Decision for dispute CAC-UDRP-103447

Case number	CAC-UDRP-103447
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Domain names	novarisgroup.com

Case administrator

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

Complainant

Organization	Novartis AG

Complainant representative

Organization	MSA IP - Milojevic Sekulic & Associates

Respondent

Name	Yang Zhi Chao

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

Complainant owns around 1.500 trademark registrations around the world for its NOVARTIS trademark. Its NOVARTIS trademark is considered to be a well-known trademark in the field of pharmaceutical products and healthcare services. Complainant is, the owner of the following trademark registrations, among many others:

- International Registration No. 663765, "NOVARTIS", registered on July 1, 1996, duly renewed, designating, inter alia, China and covering goods and services in classes 1, 2, 3, 4, 5, 7, 8, 9, 10, 14, 16, 17, 20, 22, 28, 29, 30, 31, 32, 40 and 42;

- International Registration No. 666218, “NOVARTIS", registered on October 31, 1996, duly renewed, designating, inter alia, China and covering services in classes 41 and 42;

- International Registration No. 1349878, “NOVARTIS", registered on November 29, 2016, designating, inter alia, China and covering goods and services in classes 9, 10, 41, 42, 44 and 45; and

- International Registration No. 1544148, “NOVARTIS", registered on June 29, 2020, designating, inter alia, China and

covering goods and services in classes 9, 35, 38 and 42.

In addition, Complainant is registrant of over 6,000 domain names, many of which incorporate its NOVARTIS trademark. Some of the most relevant domain names for the case at hand are the following:

- <novartis.com> registered on April 2, 1996;

- <novartis-group.com> registered on June 18, 2019;

- <novartisgroups.com> registered on October 27, 2019;

- <novartis-groups.com> registered on October 8, 2019;

- <novartis.cn> registered on April 17, 2003;

- <novartis.com.cn> registered on August 20, 1999;

- <novartis.org.cn> registered on June 23, 2019; and

- <novaris.cn> registered on December 18, 2012.

FACTUAL BACKGROUND

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

I. PROCEDURAL QUESTIONS – LANGUAGE OF THE PROCEEDINGS

According to Paragraph 11 of the Rules for Uniform Domain Name Dispute Resolution Policy (hereinafter: Rules), the language of the administrative proceeding shall be the language of the registration agreement unless otherwise agreed by the Parties, or specified otherwise in the registration agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

The spirit of Paragraph 11 is to ensure fairness in the language selection by giving full consideration to the parties' level of comfort with each language, the expenses that may be incurred, the possibility of a delay in the proceeding if translations are required, and other relevant factors.

The registrar's website is available in both Chinese and English. The language of the registration agreement of <novarisgroup.com> according to the registrar is Chinese. Although it was not possible to find the proper registration agreement on the registrar's website, this dispute is properly within the scope of the Policy. The Policy has been adopted for all ICANN-accredited registrars. As a result, Respondent is bound by the Policy.

In any event, the Complaint is submitted in English and Complainant requests that the language of the proceedings be English for the following reasons.

As indicated by the Panel in the decision, Caiso Keisanki Kabushiki Kaisha dba Casio Computer Co., Ltd. v. Taizbou Kaixuan Entertainment Co. Ltd., WIPO Case No. D2005-0870, "one important consideration is the issue of fairness to both parties in their abilities to prepare the necessary documents for this proceeding and also to respond adequately to these documents when they are served upon the parties".

In the case at hand, Complainant is located in Switzerland and has no knowledge of the Chinese language. To proceed in this language, Complainant would have to retain specialized translation services at a cost that is likely to be higher than the

overall cost for the present proceedings. Consequently, the use of another language than English in the proceeding would impose a burden on the Complainant which must be deemed significant in view of the cost for the present proceedings.

Furthermore, in Section 2.20 of Frequently Asked Questions on the website of the Czech Arbitration Court (CAC), it is stated that "The CAC platform only provides administrative proceedings in English language. If the applicable language under paragraph 11 of the Rules is different from English, the Complainant may request the proceeding in English and provide sufficient evidence that the change of the language is fair to both parties. The Panel may determine the change of the language if both parties are treated with equality, and that each party is given a fair opportunity to present its case".

