Decision for dispute CAC-UDRP-103191

Case number	CAC-UDRP-103191
Time of filing	2020-07-23 08:58:26
Domain names	novartisglobal.net

Case administrator

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

Complainant

Organization	Novartis AG

Complainant representative

Organization	BRANDIT GmbH

Respondent

Name	Ambrose Quin

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the holder of trademark rights, including for the following marks:

- NOVARTIS, U.S. trademark registration No. 5420583 registered on March 13, 2018 in classes 9, 10, 41, 42, 44 and 45; and

- NOVARTIS, U.S. trademark registration No. 2997235 registered on September 20, 2005 in class 5, with first use in commerce in 1997.

FACTUAL BACKGROUND

The Complainant, Novartis AG, is the holding company of the Novartis Group, active in the pharmaceutical and healthcare sector.

The Complainant's products are manufactured and sold in many regions worldwide. The Complainant has a strong presence in the United States of America ('USA'), where the Respondent seems to be located. In 2019, 34% of Novartis Group's total net sales were constituted in the USA.

The Complainant is the owner of the trademark NOVARTIS registered as both a word and device mark in several classes worldwide, including in the USA. The vast majority of the Complainant's trademark registrations significantly predates the registration of the disputed domain name.

The disputed domain name has been registered on May 16, 2020. According to screen prints provided by the Complainant, the disputed domain name has been used to resolve to a website using the Complainant's NOVARTIS trademark and logo and applying an overall look-and-feel confusingly similar to the Complainant's official website.

On June 15, 2020, the Complainant sent a cease and desist notice to the Respondent but received no response.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant considers the disputed domain name to be confusingly similar to trademarks in which it has rights. The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name. According to the Complainant, the Respondent does not use the disputed domain name in connection with any legitimate use. Also, according to the Complainant, the Respondent has not been authorized to register or use the disputed domain name. Finally, the Complainant considers that the disputed domain name was registered and is being used in bad faith. The Complainant contends that the Respondent knew of the existence of the Complainant's trademarks. The Complainant further contends that the incorporation of the Complainant's well-known trademark in the disputed domain name by the Respondent, coupled with a website reproducing the Complainant's trademark and website layout, evidences bad faith registration and use. This is reinforced by the use of a privacy service and the fact that the Respondent has very likely provided false contact information.

RESPONDENT:

The Respondent did not reply to the Complainant's contentions.

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

Paragraph 15 of the Rules provides that the panel is to decide the complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

The onus is on the complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the complainant must show that all three elements set out in Paragraph 4 (a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are civil, the standard of proof is the balance of probabilities.

Thus, for the complainant to succeed, it must prove, within the meaning of Paragraph 4(a) of the Policy and on the balance of probabilities, that:

1. The domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;

2. The respondent has no rights or legitimate interests in respect of the domain name; and

3. The domain name has been registered and is being used in bad faith.

The Panel has therefore dealt with each of these requirements in turn.

1. Identity or confusing similarity

The Complainant must first establish that there is a trademark or service mark in which it has rights. Since the Complainant is the holder of the registered NOVARTIS marks, which are used in connection with its pharmaceutical and healthcare business, it is established that there are trademarks in which the Complainant has rights.

The disputed domain name <novartisglobal.net> incorporates the Complainant's NOVARTIS trademark in its entirety, merely adding the descriptive term "global". In these circumstances, the Panel finds that the confusing similarity is obvious.

It is well established that the Top Level Domains ("TLDs") such as ".net" may be disregarded when considering whether the disputed domain name is confusingly similar to the trademark in which the Complainant has rights (see section 1.11 WIPO Overview 3.0).

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks. Accordingly, the Complainant has made out the first of the three elements that it must establish.

2. No rights or legitimate interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

It is established case law that it is sufficient for the Complainant to make a prima facie showing that the Respondent has no right or legitimate interest in the disputed domain name in order to shift the burden of proof to the Respondent (see section 2.1 WIPO Overview 3.0 and Champion Innovations, Ltd. V. Udo Dussling (45FHH), WIPO case No. D2005-1094; Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO case No. D2003-0455; Belupo d.d. v. WACHEM d.o.o., WIPO case No. 2004-0110).

