Decision for dispute CAC-UDRP-103017

Case number	CAC-UDRP-103017
Time of filing	2020-04-21 13:53:50
Domain names	novartisparma.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	Novartis AG

Complainant representative

Organization	BRANDIT GmbH

Respondent

Name	Guo Fang Huang

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant submitted evidence that it is the registered owner of the following trademark(s) (hereafter referred to as "the "NOVARTIS" trademark(s)":

- Chinese trademark registration n. 663765 "NOVARTIS", registered on 1 July 1996, valid for various classes including class 5 ("pharmaceutical substances"; etc.).

The Complainant also submitted an extract of the website of the WIPO Global Brand Database, showing an overview of other national and international trademarks that correspond with a search for trademarks containing the name "NOVARTIS". The corresponding registered trademarks are valid for various classes. The overview shows that most of the trademarks resulting from this search are owned by the Complainant.

FACTUAL BACKGROUND

The Complainant ("Novartis AG") is a healthcare company based in Switzerland that mainly focuses on the manufacture of medicines and other pharmaceutical products. The Complainant manufactures well-known drugs such as clozapine (Clozaril), diclofenac (Voltaren), carbamazepine (Tegretol), and valsartan (Diovan). The Complainant claims that its

pharmaceutical products are sold in 155 countries, reaching nearly 800 million people globally in 2018. According to the Complainant, about 125.000 people of 145 nationalities work at Novartis around the world.

The Complainant asserts that it has a strong presence in China, where the Respondent is located. The Complainant shows that it uses the websites www.novartis.com as a global website and www.novartis.com.cn as a local Chinese website. The Complainant submitted evidence that it is the registered owner of the Chinese trademark mentioned above under "Identification of rights".

The Complainant proves that it is the owner of various other domain names with different domain extensions consisting of the term "NOVARTIS", including <novartis.com>, <novartis.com.cn>, <novartis.net>, and <novartispharma.com>. The domain <novartispharma.com> redirects to the webpage www.novartis.com/stories.

The Complainant further asserts that, due to extensive use, advertising and revenue associated with its “NOVARTIS” trademark(s) worldwide, the Complainant is well-known around the world, including in China, where the Respondent is located. The Complainant also asserts that it has previously successfully challenged several NOVARTIS domain names through UDRP processes, and that, in one particular UDRP decision, the panel described the trademark NOVARTIS as “well-known worldwide”.

The disputed domain name was registered on 10 February 2020.

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. Language of the proceedings

The domain name Registration Agreement being in Chinese, pursuant to paragraph 11 of the UDRP Rules, the language of the proceedings should be Chinese, unless otherwise agreed upon by the Parties or otherwise specified in the Registration Agreement.

The Panel notes that the Complainant filed a request that the language of the proceeding should be changed to English, based on the following arguments:

a) The disputed domain name resolves to a pay-per-click website which displays information in English, e.g. “Pharmacy Discount Card”, “Prescription Discount”, and “Medicare Plans”;

b) When searched by the Respondent’s e-mail in the reverse WHOIS Search, the Complainant has found that the Respondent had registered a number of domain names incorporating English terms, e.g. <angelandentrepreneur.com>, <wwwballadhealth.org>, <wwwcashstar.com>, <wwwjoinroot.com>; and

c) The disputed domain name is very likely a typosquatting of another domain name <novartispharma.com> owned by the Complainant, which redirects to the Complainant’s official website www.novartis.com with display language in English if browsed from a mobile phone from China.

The Panel accepts the language of proceeding request based on a combination of the following factors:

a) The disputed domain name resolves to a website with content in the English language only (no content in Chinese or other languages). This website seems to target an English language audience (e.g.: pay-per-click links in the English language only; mentioning of “copyright 2020. All rights reserved.” in English only; mentioning of "Privacy Policy" in English only). It can thus be assumed that the Respondent conducts its business in the English language or at least targets an English language public

b) The Respondent registered various other domain names incorporating English-language terms.