Many UDRP decisions have recognized that using the registration agreement's language, which in the present case is Chinese, would lay an undue burden on Complainant (Deutsche Messe AG v. Kim Hyungho, WIPO Case No. D2003-0679).

It is also important to emphasize that the disputed domain name <novarisgroup.com> is formed exclusively of Latin characters, using the English word "group" which strongly suggests that Respondent has knowledge of languages other than Chinese, in particular English. Furthermore, it should also be noted that the disputed domain name resolves to a webpage with sponsored links where the entire content of the website is in English. For that reason, it could be reasonably assumed that Respondent has a sufficient knowledge of English. The same standpoint has been adopted by numerous prior panels (Sanofi and Sanofi Biotechnology v. (Quan Zhong Jun), WIPO Case No. D2020-0618, Novartis AG v. (si chuan zhong nuo hua yi liaoke ji you xian gong si), WIPO Case No. D2020-0195, Novartis AG v. Meng Dan Qian, CAC Case No. 103197, Mold-Masters (2007) Limited v. Jian Ji, CAC Case No. 100307, ECCO SKO A/S v. fuqingmaoyi, CAC Case No. 100311 and Laboratoires M&L v. Zhaoxingming, CAC Case No. 102277).

In many relevant UDRP decisions, the panels have decided that since the complainant was unable to communicate in the language of the registration agreement, the proceeding would inevitably be delayed unduly, and the complainant would have to incur substantial expenses if the complainant were to submit all documents in said language (Solvay SA v. Hyun-Jun Shin, WIPO Case No. D2006-0593).

As an illustration, it should be added that Section 4.5.1 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0") provides a non-exhaustive list of cases where previous panels have found that proceeding in a language that may be different from the language of the registration agreement is justified. Examples of such cases are: (i) evidence showing that the respondent can understand the language of the complaint, (ii) the language/script of the domain name particularly where the same as that of the complainant's mark, (iii) any content on the webpage under the disputed domain name, (iv) prior cases involving the respondent in a particular language, (v) prior correspondence between the parties, (vi) potential unfairness or unwarranted delay in ordering the complainant to translate the complaint, (vii) evidence of other respondent-controlled domain names registered, used, or corresponding to a particular language, (viii) in cases involving multiple domain names, the use of a particular language agreement for some (but not all) of the disputed domain names, (ix) currencies accepted on the webpage under the disputed domain name, or (x) other indicia tending to show that it would not be unfair to proceed in a language other than that of the registration agreement.

In addition, previous panels have allowed the language of the proceeding to be English even though the concerned registrar was DNSPod, Inc. (see in particular Sanofi and Sanofi Biotechnology v. (Quan Zhong Jun), WIPO Case No. D2020-0618).

In view of all the above-mentioned arguments and evidence, the Complainant requests that the language of the present proceedings be English.

II. FACTUAL AND LEGAL GROUNDS

A. Complainant and its activities

Complainant was created in 1996 through a merger of Ciba-Geigy and Sandoz. Complainant and its predecessor companies trace their roots back more than 250 years, with a rich history of developing innovative products. Today, Complainant is a

world pharmaceutical leader based in Switzerland that provides innovative healthcare solutions to address the evolving needs of patients and societies worldwide.

Complainant's global pharmaceuticals portfolio includes more than 50 key marketed products, many of which are innovative leaders in their therapeutic areas, such as cardiometabolic indications, dermatology, immunology, neuroscience, oncology, ophthalmology and respiratory. The Complainant's products are available in more than 155 countries around the world and they have reached 799 million patients globally.

In 2019, Complainant achieved net sales from continuing operations of USD 47.4 billion, while net income from continuing operations amounted to USD 7.1 billion and total net income to USD 11.7 billion. Companies from the Novartis Group employ more than 100,000 full-time equivalent associates as of December 31, 2019. With net sales of USD 47.4 billion, Complainant has been rated at 4th place by the Pharmaceutical Technology magazine on the list of pharmaceutical companies with highest revenues in 2020.

The complex corporate structure of Novartis Group includes two major divisions – Innovative Medicines and Sandoz which are supported by functional organizations with global scale. The Innovative Medicines division commercializes innovative patented medicines to enhance health outcomes for patients and healthcare professionals, and it is made up of two business units – Novartis Pharmaceuticals which includes Novartis Gene Therapies, and Novartis Oncology. Sandoz division is the global leader in generic pharmaceuticals and biosimilars that pioneers novel approaches to help people around the world access high-quality medicines.

