Decision for dispute CAC-UDRP-103376

Case number	CAC-UDRP-103376
Time of filing	2020-10-30 10:57:23
Domain names	novartis-teva.site

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)

Complainant

Organization	Novartis AG

Complainant representative

Organization	BRANDIT GmbH

Respondent

Organization	Alexx Reverso

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

According to the evidence submitted by Complainant, Complainant is the owner of the well-known trademark NOVARTIS registered as both a word and device mark in several classes worldwide, including Russia. Complainant's trademark registrations in Russia applying to the present proceedings include the following trademark: NOVARTIS, Registration no: 663765, Registration date: 1 July 1996.

FACTUAL BACKGROUND

According to the evidence submitted by Complainant, Complainant 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. Complainant was created in 1996 through a merger of two other companies Ciba-Geigy and Sandoz. Complainant's products are manufactured and sold in many regions worldwide. Complainant has a strong presence in Russia where Respondent is located. In particular, Complainant uses the domain name <novartis.ru> to communicate with its Russian customers.

The disputed domain name <novartis-teva.site> was registered on 5 October 2020 and is held by Respondent.
According to the information provided by Complainant there is no website to which the disputed domain name resolves.

The trademark registration of Complainant has been issued prior to the registration of the disputed domain name.

According to Complainant the disputed domain name is confusingly similar to Complainant's trademark as it incorporates Complainant’s well-known, distinctive trademark NOVARTIS in combination with another brand “teva”, separated by the symbol “-“.
According to Complainant, Respondent has no rights or legitimate interest in the disputed domain name. Complainant and Respondent have never had any previous relationships, nor has Complainant ever granted Respondent with any rights to use the NOVARTIS trademark in any form, including in the disputed domain name. Complainant submits that Respondent is not commonly known by the disputed domain name or that it has interest in the disputed domain name. By the time Complainant prepared its Complaint on 28 October 2020, the disputed domain name resolved to a blank website that displayed a sentence “Default campaign not found”. Complainant concludes that Respondent has no right nor legitimate interest in respect of the disputed domain name and has not been using the disputed domain name for any bona fide offering of goods or services.

According to Complainant the disputed domain name is registered and is being used in bad faith. It is highly unlikely that Respondent was not aware of Complainant’s prior rights in the trademark NOVARTIS at the time of registering the disputed domain name, given Complainant’s worldwide renown. As noted above, Complainant asserts that the disputed domain name resolves to a blank website which falls into the category of passive holding, which means bad faith use.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

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 Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

Complainant has, to the satisfaction of the Panel, shown 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

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

In the opinion of the Panel the disputed domain name is confusingly similar to Complainant's trademark. Many UDRP decisions have found that a disputed domain name is identical or confusingly similar to a complainant’s trademark where the disputed domain name incorporates the complainant’s trademark or the principal part thereof in its entirety. Complainant has established that it is the owner of a trademark registration for NOVARTIS. The disputed domain name incorporates the entirety of the well-known NOVARTIS trademark as its distinctive element. The addition of the hyphen “-” and the addition of the word “teva” (the trademark and company name of another well-known global pharmaceutical company) in the disputed domain name, is insufficient to avoid a finding of confusing similarity as the NOVARTIS trademark remains the first and dominant component of the disputed domain name. The generic Top-Level Domain (“gTLD”) “.site” in the disputed domain

name may be disregarded.
The Panel notes that Complainant's registration of its trademark predates the creation date of the disputed domain name.

In the opinion of the Panel Complainant has made a prima facie case that Respondent lacks rights or legitimate interest in the disputed domain name. Complainant has not licensed or otherwise permitted Respondent to use its trademark or to register the disputed domain name incorporating its mark. Respondent is not 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 trademark of Complainant. Respondent is not commonly known by the disputed domain name nor has it acquired trademark rights. Complainant has no relationship with Respondent. The disputed domain name does not resolve to an active website, Respondent has no right nor legitimate interest in respect of the disputed domain name and the disputed domain name is not being used for any bona fide offering of goods or services.
Respondent did not submit any response.
Under these circumstances, the Panel finds that Respondent has no rights or legitimate interests in the disputed domain name.

The Panel finds that the disputed domain name has been registered and is being used in bad faith. Complainant has rights in the NOVARTIS trademark. Respondent knew or should have known that the disputed domain name included Complainant's well-known mark. The Panel notes that there is no website at the disputed domain name. Passive holding of the disputed domain name does not prevent the Panel from finding registration and use in bad faith. The Panel further notes that the undeveloped use of the website at the disputed domain name which incorporates Complainant's trademark in its entirety indicates that Respondents possibly registered the disputed domain name with the intention to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the trademark of Complainant as to the source, sponsorship, affiliation, or endorsement of its website or location, which constitutes registration and use in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **NOVARTIS-TEVA.SITE**: Transferred

PANELLISTS

Name	**Dinant T.L. Oosterbaan**

DATE OF PANEL DECISION 2020-11-24

Publish the Decision