Decision for dispute CAC-UDRP-103197

Case number	CAC-UDRP-103197
Time of filing	2020-07-28 09:54:13
Domain names	novartisoharma.com , novartisphrma.com , novartispharna.com , novrtispharma.com , novartspharma.com

Case administrator

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

Complainant

Organization	Novartis AG

Complainant representative

Organization	BRANDIT GmbH

Respondent

Name	Meng Dan Qian

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 names.

IDENTIFICATION OF RIGHTS

The Complainant is owner of, inter alia, International trademark NOVARTIS, with registration number 666218 of October 31, 1996 for services in classes 41 and 42 for different designated states, including the People's Republic of China and International trademark NOVARTIS, with registration number 663765 of July 1, 1996 for goods and services in classes 01; 02; 03; 04; 05; 07; 08; 09; 10; 14; 16; 17; 20; 22; 28; 29; 30; 31; 32; 40 and 42 for different designates states, including the People's Republic of China. The trademarks shall be referred to as the "NOVARTIS trademarks."

FACTUAL BACKGROUND

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

The Novartis Group is one of the biggest global pharmaceutical and healthcare groups. It provides solutions to address the evolving needs of patients worldwide by developing and delivering innovative medical treatments and drugs. The Complainant, created in 1996 through a merger of two other companies Ciba-Geigy and Sandoz, is the holding company of the Novartis Group.

The Complainant's products are manufactured and sold in many regions worldwide including China. The Complainant has a strong presence in China where the Respondent is located.

The disputed domain names were all registered on May 21, 2020 and incorporate the Complainant's well-known, distinctive NOVARTIS trademarks in their entirety, with or without typo, combined with a medical term "pharma", with or without typo, which is closely related to the Complainant and its business activities. The addition of the gTLD ".com" does not add any distinctiveness to the disputed domain names.

The Complainant has never granted the Respondent any right to use the NOVARTIS trademarks within the disputed domain names, nor is the Respondent affiliated to the Complainant in any form. The Complainant has not found that the Respondent is commonly known by the disputed domain names or that it has legitimate interest over the disputed domain names or the major part of them. When entering the terms "NOVARTIS" and "pharma" in the Google and Baidu (the leading search engine in China) search engine, the returned results all pointed to the Complainant and its business activities and not to the Respondent. The Respondent could have easily performed an internet search before registering the disputed domain names 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 and many other countries of the world. It would also have learnt immediately that the Complainant actually operates under the name "Novartis Pharma" as shown in the search results. However, the Respondent still chose to register the disputed domain names as such.

Additionally, according to the Registrar Verification, the Respondent's city, province, phone number and e-mail addresses are exactly the same as the respondent in a previous UDRP complaint for the domain name <novartisparma.com>, which is again a typo of "Novartis pharma". It is very likely that the Respondent has used false WHOIS information to register the disputed domain names, or the registrants of these domain names belong to the same cyber-squatting group, neither of which can be considered as a bona fide offering of goods or services. In fact, considering the overall composition of the five disputed domain names, it is blatant that the Respondent has been targeting the Complainant as the disputed domain names are composed by typo of "Novartis" and "pharma", either by replacing a letter with another letter which is close to it in the keyboard, e.g. in <novartisoharma.com>, the letter "p" is replaced by the letter "o", which is right next to it in the keyboard; or by removing one letter from the correctly spelled term, e.g. in <novartisphrma.com>, the first letter "a" in "pharma" is removed. The Respondent is clearly attempting to create a false and misleading impression among Internet users that the disputed domain names are authorized or somehow related to the Complainant, especially while the Complainant itself owns the domain name <novartispharma.com>. By the time the Complainant prepared this Complaint, the disputed domain names resolved to pay-per-click websites except for the disputed domain name <novartisoharma.com> which resolved to a parked page. Pursuant to WIPO Overview 3.0, para. 2.9, the Respondent has not been using the disputed domain names for any bona fide offering of goods or services.