Complainant also has a strong presence in China. Within the past 3 decades, more than 60 pharmaceutical products have been launched in China (including different indications). Based on data from 2019, in the last two years alone, Complainant has launched 15 pharmaceutical products on the Chinese market and over the next five years, is expected to launch another 32. Complainant's business activities in China can be traced back more than 200 years ago through the activity of its predecessor companies that formed Novartis in 1996. Complainant's business in China includes Novartis Oncology, Novartis Pharmaceuticals and Sandoz. It has two major production bases nationwide and R&D in Beijing, Shanghai and Jiangsu. Currently, Novartis has more than 8,000 employees in China).

Since the inception of the COVID-19 global health crisis in early 2020, Complainant is, along with other major companies from the pharmaceutical sector, witnessing increased cybersquatting activities related to its company name and a significant increase of abusive domain name registrations.

B. Complainant's efforts to resolve this dispute amicably

Complainant became aware of Respondent's registration of the domain name <novarisgroup.com> which is confusingly similar to its well-known trademark NOVARTIS, as the same incorporates a typo of the trademark NOVARTIS by the omission of the letter "T" in combination with the generic term "group". The disputed domain name resolves to a web-page with sponsored links (pay-per-clicks) exclusively related to pharmaceutical products and the pharmaceutical industry. Complainant has also noticed that an e-mail server was configured on the domain name <novarisgroup.com>. Thus, a risk of phishing cannot be ruled out.

Before starting the present proceeding, Complainant made efforts to resolve this matter amicably.

On October 15, 2020, Complainant sent a cease-and-desist letter to the registrant of the disputed domain name via abuse contact e-mail of the registrar requesting the transfer of the disputed domain name to Complainant. Respondent never replied to Complainant's cease-and-desist letter.

Consequently, as no amicable settlement could be found, Complainant has no other choice but to initiate UDRP proceedings against Respondent in order to obtain the transfer of the disputed domain name.

C. Legal Grounds

The present Complaint is based on the following legal grounds:

1. The disputed domain name is identical with trademark or service mark in which the Complainant has rights (Policy, Paragraph 4(a)(i); Rules, Paragraphs 3(b)(viii), (b)(ix)(1))

Complainant owns around 1.500 trademark registrations around the world for its NOVARTIS trademark. Its NOVARTIS trademark is considered to be a well-known trademark in the field of pharmaceutical products and healthcare services.

Numerous previous panels have considered Complainant's trademark NOVARTIS as a well-known trademark that has reputation (see, for example Novartis AG v. Ancient Holdings, LLC, Wendy Webbe, WIPO Case No. D2014-1084, Novartis AG v. Hka c/o Dynadot Privacy, WIPO Case No. D2014-1737, Novartis AG v. Susan Christensen, WIPO Case No. D2015-0476, Novartis AG v. Seedy Loveth, ArtisNov Medical Chemical / PrivacyProtection Service INC d/b/a PrivacyProtect.org, Domain Admin, WIPO Case No. D2015-1951, Novartis AG v. Hoang Le, WIPO Case No. D2016-0552, Novartis AG v. Domain Admin, Privacy Protection Service INC d/b/aPrivacyProtect.org, / Sergei Lir, WIPO Case No. D2016-1688, Novartis AG v. (si chuan zhong nuo hua yi liaoke ji you xian gong si), WIPO Case No. D2020-0195, Novartis AG v Sika Lawrence, WIPO Case No. D2020-1785, Novartis AG v Georgi Dimitrov, Netart, WIPO Case No. D2020-2144, Novartis AG v Okoye Igwe, WIPO Case No. D2020-2174, Novartis AG v. Negotiation Matters Inc., CAC Case No. 103013, Novartis AG v. DYVenture, CAC Case No. 103038, Novartis AG v. Ambrose Quin, CAC Case No. 103191, Novartis AG v. guiqiang deng, CAC Case No. 103248, Novartis AG v. andre cole, CAC Case No. 103262).