Based on these factors, the Panel determines that the Respondent is deemed to have sufficient knowledge of the English language. The Panel also took into consideration that the Respondent has been given a fair chance to object to the use of the English language through the various notifications sent to him, but that the Respondent has not filed any objection against the change of language request.

In conclusion, in conformity with the Panel's discretionary power under paragraph 11 (a) of the UDRP Rules, and for the combination of reasons mentioned above, the Panel accepts the language of proceeding request submitted by the Complainant and determines that the proceeding can be conducted in English rather than Chinese.

2. Substantive elements

2.1. Identical or confusingly similar

The disputed domain name <NOVARTISPARMA.COM> consists of the Complainant’s registered “NOVARTIS” trademark(s), with the addition of the term “PARMA”. The Panel takes into account that this last term strongly resembles the term “PHARMA”, which refers to the Complainant’s core business. The Panel considers that the term “PARMA” is a misspelling of the term “PHARMA” and should be considered as descriptive of the goods and/or services offered by the Complainant and covered by its “NOVARTIS” trademark(s). There is also the addition of the '.com' suffix, which may be disregarded when it comes to considering whether a domain name is confusingly similar to a trademark in which the Complainant has rights.

The Respondent did not file an administratively compliant (or any) response.

The Panel concludes that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

2.2. Rights or legitimate interests

As regards paragraph 4(a)(ii) of the Policy, while the overall burden of proof rests with the Complainant, it is commonly accepted that this should not result in an often-impossible task of proving a negative. Therefore, numerous previous panels

have found that the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of production shifts to a respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, the complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy. If the respondent does come forward with some allegations or evidence of relevant rights or legitimate interests, the panel then has to weigh all the evidence, with the burden of proof always remaining on the complainant.

The Panel notes that the Complainant has never granted the Respondent any right to use the “NOVARTIS” trademark(s) within the disputed domain name. The Complainant also confirms that the Respondent is not affiliated to the Complainant in any way. The Complainant further argues that the Respondent is not commonly known by the disputed domain name or its parts (“NOVARTISPARMA”), and that, when searching for the terms “NOVARTIS” and “PARMA” in the search engines of Google and Baidu, all search results lead to the Complainant (and not to the Respondent). Based on this, the Complainant asserts that the Respondent could have easily performed a similar search before registering the disputed domain name and would have quickly learnt that the “NOVARTIS” trademarks are owned by the Complainant and that the Complainant has been using its trademarks in China. Nonetheless, the Respondent still chose to register the disputed domain name.

The Complainant shows that the disputed domain name currently redirects to a pay-per-click website that advertises pharma-related products and services.

The Complainant also asserts that there is no evidence showing that the Respondent is using the disputed domain name in connection with a bona fide offering of goods or services, nor that the Respondent is making a legitimate, non-commercial or fair use of the disputed domain name.

Finally, the Complainant claims that there is a pattern of conduct in the sense that the Respondent registered a number of other domain names - such as <balladhealt.org>, <balladhelth.org>, <balldhealth.org>, and <balladhealth.org> - which are likely typosquattings of the website www.balladhealth.org.

The Respondent did not file an administratively compliant (or any) response. In such circumstances, the Panel finds from the facts put forward that:

The Respondent does not appear to have any rights or legitimate interests associated with the “NOVARTIS” trademark(s), nor with variations thereof such as “NOVARTISPARMA”.

There is no evidence that the Respondent is commonly known by the “NOVARTIS” trademark(s), or with variations such as “NOVARTISPARMA” or “NOVARTISPHARMA”. The Respondent does not seem to have any consent to use these trademarks or variations such as “NOVARTISPARMA” or “NOVARTISPHARMA”. The disputed domain name does not correspond to the name of the Respondent.

There is no evidence to show that the Respondent may have used the disputed domain name for any bona fide offering of goods or services of its own. Also, there is no evidence to show any demonstrable preparations to use the domain name or a name corresponding to the disputed domain name in connection with such bona fide offering of goods or services.

There is no evidence to show that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademarks at issue.