It should further be highlighted that most of Complainant's trademark registrations predate the registration of the disputed domain names and the Respondent has never been authorized by the Complainant to register the disputed domain names. Considering the renown of the Complainant and its trademark NOVARTIS, and the overall composition of the disputed domain names, i.e. using the term "Novartis", with or without typo, in connection with the term "pharma", with or without typo, which is closely related to the Complainant and its business activities, it follows that incorporating the well-known NOVARTIS trademarks in the disputed domain names is a deliberate and calculated attempt to improperly benefit from the Complainant's rights and reputation. Considering the fact that:

• The Respondent very likely knew about the Complainant and its trademark when it registered the disputed domain names;

• The Complainant's NOVARTIS trademarks are distinctive, well-known trademarks worldwide, including China where the Respondent resides;

• The Respondent's registration of the disputed domain names follows a pattern of abusive registrations;

• The Respondent has failed in presenting a credible evidence-backed rationale for registering the disputed domain names,

the disputed domain names shall be deemed as registered in bad faith.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names (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 names have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

1. The Language of proceedings

Article 11(a) of the URDP provides that "[u]nless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding". The language of the Registration Agreement is Chinese. The Complainant requested for English to be the language of the proceedings for the following reasons. The reverse WHOIS Search showed that the Respondent had registered a number of domain names incorporating English terms, which indicates that the Respondent clearly understands English well. The disputed domain names are composed of a typo of either the trademark NOVARTIS or of the English term "pharma", and the choice of registering and using a domain name with an English term ("pharma") shows that the Respondent's intention is to target Internet users who understand English, and the disputed domain names resolve to a websites which display terms in English, such as "Pharmacy Discount Card", "Prescription Discount", etc., which demonstrates that the Respondent clearly understands English. And finally, if the Complainant had to translate the Complaint's subsequent communications in Chinese, such translation would entail significant additional costs for the Complainant and delay in the proceedings.

In order for the Panel to grant the request to change the language of the proceedings into English the Complainant should have shown that the Respondent sufficiently understands English to appreciate the Complaint and, if the Respondent so wishes, file a response. The mere fact that the Complainant does not speak the language of the Registration Agreement is not sufficient. Other factors to be considered are the expenses to be incurred in case the language of proceedings is Chinese, and possibility of delay in the proceeding in the event translations are required (e.g., Deutsche Messe AG v. Kim Hyungho, WIPO Case No. D2003-0679).

In the present case, there is no direct evidence that the Respondent understands English, or as the case may be, Chinese. The Complainant did, however, put forward that the Respondent must understand at least some English as it was used as part of the disputed domain names and corresponding website. Furthermore, if the Complainant were required to translate the Complaint in Chinese, it would be unreasonably burdensome for the Complainant, both money and time wise, whereas this being a case of clear cybersquatting the Panel considers it very unlikely that the Respondent would file a Response if the Complaint was filed in Chinese.

Given the circumstances mentioned above the Complainant would be unfairly disadvantaged by being forced to translate the Complaint in Chinese. The Panel decides that the language of the proceedings shall be English.

2. 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. All disputed domain names exist of the NOVARTIS trademark and the generic word "pharma", each of them having a slight typo to either "NOVARTIS or "pharma." Neither the addition of the term "pharma" or the typographical errors in the disputed domain names take away the strong similarity between the disputed domain names and the NOVARTIS trademarks. Consequently, the Panel finds that the disputed domain names are confusingly similar to the NOVARTIS trademarks.

2. The Panel finds that the Complainant successfully submitted prima facie evidence that the Respondent has made no use of, or demonstrable preparations to use, neither of the disputed domain names in connection with a bona fide offering of goods or services, nor is making a legitimate non-commercial or fair use of the disputed domain names, nor is commonly known under the disputed domain names. This prima facie evidence was not challenged by the Respondent.

3. In the absence of a Response, the Panel infers that the Respondent must have had the NOVARTIS trademark in mind when he registered the disputed domain names, which were therefore registered and are being (partly passively) used in bad faith, in order to take advantage of a misspelling of the NOVARTIS trademark or the term "pharma", which constitutes a clear act of typosquatting.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **NOVARTISOHARMA.COM** : Transferred
2. **NOVARTISPHRMA.COM** : Transferred
3. **NOVARTISPHARNA.COM** : Transferred
4. **NOVRTISPHARMA.COM** : Transferred
5. **NOVARTSPHARMA.COM**: Transferred

PANELLISTS

Name	**Alfred Meijboom**

DATE OF PANEL DECISION 2020-08-28

Publish the Decision