The disputed domain name reproduces Complainant's well-known trademark NOVARTIS as a typo with the mere omission of the letter "T". This deleted letter does not significantly affect the appearance or pronunciation of the domain name. This practice is commonly referred to as "typosquatting" and creates virtually identical and/or confusingly similar marks to the Complainant's trademark (Mapfre S.A. y Fundación Mapfre v. Josep Sitjar, WIPO Case No. D2011-0692, Novartis AG v. Privacy Ltd. Disclosed Agent for YOLAPT, CAC Case No. 103355, Novartis AG v. novartis, CAC Case No. 101772, Hershey Foods Corporation and Hershey Chocolate & Confectionery Corporation v. DRP Services, WIPO Case No. D2003-0841, Compagnie Gervais Danone of Paris v. Jose Gregorio Hernandez Quintero, WIPO Case No. D2009-1050).

Furthermore, previous panels have found that a combination of the complainant's trademark that contains a typo with a generic term does not preclude a finding of confusing similarity of the disputed domain name to the complainant's trademark (Novartis AG v. novartis, CAC Case No. 101772, Hershey Foods Corporation and Hershey Chocolate & Confectionery Corporation v. DRP Services, WIPO Case No. D2003-0841).

Previous panels have repeatedly held that the addition of generic terms is insufficient to give distinctiveness to the domain name in dispute (see, for example Merck Sharp & Dohme Corp. v. GlobalCom, Henry Bloom, WIPO Case No. D2011-0700). Moreover, the addition of the generic word "group" as part of the disputed domain name is likely to cause further confusion since this term clearly refers to the companies owned and controlled by Complainant. Namely, Complainant is the parent company of many subsidiaries and affiliates within its complex corporate structure, due to which Complainant and its affiliates and subsidies are commonly referred to as "Novartis Group", as can be seen from Complainant's website. Therefore, in the case at hand, not just any generic term was chosen as a part of the disputed domain name, but a generic term that creates a direct link with Complainant. However, even if the generic term was not in any way associated with Complainant and its business, the mere addition of a generic term would not dispel any likelihood of confusion.

In connection with the above, it should be emphasized that it has been a long-established practice under the UDRP that the addition of the generic or dictionary term "group" to a Complainant's trademark will be insufficient to avoid confusing similarity and that the same would actually add to the confusion (Merck KGaA v. Virginia Cross, WIPO Case No. D2013-1294, Stockmann plc v. Asep Saepul, WIPO Case No. D2012-0323 and ARAG Allgemeine Rechtsschutz-Versicherungs-AG v. Seung Nam Kim, WIPO Case No. D2006-1001).

More precisely, the Complainant has already been a party to various UDRP proceedings in which the combination of Complainant's trademark NOVARTIS with the term "group" or "groups" has been perceived as a factor that adds to a confusing similarity between the disputed domain name and NOVARTIS trademark (Novartis AG v. Bryan Scred, CAC Case No. 102591, Novartis AG v. Brian Furry Furry, CAC Case No. 102788 and Novartis AG v. Ambrose Quin, CAC Case No. 103299).

The extension ".com" should not be taken into consideration when examining the identity or similarity between the Complainant's trademark and the disputed domain name (Accor v. Noldc Inc., WIPO Case No. D2005-0016). The mere adjunction of a gTLD such as ".com" is irrelevant as it is well established that the generic top-level domain is insufficient to avoid a finding of confusing similarity (L'Oréal v Tina Smith, WIPO Case No. 2013-0820, Titoni AG v Runxin Wang, WIPO Case No. D2008-0820 and, Alstom v. Itete Peru S.A., WIPO Case No. D2009-0877).

The Complainant has used the trademark NOVARTIS in connection with a wide variety of pharmaceutical products and healthcare services around the world, including in China where Respondent is located. Consequently, the public has learned to perceive the goods and services offered under this mark as being those of the Complainant.

Accordingly, the disputed domain name creates a clear likelihood of confusion with Complainant's trademark. It is likely that this domain name could mislead Internet users into thinking that it is, in some way, associated with Complainant. Furthermore, the use of the generic or dictionary term "group" in combination with the Complainant's trademark (and typo omission of the letter "T") suggests a connection with Complainant's business, consequently increasing the risk of confusion.

For all of the above-mentioned reasons, the domain name in dispute is confusingly similar to the trademark NOVARTIS in which Complainant has rights, and therefore the condition of Paragraph 4(a)(i) is fulfilled.

