

Decision for dispute CAC-UDRP-103834

Case number	CAC-UDRP-103834
Time of filing	2021-05-31 08:47:58
Domain names	novartisweb.online, novartis-hr.com

Case administrator

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

Organization	Novartis AG
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Complainant representative

Organization	BRANDIT GmbH
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Respondent

Organization	Godsmak
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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 names.

IDENTIFICATION OF RIGHTS

Among others, the Complainant is the owner of the following registered trademark in respect of the NOVARTIS mark:

- Indian registered trademark no. 700020 for the word mark NOVARTIS, filed on February 28, 1996, in class 5.

FACTUAL BACKGROUND

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

The Complainant is part of the Novartis Group, a global pharmaceutical and healthcare group which was created in 1996 through the merger of two other companies. It has a presence in India, where the Respondent is located, and both its global website and its local Indian website connect customers to its official local sales and services.

The Complainant is the owner of the trademark NOVARTIS in numerous countries of the world including India. Such mark has been found to be well-known by a previous panel under the Policy. The Complainant owns numerous domain names composed of said mark, either alone or in combination with other terms. Said domain names are used to promote the

NOVARTIS mark and related products and services. The Complainant has a strong online presence including via its official social media platforms.

The disputed domain names were registered on April 21, 2021 and May 6, 2021. They incorporate the Complainant's NOVARTIS mark, combined with a generic term "web" or "hr". The latter is commonly known as an abbreviation for "human resources", which is closely related to the Complainant and its business activities. The addition of the respective gTLDs does not add any distinctiveness.

The Respondent does not have rights or legitimate interests in the disputed domain names. The Complainant has never granted the Respondent any right to use the NOVARTIS mark, the Respondent is not affiliated to the Complainant in any form, and the Complainant has not found the Respondent to be commonly known by the disputed domain names or to have any legitimate interests over them. The Respondent could have performed a search before registering the disputed domain names which would have disclosed the Complainant's interest. According to the Registrar verification, the Respondent is named "Jack M" of the organization "Godsmak". These are in no way connected to the Complainant or its NOVARTIS mark.

The Respondent deliberately chose to use the Complainant's well-known, distinctive NOVARTIS mark within the disputed domain names with the likely intention of benefitting from the Complainant's worldwide renown and to confuse Internet users as to source or sponsorship. It cannot be considered to be making a bona fide offering of goods or services.

The registration of the Complainant's marks pre-dates the registration of the disputed domain names and the Complainant did not authorize the Respondent to register the disputed domain names. The combination of the well-known NOVARTIS mark with the terms "web" and "hr" can only be a deliberate and calculated attempt to benefit improperly from the Complainant's rights.

The Respondent very likely knew about the Complainant and its mark, which is distinctive and well-known both worldwide and in India, where the Respondent resides. The Respondent has failed in presenting a credible evidence-backed rationale for registering the disputed domain names.

The disputed domain names resolved to pay-per-click websites, which constitutes bad faith conduct in terms of paragraph 4(b)(iv) of the Policy, as confirmed by previous cases. The Respondent has registered two domain names under gTLDs and five other domain names under the ccTLD ".in" containing the Complainant's well-known NOVARTIS mark combined with a generic term. This constitutes a pattern of conduct in terms of paragraph 4(b)(ii) of the Policy.

The Complainant has tried to reach the Respondent by a cease-and-desist notice sent on April 28, 2021 sent via the online contact form but has received no response from the Respondent. Its non-response allows the Panel to infer bad faith use of the disputed domain names per previous cases under 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 names are 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 names (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 names have been registered and are 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

The Panel notes that the second level of each of the disputed domain names incorporates the Complainant's NOVARTIS mark in its entirety. This is coupled with the word "web" in the case of the disputed domain name <novartisweb.online> and with the term "hr" together with a dash or hyphen in the case of the disputed domain name <novartis-hr.com>. The latter term is commonly used as abbreviation for "human resources". Neither the additional word or term in the case of each disputed domain name, nor the hyphen in the case of <novartis-hr.com>, serves to distinguish the disputed domain names from the mark concerned. The Complainant's mark remains entirely recognizable within each disputed domain name. The generic Top-Level Domains, in this case ".online" and ".com" respectively, are typically disregarded for the purposes of the comparison exercise. In these circumstances, the Panel finds that the disputed domain names are confusingly similar to the Complainant's trademark.

The Panel finds that the Complainant has made out a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain names. The Complainant asserts that it has never granted the Respondent any right to use the NOVARTIS mark, that the Respondent is not affiliated to the Complainant in any form, and that the Complainant has not found the Respondent to be commonly known by the disputed domain names or to have any legitimate interests over them. The Complainant also submits that neither "Jack M" nor the organization "Godsmak", as disclosed by the Registrar, have any connection to the Complainant or to its NOVARTIS mark. The Complainant concludes that the Respondent deliberately chose to use the Complainant's mark within the disputed domain names with the likely intention of benefitting from the Complainant's worldwide renown and to confuse Internet users as to source or sponsorship.

According to the Complainant's screenshots, the Respondent has used the disputed domain names in connection with pay-per-click advertising which references the Complainant's line of business. This cannot confer any rights or legitimate interests upon it.

The Respondent has not filed a Response in this case. Accordingly, it has not taken the opportunity to set out any alleged rights or legitimate interests in the disputed domain names. There are no submissions or evidence on the record which might serve to rebut the Complainant's prima facie case. In all of the above circumstances, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names.

The Panel finds that the Complainant has established that the disputed domain names have been registered and are being used in bad faith. The disputed domain names each incorporate the Complainant's distinctive NOVARTIS mark. Such mark is well-known globally and, furthermore, the Complainant has submitted specific evidence of its presence in India, where the Respondent is based. The websites associated with the disputed domain names have been configured to display links which are keyed to the Complainant's line of business. In these circumstances, it is more probable than not that the Respondent registered the disputed domain name in full knowledge of the Complainant's rights and with intent to target these via the pay-per-click advertising links displayed on the associated websites.

The Panel accepts the Complainant's submission that a finding of registration and use in bad faith on the basis of paragraph 4(b)(iv) of the Policy is warranted, given that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to source, sponsorship, affiliation, or endorsement of its website. In these circumstances, it is unnecessary for the Panel to consider the Complainant's additional submission relative to paragraph 4(b)(ii) of the Policy.

The Respondent has not replied to the Complainant's allegations of bad faith registration and use, nor has it advanced any explanation which might indicate that its actions regarding the disputed domain names were in good faith. In the absence of such, the Panel has not identified any likely or reasonable explanation based upon the present record which the Respondent might have tendered relative to its registration and use of the disputed domain names which would have avoided the present

finding.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **NOVARTISWEB.ONLINE**: Transferred
 2. **NOVARTIS-HR.COM**: Transferred
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PANELLISTS

Name	Andrew Lothian
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DATE OF PANEL DECISION 2021-07-09

Publish the Decision