On the balance of probabilities, and in the absence of any evidence to the contrary or any administratively compliant response being put forward by the Respondent, the Panel finds that the Respondent does not have any rights or legitimate interests in the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

2.3. Bad faith registration and use

The Complainant claims that the disputed domain name was registered in bad faith. The Complainant asserts that the registration of its “NOVARTIS” trademark(s) predates the registration of the disputed domain name, that its “NOVARTIS” trademark(s) are distinctive and well-known globally including in China, and that the Respondent has never been authorised by the Complainant to register the disputed domain name. The Complainant asserts that the fact that the Respondent registered a domain name that is confusingly similar to the distinctive and well-known “NOVARTIS” trademark(s) of the Complainant is an indication that the Respondent had knowledge of its registered trademark(s).

The Complainant also claims that the disputed domain name was used in bad faith.

Firstly, the Complainant claims that the disputed domain name redirects to a pay-per-click website that advertises pharmaceutical products and services. In other words, the Complainant asserts that the disputed domain name is being used to illegally attract visitors for commercial gain.

Secondly, the Complainant asserts that the Respondent has engaged in a pattern of typosquatting conduct, which is a clear demonstration of bad faith registration and use of the disputed domain name. The Complainant seems to refer to its earlier argument that the Respondent has registered a number of other domain names resembling the domain name <balladhealth.com>, where it has either removed or replaced one letter from said domain name, or has added the prefix “www” to it. The Complainant asserts that is reasonable to believe that the Respondent has engaged in similar activities in the case at hand, by removing the letter “h” from the Complainant’s registered domain name <novartispharma.com>.

Thirdly, the Complainant asserts that the Complainant has contacted the Respondent with a cease-and-desist letter sent on 18 February 2020, asking for the voluntary transfer of the disputed domain name, followed by two reminders. However, the Respondent did not reply to this request.

Lastly, the Complainant contends that the Respondent has not submitted accurate contact information at the time of registering the disputed domain name, which further demonstrates its registration and use of the disputed domain name in bad faith.

The Panel finds that, on the balance of probabilities, it may be expected that the Respondent had knowledge of the existence of the Complainant and its activities, and of the Complainant's “NOVARTIS” trademark(s) and the scope of these trademark(s). The Panel points to the fact that the Complainant has trademark rights to the term “NOVARTIS” for pharmaceutical products and services in the home country of the Respondent (i.e. China) and in various other countries around the globe. The terms selected by the Respondent (“NOVARTIS” and “PARMA”) seem only selected for their similarity to the Complainant’s registered “NOVARTIS” trademark(s) on the one hand, and to the Complainant’s registered domain name <novartispharma.com> and pharma-related activities on the other hand (which are precisely covered by the “NOVARTIS” trademarks). Moreover, the registration of the Complainant’s Chinese "NOVARTIS" trademark predates the registration of the disputed domain name. The disputed domain name consists of the Complainant’s registered “NOVARTIS” trademark(s), with the addition of the term “PARMA”. The term “PARMA” strongly resembles the term “PHARMA”, which refers to the Complainant’s core business. The Panel notes that the fact that the disputed domain name consists of the Complainant’s “NOVARTIS” trademark with the addition of a typo in the word “PHARMA” (a term which is in itself descriptive of the Complainant’s core activities) makes it even more unlikely that the Respondent would have chosen the term “NOVARTISPARMA” independently from and without prior knowledge of the Complainant. This is confirmed by the fact that the disputed domain name leads to a website that advertises pharma-related products and services, such as “Pharmacy Discount Card”, “Medicare Plans”, and “over-the-counter (or ‘OTC’) products”, via pay-per-click links.

In light of this, it seems highly unlikely that the Respondent would not have been aware of the unlawful character of the disputed domain name at the time of its registration and use.

In the absence of any evidence to the contrary (or any administratively compliant response) being put forward by the Respondent, the Panel believes from the facts in this case that the Respondent had the "NOVARTIS" trademark(s) of the Complainant in mind when registering and subsequently using the disputed domain name.

For all of the reasons set out above, the Panel determines that the disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **NOVARTISPARMA.COM**: Transferred

PANELLISTS

Name	**Bart Van Besien**

DATE OF PANEL DECISION 2020-07-20

Publish the Decision