2. The Respondent has no rights or legitimate interests in respect of the disputed domain name (Policy, Paragraph 4(a)(ii); Rules, Paragraph 3(b)(ix)(2))

The Respondent is not affiliated with Complainant in any way and has not been authorized by Complainant to use and register its trademark or to seek registration of any domain name incorporating said mark.

Based on all available information, Respondent did not demonstrate use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services. Indeed, the disputed domain name resolves to a parking page displaying sponsored links (pay-per-clicks), exclusively related to pharmaceutical products and the pharmaceutical industry.

In that sense, as the disputed domain name directs Internet users to a parking page with pay-per-clicks which are likely to generate revenue, it cannot be inferred that Respondent is making a legitimate non-commercial or fair use of the disputed domain name. In accordance with Section 2.9 of WIPO Overview 3.0, there is a consensus with prior panels that the use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users.

The Respondent is natural person under the name Yang Zhi Chao and it is neither commonly known by the names "NOVARTIS" or in any way affiliated with Complainant. Respondent in any event is not authorized or licensed to use the NOVARTIS trademark, nor to seek registration of any domain name incorporating such trademark. In previous UDRP decisions, panels found that in the absence of any license or permission from the complainant to use such a widely-known trademark, no actual or contemplated bona fide or legitimate use of the domain names could reasonably be claimed (LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master, WIPO Case No. D2010-0138).

Additionally, Respondent, by registering the disputed domain name that apart from the generic term "group" differs from the

Complainant's well-known trademark NOVARTIS by only one letter, seeks to take advantage of internet users, by virtue of typographical errors or so-called "typosquatting". As a result, a predictable and easily made typing error could result in an Internet user being diverted from Complainant's site to that of Respondent. Such use of the disputed domain name cannot be in any case observed as a legitimate use nor can the same constitute a legitimate interest on Respondent's side to use such domain name. Furthermore, previous panels have consistently held that "typosquatting" does not constitute a legitimate use of a domain name nor of a trademark incorporated in such domain name with certain typographical errors (Microsoft Corporation v. Global Net 2000, Inc., WIPO Case No. D2000-0554, Edmunds.com, Inc. v. Yingkun Guo, dba This domain name is 4 sale, WIPO Case No. D2006-0694 and FragranceX.com, Inc. v. Argosweb Corp a/k/a Oleg Techino in this name and under various aliases, WIPO Case No. D2010-1237).

The Respondent also seems to be engaged in a pattern of registration of domain names that includes typographic errors of third-party trademarks. Based on publicly available information, Respondent's e-mail address is linked to a number of typosquatting domain names that includes third party trademarks, such as <mercede-benz.com>, <creditkarmna.com>, <airfarance.us>.

Moreover, Respondent appears to have been a party to numerous UDRP proceedings where he has been ordered to transfer to various complainants hundreds of domain names (see for example: Sodexo v. (Zhi Chao Yang), WIPO Case No. D2020-1171, John Hancock Life Insurance Company (U.S.A.) v. (Zhi Chao Yang), WIPO Case No. D2020-1889, Oboleo Ltd v. (Zhi Chao Yang), Zhichao Yang, Zhichao, Privacy Administrator, Anonymize, Inc., Carolina Rodrigues, Fundacion Comercio Electronico, and Milen Radumilo, WIPO Case No. D2020-1952, ZipRecruiter Inc. v. (Zhi Chao Yang), WIPO Case No. D2020-2004, ZipRecruiter Inc. v. (Zhi Chao Yang), WIPO Case No. D2020-2211). This type of behavior could never be observed as use of domain name for bona fide offering of goods and services. On the contrary, pattern of abusive registrations by respondent has been recognized by prior panels as a clear indication of lack of legitimate interest on respondent's side (see Section 2.5 of WIPO Overview 3.0).

