Decision for dispute CAC-UDRP-103355

Case number	CAC-UDRP-103355
Time of filing	2020-10-16 09:37:50
Domain names	novarits.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)

Complainant

Organization	Novartis AG

Complainant representative

Organization	BRANDIT GmbH

Respondent

Organization	Privacy Ltd. Disclosed Agent for YOLAPT

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 name.

IDENTIFICATION OF RIGHTS

The Complainant has used and owns registrations for the NOVARTIS trademark since 1996, including International trademark No. 666218, registered on October 31, 1996 and United States registration No. 2997235, registered on 20 September 2005, first used in commerce in 1997.

FACTUAL BACKGROUND

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

The Complainant, Novartis AG, was created in 1996 through the merger of Ciba-Geigy and Sandoz and is the holding company of the Novartis Group, one of the biggest global pharmaceutical and healthcare groups.

The disputed domain name is confusingly similar to Complainant's NOVARTIS trademark and the Respondent has no rights or legitimate interests in the disputed domain name, which was registered and is being used 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 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.

LANGUAGE OF PROCEEDINGS:
The Panel accepts the Complainant’s submission that since the language of the Registration Agreement is English, the language of the proceeding should be English.

PRINCIPAL REASONS FOR THE DECISION

In accordance with paragraph 4(a) of the Policy, to obtain transfer of a domain name, a complainant must prove the following three elements: (i) the respondent’s domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; (ii) the respondent has no rights or legitimate interests in the domain name; and (iii) the respondent has registered the domain name and is using it in bad faith.

Under paragraph 15(a) of the Rules, “A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, asserted facts may be taken as true and reasonable inferences may be drawn from the information provided by the complainant. See Reuters Limited v. Global Net 2000, Inc, WIPO Case No. D2000-0441.

The Panel accepts the Complainant's submission that the disputed domain name <novarits.com> is confusingly similar to the Complainant's well-known, distinctive trademark NOVARTIS, since it incorporates a typo of the Complainant’s NOVARTIS mark by switching the positions of the letters “i” and “t”. The top-level suffix, in this case “.com”, may be disregarded for the purpose of determining whether the disputed domain name is identical or confusingly similar. See Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson, Sr., WIPO Case No. D2000-1525.

Paragraph 4(c) of the Policy sets out three illustrative circumstances as examples which, if established by a respondent, shall demonstrate rights to or legitimate interests in a domain name for purposes of paragraph 4(a)(ii) of the Policy, i.e.

(i) before any notice to the respondent of the dispute, the use by the respondent of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) the respondent (as an individual, business or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.

The Complainant asserts that Respondent has no rights in the mark NOVARTIS, bears no relationship to the Complainant, and is not commonly known by the disputed domain name. Accordingly it has no legitimate interest in the disputed domain name. The Respondent registered the disputed domain name on November 16, 2002. It resolves to a website displaying the NOVARTIS trademark, offering pay-per-click links to pharmaceutical products. These circumstances, coupled with the Complainant's assertions and the typosquatted nature of the disputed domain name, are sufficient to constitute a prima facie showing of absence of rights or legitimate interests in respect of the disputed domain name on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show that it does have rights or legitimate interests in the disputed domain name. See Cassava Enterprises Limited, Cassava Enterprises (Gibraltar) Limited v. Victor Chandler International Limited, WIPO Case No. D2004-0753. The Respondent has made no attempt to do so. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(b) of the Policy sets out four illustrative circumstances, which, though not exclusive, shall be evidence of the registration and use of the disputed domain name in bad faith for purposes of paragraph 4(a)(iii) of the Policy, i.e.

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

The Panel finds that the Respondent registered the disputed domain name several years after the Complainant had established a strong reputation and goodwill in its NOVARTIS mark. Given the typosquatted nature of the disputed domain name, the Panel finds that the Respondent was aware of the Complainant and its trademark and that the Respondent intended to target the Complainant and its NOVARTIS trademark when registering the disputed domain name, which the Respondent is using to divert Internet users searching for the Complainant's website to the Respondent's competing website, and to create a likelihood of confusion with the Complainant's mark for the Respondent's commercial gain by offering competing products.

Accordingly the Panel finds 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. **NOVARITS.COM**: Transferred

PANELLISTS

Name	**Alan Limbury**

DATE OF PANEL DECISION 2020-11-16

Publish the Decision