Decision for dispute CAC-UDRP-103343

Case number	CAC-UDRP-103343
Time of filing	2020-10-26 09:45:38
Domain names	novartsi.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)

Complainant

Organization	Novartis AG

Complainant representative

Organization	BRANDIT GmbH

Respondent

Name	Riccardo Weingart (GRAVA99180)

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 proved to be the owner of multiple "NOVARTIS" trademarks having effects in Switzerland and in numerous other countries.

The Complainant also proved to own domain names composed by NOVARTIS, including <novartis.net>, <novartispharma.com> and <novartis.com>.

FACTUAL BACKGROUND

The Complainant is NOVARTIS AG, a Switzerland based company active in the pharmaceutical field. The Complainant's products are distributed worldwide.

The Complainant owns numerous trademark registrations for NOVARTIS, having effects in Switzerland and in other countries around the world.

The Complainant also owns domain names composed by NOVARTIS.

The disputed domain name was registered on September 30, 2020 and it linked to a webpage containing sponsored links. Following the filing of the UDRP Complaint, the Parties informed the CAC that negotiations were taking place in order to settle the matter. As a consequence, the UDRP was suspended. Later on, the Complainant informed the CAC that the parties did not manage to settle the matter and consequently the UDRP was resumed.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant claims that the disputed domain name is confusingly similar to its prior trademarks as the mere inversion of the last two letters ("novart -is-" / "novart -si") is not sufficient to exclude confusing similarity with the NOVARTIS trademarks.

The Complainant also contends that TLD are disregarded when assessing confusingly similarity as they are considered as standard registration requirements.

The Complainant claims that the Respondent has no rights nor legitimate interest in registering the disputed domain name. According to the Complainant assertions, there is no evidence that the Respondent is known as the disputed domain name or is, in some way, authorized to use the Complainant's trademarks.

Furthermore, the use of the disputed domain name is not considered a "bona fide offering of goods or services" or a "legitimate non-commercial or fair use" for the purposes of the Policy.

As regards registration and use in bad faith, the Complainant claims that since the NOVARTIS trademarks are widely known and were registered well before the disputed domain name, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's rights.

Moreover, the use of the disputed domain name in connection with sponsored links is, according to the Complainant, an index of use in bad faith of the domain name.

RESPONDENT:

The Respondent submitted a brief reply to the Complaint stating that the disputed domain name was intended to be used for an artistic project. The Respondent also informed that, following the Complaint, he changed the name of the potential group.

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. The disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

The Complainant has successfully proved to be the owner of the trademark NOVARTIS and of domain names composed by the element "novartis".
The Panel finds that the trademark “NOVARTIS” is fully recognizable in the disputed domain name: the reversal of the ending letters ("is" on the NOVARTIS trademark; and "si" on the disputed domain name <novartsi.com>) has no significant impact in the confusing similarity assessment.
According to a consolidated case law in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in it, the confusing similarity threshold is met. This case law applies also to cases of misspelling of the complainant's trademark (typosquatting) which appears to be the case at hand.
Furthermore, the addition of “.com" is generally disregarded in view of its technical function.
As a consequence, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademarks, for the purposes of the First Element of the Policy.

2. The Respondent lacks rights or legitimate interests in the disputed domain name.

Pursuant to paragraph 4(a)(ii) of the Policy, a complainant is required to make out a prima facie case that a respondent lacks rights or legitimate interests in the domain name. Once such a prima facie case is made, the respondent carries the burden of demonstrating its rights or legitimate interests in the domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.
In this case, the Panel finds that the Complainant’s submitted evidence and allegations are sufficient to establish a prima facie case of Respondent’s lack of rights and legitimate interests in the disputed domain name.
According to the information provided by the Complainant and not contested by the Respondent, Riccardo Weingart is not commonly known by the disputed domain name nor he is authorized to use the Complainant’s trademarks.
Additionally, the disputed domain name links to a PPC webpage. From the evidence submitted by the Complainant, the sponsored links do not relate with the Complainant's business but at the same time they are not related to a possible dictionary meaning of the word "novartsi". Considered the above, and given the reputation of the NOVARTIS trademark, the Panel considers such use discloses an intention by the Respondent to capitalize on the reputation and goodwill of the Complainant’s mark.
For the foregoing reasons, it shall be concluded that the Respondent has no right nor legitimate interest in respect of the disputed domain name, and that it has not been using the disputed domain name for any bona fide offering of goods or services for the purposes of the Policy.

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

The Panel finds the following circumstances as material in order to establish the Respondent's bad faith in the registration of the disputed domain name:
(i) the disputed domain name was registered well after the Complainant acquired rights on the trademark NOVARTIS;
(ii) the Complainant's trademark is widely known as confirmed by previous Panels (inter alia Novartis AG v. Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org, / Sergei Lir, WIPO Case No. D2016-1688). The reputation of the NOVARTIS trademark makes it very improbable that the Respondent was not aware of the Complainant's exclusive rights on the trademark at the time of the registration of the disputed domain name;
(iii) the disputed domain name is composed by a clear and obvious misspelling of the Complainant's trademark (i.e. typosquatting).
Previous panels found that typosquatting discloses an intention on the part of the respondent to confuse users seeking or expecting to find a website related to the complainant.
As regards use in bad faith, the disputed domain name currently resolves to PPC webpages. The links sponsored through the disputed domain name appear to capitalize on the reputation and goodwill of the Complainant's trademark and are not

justified by a possible dictionary meaning of the word NOVARTSI.
As a consequence, the Panel finds that the disputed domain name is used to exploit the Complainant's trademark for the Respondent's commercial gain and such use must be considered in bad faith.
All above considered the Panel finds the evidence submitted as sufficient to prove use and registration of the disputed domain name in bad faith for the purposes of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **NOVARTSI.COM**: Transferred

PANELLISTS

Name	**Andrea Mascetti**

DATE OF PANEL DECISION 2020-12-30

Publish the Decision