Finally, Complainant attempted to contact the Registrant by sending a cease-and-desist letter in order to amicably resolve this matter). However, Respondent has never replied to Complainant's letter. Previous UDRP panels have repeatedly stated that when a respondent does not avail himself of his right to respond to a complainant's allegations, it can be assumed that the respondent has no rights or legitimate interests in the disputed domain name, (Nordstrom, Inc. and NIHC, Inc. v. Inkyu Kim, WIPO Case No. D2003-0269 and AREVA v. St. James Robyn Limoges, WIPO Case No. D2010-1017). If Respondent had a right or legitimate interest in connection with the disputed domain name, he would have presumably defended such rights by quickly replying to Complainant's cease-and-desist letter. In light of these circumstances, it clearly appears that Respondent does not have any legitimate interest with respect to the disputed domain name.

For all of the above-cited reasons, it is undoubtedly established that Respondent has no rights or legitimate interests in respect to the disputed domain name in dispute under Paragraph 4(a)(ii) of the Policy.

3. The disputed domain name was registered and is being used in bad faith (Policy, paragraphs 4(a)(iii), 4(b); Rules, paragraph 3(b)(ix)(3))

Paragraph 4(a) (iii) of the Policy requires the Complainant to prove that the Respondent registered and used the disputed domain name in bad faith. The language of Paragraph 4(a) (iii) of the Policy requires both bad faith registration and bad faith use to be proven.

a) Registration in bad faith

It is implausible that Respondent was unaware of Complainant when he registered the disputed domain name. Bad faith can be found where a respondent "knew or should have known" of a complainant's trademark rights and nevertheless, registered a domain name in which he had no right or legitimate interest. In accordance with Section 3.2.2 of WIPO Overview 3.0, previous panels have consistently considered that where the complainant's mark is widely known or highly specific, a

respondent cannot credibly claim to have been unaware of the mark.

In that sense, it should be noted that the Complainant is well-known throughout the world, including Respondent's home country – China. Also, in numerous decisions, previous panels considered that Complainant's NOVARTIS trademark is widely-known worldwide.

Bad faith has already been found where a domain name is so obviously connected with a well-known trademark that its very use by someone with no connection to the trademark suggests opportunistic bad faith (Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co., WIPO Case No. D2000-0163 and Sanofi-Aventis v. Nevis Domains LLC, WIPO Case No. D2006-0303).

In addition, as indicated in another UDRP case, "it would have been pertinent for Respondent to provide an explanation of its choice in the disputed domain name, failing which the Panel draws the conclusion that the disputed domain name was registered in bad faith with intent to create an impression of an association with Complainant and its products" (Bouygues v. Chengzhang, Lu Ciagao, WIPO Case No. D2007-1325). However, Respondent neither tried to defend his rights nor stated any valid arguments to justify the registration of the disputed domain name in response to Complainant's cease-and-desist letter.

Also, registering a domain name which is confusingly similar to the Complainant's trademark NOVARTIS with the omission of the letter "T" is a form of typosquatting, and typosquatting as such is evidence of bad faith (ESPN, Inc. v. XC2, WIPO Case No. D2005-0444, Barnes & Noble College Bookstores, Inc. v. Oleg Techino, WIPO Case No. D2006-1537, Edmunds.com, Inc. v. Yingkun Guo, dba This domain name is 4 sale, WIPOCase No. D2006-0694 and Novartis AG v. Ancient Holdings, LLC, Wendy Webbe, WIPO Case No. D2014-1084).

The choice of the disputed domain name including a typo of Complainant's trademark and the generic term "group" corresponding to Complainant's corporate structure suggests that Respondent was perfectly aware of Complainant and its trademark.

Under Section 2 of the ICANN Policy, it is stipulated that when someone registers a domain name, he or she represents and warrants to the registrar that, to his knowledge, the registration of the domain name will not infringe the rights of any third party. This means that it was Respondent's duty to verify that the registration of the disputed domain name would not infringe the rights of any third party before registering the disputed domain name (Nike, Inc. v. B.B. de Boer, WIPO Case No. D2000-1397 and Carolina Herrera, Ltd. v. Alberto Rincon Garcia, WIPO Case No. D2002 0806).

Moreover, a quick search for NOVARTIS trademarks would have revealed to Respondent the existence of Complainant and its trademarks. Respondent's failure to do so is a contributory factor to its bad faith (Lancôme Parfums et Beauté & Cie, L'Oréal v. 10 Selling, WIPO Case No. D2008-0226).

Finally, the pattern of typosquatting registrations and number of previous UDRP proceedings where Respondent participated suggest clear intent of registration of disputed domain name in bad faith and indicate that Respondent was well-aware that he is registering domain that violates rights of Complainant.

