. Finally, said use for commercial web content does - in the Panel's view - not represent a bona fide offering (pursuant to paragraph 4(c)(i) of the Policy). This use rather capitalizes on the reputation and goodwill of the complainant's NOVARTIS marks.

3.
Finally, the Panel finds that the disputed domain name has been registered and is being used in bad faith according to paragraph 4(a)(iii) of the Policy. It is indeed satisfied that the Respondent has registered the disputed domain name primarily for the purpose of selling it either to the Complainant or to third persons for valuable consideration in excess of the documented out-of-pocket costs directly related to the disputed domain name.

It results from the Complainant's undisputed and documented allegations the Respondent is offering the disputed domain name for sale for a minimum amount of USD 899. This Panel finds that such requested price is clearly in excess of any out-of-pocket costs directly related to the disputed domain name (see Vestopazzo s.r.l. v. This domain name is for sale, Shanshan Huang, WIPO Case No. D2019-3176; Linatex Limited v. Yunkook Jung, WIPO Case No. D2019-1784; T. Rowe Price Group, Inc. v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico, WIPO Case No. D2019-1955).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **NOVARTISTHARMA.COM**: Transferred

## PANELLISTS

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| Name | **Dr. Tobias Malte Müller** |

DATE OF PANEL DECISION 2020-05-27

Publish the Decision