The Panel notes that the Respondent has not been commonly known by the disputed domain name and that the Respondent has not acquired trademark or service mark rights. According to the WhoIs records connected to the disputed domain name, the Respondent is "Ambrose Quin". The Respondent's use and registration of the disputed domain name was not authorized

by the Complainant. There are no indications that a connection between the Complainant and the Respondent existed.

Where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner (see section 2.5.1 of the WIPO Overview 3.0). The disputed domain name incorporates the Complainant's NOVARTIS trademark and merely adds the word "global", which is descriptive and could be considered to refer to the global nature of the Complainant's business. Therefore, the Panel finds that the disputed domain name carries a high risk of implied affiliation with the Complainant and cannot constitute fair use.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, such as the content of the website linked to the disputed domain name and the absence of a response, support a fair use or not (see sections 2.5.2 and 2.5.3 of the WIPO Overview 3.0).

According to screen prints provided by the Complainant, the disputed domain name has been used to resolve to a website using the Complainant's NOVARTIS trademark and logo and applying an overall look-and-feel confusingly similar to the Complainant's official website. The website linked to the disputed domain name prominently mentions the sentence "we are reimagining medicine" which appears on the home page of the Complainant's official website and includes a "Novartis COVID-19 Information Center" including identical text.

The website linked to the disputed domain name also includes several invitations to provide personal information such as name, e-mail and phone number. The Panel finds it is very likely that Internet users would provide such information in the belief that such website is associated with the Complainant.

UDRP panels have categorically held that the use of a domain name for illegal activity (e.g., phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on the Respondent (see section 2.13 WIPO Overview 3.0).

Based on the available record, the Panel finds that the Complainant has established a prima facie case, which was not refuted, and that the Respondent lacks rights or legitimate interests in the disputed domain name. Therefore, the Complainant has satisfied the second requirement that the Respondent has no rights or legitimate interests in the disputed domain name, under paragraph 4(a)(ii) of the Policy.

3. Bad faith

Complainant must prove on the balance of probabilities that the disputed domain name was registered in bad faith and that it is being used in bad faith (see section 4.2 WIPO Overview 3.0 and e.g. Telstra Corporation Limited v. Nuclear Marshmallow, WIPO Case No. D2000-0003; Control Techniques Limited v. Lektronix Ltd, WIPO Case No. D2006-1052).

According to the Panel, the respondent's awareness of the complainant and/or the complainant's trademark rights at the time of registration can evidence bad faith (see Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz, WIPO Case No. D2011-2209; Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite, WIPO Case No. D2001-1070).

In the instant case, it is inconceivable that the Respondent was not aware of the Complainant's rights in the NOVARTIS trademark at the moment it registered the disputed domain name. The Complainant's NOVARTIS trademark is distinctive and well-known, as confirmed by previous UDRP panels (see Novartis AG v. Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org, / Sergei Lir, WIPO Case No. D2016-1688). Moreover, the website linked to the disputed domain name has been obviously based on the Complainant's official website, confirming the Respondent's awareness of the Complainant.

UDRP panels have found the following types of evidence to support a finding that a respondent has registered a domain

name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark:

- seeking to cause confusion for the respondent's commercial benefit, even if unsuccessful;

- the lack of a respondent's own rights to or legitimate interests in a domain name;

- absence of any conceivable good faith use (see section 3.1.4 WIPO Overview 3.0).

In the present case, the Panel finds that the website linked to the disputed domain name is more than likely to cause confusion with the Complainant's NOVARTIS mark. The uncontested lack of the Respondent's own rights to or legitimate interests in the disputed domain name has already been mentioned above. Finally, given the distinctive and well-known character of the Complainant's mark, the Panel finds it difficult to conceive any plausible good faith use of the disputed domain name by the Respondent in the future.

The Complainant indicates that the Respondent did not respond to its cease and desist notice, used a privacy service and appears to have provided a non-existing address in the Whois records. In the circumstances of the present case, the Panel finds that these are further indications of bad faith.

Therefore, the Panel finds that, on the balance of probabilities, it is sufficiently shown that the disputed domain name was registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **NOVARTISGLOBAL.NET**: Transferred

PANELLISTS

Name	**Flip Petillion**

DATE OF PANEL DECISION 2020-09-02

Publish the Decision