Consequently, in view of the abovementioned circumstances, it is clear that the Respondent registered the disputed domain name in bad faith.

b) Use in bad faith

Apart from registration of the disputed domain name in bad faith, there are elements that should be put forward to support the finding that Respondent also uses the disputed domain name in bad faith.

As previously indicated, there is little doubt in this case that, at all times, Respondent was not aware that the NOVARTIS

trademark enjoys a substantial reputation worldwide and specifically in China. In light of this knowledge, Respondent uses the disputed domain name to direct Internet users to a webpage displaying pay-per-clicks links which are likely to generate revenues. Panels have held that the use of domain names to divert Internet users and to direct them to a webpage providing revenues through clicks to the respondent evidences bad faith. The use of a well-known trademark to attract Internet users to a website for commercial gains constitutes a use in bad faith pursuant to the Policy as stated by numerous previous panels (see, for example Deutsche Telekom AG v. Spiral Matrix, WIPO Case No. D2005-1145 and F Hoffmann-La Roche AG v. Anna Valdieri, WIPO Case No. D2007-0956). In addition, it should be noted that there is no indication of Respondent's own activities on the aforementioned site.

Therefore, the clear inference that can be drawn from the Respondent's operations is that he is trying to benefit from the fame of the Complainant's marks. In that sense, it seems likely that Respondent's primary motive in registering and using the disputed domain name was to capitalize on or otherwise take advantage of Complainant's trademark rights.

The disputed domain name clearly constitutes a typosquatting variant of Complainant's trademark. As held by previous panels, a mere finding of typosquatting is sufficient to establish use and registration in bad faith (ESPN, Inc. v. XC2, WIPO Case No. D2005-0444, Barnes & Noble College Bookstores, Inc. v. Oleg Techino, WIPO Case No. D2006-1537, Edmunds.com, Inc. v. Yingkun Guo, dba This domain name is 4 sale, WIPOCase No. D2006-0694 and Novartis AG v. Ancient Holdings, LLC, Wendy Webbe, WIPO Case No. D2014-1084).

All the aforementioned circumstances confirm that the disputed domain name is used in bad faith.

Consequently, it is established that the Respondent both registered and used the disputed domain name in bad faith in accordance with Paragraph 4(a)(iii) of the Policy.

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.

The Complainant requests that the language of this administrative proceeding be English pursuant to UDRP Rule 11(a): Unless 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. Complainant makes this request in light of the potential Chinese language Registration Agreement of the disputed domain name involved at this Complaint.

Paragraph 10 of the UDRP Rules vests a panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case. UDRP panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios were summarized into WIPO Jurisprudential Overview 3.0, 4.5.1. In this particular instance, the Complainant tried to request change of languages of proceedings in light of Chinese language Registration Agreement by showing that 1) disputed domain name <novarisgroup.com> is formed exclusively of Latin characters, using the English word “group” which strongly suggests that Respondent has knowledge of English; 2) the disputed domain name resolves to a webpage with sponsored links where the entire content of the website is in English; and 3) having the Complainant translating subsequent communications in Chinese would entail significant additional costs for the Complainant and unnecessarily burden the Complainant. Relevant decisions have been cited to support the Complainant’s positions. In light of the scenarios and the displayed information on the website resolved to by the disputed domain name (containing sponsored links including CVS urgent are near me, Protection, Pharmaceutical, etc.), the Panel is of the view that Respondent can understand the English language based on a preponderance of evidence test. Without further objection from the Respondent on the issue, the Panel will proceed to issue the decision in English.

PRINCIPAL REASONS FOR THE DECISION

1. Identical or confusingly similar

The Complainant contended that the disputed domain name <novarisgroup.com> is confusingly similar to its registered trademark "Novartis". The Novartis Group is one of the biggest global pharmaceutical and healthcare groups. The Complainant’s products are manufactured and sold in many regions worldwide including China. The Complainant is the owner of the well-known trademark NOVARTIS registered as both a word and device mark in several classes worldwide, including China. The vast majority of the Complainant’s trademark registrations significantly predates the registration of the disputed domain name.

The disputed domain name <novarisgroup.com> incorporates a typo of the Complainant’s well-known, distinctive trademark NOVARTIS, by eliminating letter “t” from “Novartis”, and adding a common English term “group”. This deleted letter does not significantly affect the appearance or pronunciation of the domain name. This practice is commonly referred to as “typosquatting” and creates virtually identical and/or confusingly similar marks to the Complainant’s trademark. The added term “group” also implies the relationship between the typosquatted trademark and information contained in the website. In accordance with WIPO Jurisprudential Overview 3.0 para 1.9, a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. Therefore, a misspelled trademark does not preclude the finding of confusing similarity within the meaning of paragraph 4(a)(i) of the Policy and the Panel needs to reach to other evidence in finding the Respondent’s intention to confuse users, before a final determination can be made.

Further, as the Complainant contends, “it is generally accepted that the addition of the top-level suffix in the domain name (e.g., “.com”) is to be disregarded under the confusing similarity test” (WIPO Jurisprudential Overview 3.0 para 1.11).

The Panel therefore concludes that the disputed domain names are confusingly similar to a trademark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

2. No rights or legitimate interests

Although the Respondent did not file an administratively compliant (or any) response, the Complainant is still required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant has offered three arguments to support its contention that the Respondent has no rights or legitimate

interests in respect of the disputed domain name. Firstly, neither license or authorization has been granted to the Respondent; secondly, the Respondent is not commonly known as the disputed domain name; thirdly, current websites did not indicate any sign of bona fide offering of goods or services.

According to the information of the Respondent as provided by the Registrar, the name of the Respondent's organization is protected by privacy shield WHOISGUARD Inc. True name and address of the registrant was revealed to be "Yang Zhichao" and "Qimen Road No. 333, Hefei City, Anhui Province". From contact information provided, there seems to be no evidence that Respondent is either commonly known by the names "NOVARTIS" or in any way affiliated with Complainant. There is no evidence suggests that the Respondent is in anyway associated with the name "Novarisgroup". The Complainant also contended that it does not carry out any activity for, nor has any business with the Respondent. It has never licensed nor authorized the Respondent to make any use of the Complainant's trademark.

On the basis of preponderance of evidence, and in the absence of any evidence to the contrary or any administratively compliant response being put forward by the Respondent, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

3. Bad faith

By trying to establish the bad faith element of paragraph 4(a) of the Policy, the Complainant has primarily attempted to rely on paragraph 4(b)(i) and 4(b)(iv) of the Policy.

There are a couple of instances cited by the Complainant that can be used to prove that the domain name is registered and used in bad faith.

As far as registration goes, UDRP panels have consistently held that the mere registration of a domain name that is confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. The Complainant's trademark "Novartis" is distinctive and well known all around the world. The fact that the Respondent has registered a domain name is registered long after the Complainant's trademark became known, and uses a typo of the distinctive trademark "Novartis" with a common English language term "group" indicates that the Respondent had knowledge of the Complainant's trademark at the time of registration of the disputed domain name. The Complainant's trademark "Novartis" is not a common word and a simple Google search reveals all results and references related to the Complainant's brand. Therefore, it is reasonable to conclude that the registrant registered the disputed domain name with the knowledge of the complainant's trademark and/or brand influence.

The disputed domain name is not used for any bona fide offerings. As far as usage of the disputed domain name, the disputed domain name has been resolved to a pay-per-click ("PPC") website. Panels have recognized that the use of a domain name to host a page comprising PPC links would be permissible – and therefore consistent with respondent rights or legitimate interests under the UDRP – where the domain name consists of an actual dictionary word(s) or phrase and is used to host PPC links (WIPO Overview 3.0 §2.9), which does not seem to match scenarios presented by this case. In this case, the disputed domain name to host a parked page comprising multiple PPC links, and the Respondent shows no efforts to suppress PPC advertising related to the Complainant's trademark.

In addition, the Complainant has tried to reach the Respondent by a cease-and-desist letter sent on 15 October 2020. However, the Respondent has to date not responded to the Complainant's letter.

In view of the above, in the absence of any evidence to the contrary (or any administratively compliant response) being put forward by the Respondent, the Panel determines that the disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **NOVARISGROUP.COM**: Transferred

PANELLISTS

Name	**Carrie Shang**

DATE OF PANEL DECISION 2021-02-20

Publish the Decision