

Decision for dispute CAC-UDRP-103997

Case number	CAC-UDRP-103997
Time of filing	2021-08-30 11:37:25
Domain names	novartisicare.site, novartisicare.live, novartisicare.life

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
--------------	---------------------------------

Complainant

Organization	Novartis AG
--------------	-------------

Complainant representative

Organization	BRANDIT GmbH
--------------	--------------

Respondent

Name	Chi Thanh
------	-----------

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

Amongst many other trademarks, the Complainant is the proprietor of the International Trademark registration NOVARTIS 663765 registered on May 26, 1997 in several classes and designated inter alia for Vietnam.

FACTUAL BACKGROUND

The Complainant is the proprietor of the NOVARTIS trademarks registered as a word and figurative mark in several classes across numerous countries all over the world. The Complainant is a global healthcare company based in Switzerland that provides solutions to address the evolving needs of patients worldwide. The Complainant's products are sold in about 155 countries and they reached nearly 800 million people globally in 2018. About 125 000 people of 145 nationalities work at Novartis around the world. The Complainant has a strong presence also in Vietnam.

The disputed domain names have been registered on July 7, 2021.

The websites under the disputed domain names <novartisicare.life and novartisicare.live> resolve in pay per click websites with pharmaceutical related or medical terms such as „pcr test“or „Pharmazeutisches Unternehmen“ (in English:

Pharmaceutical company"). For these disputed domain names registrant's contact information is partly „redacted for privacy". The disputed domain name <novartisicare.site> does not resolve to an active website. Its registrant's information is incomplete missing a plausible street name and number.

A cease and desist letter sent to the Respondent was not answered.

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

In order to succeed in its claim, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied:

- (i) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) The Respondent has no rights or legitimate interests with respect to the disputed domain name; and (iii) The disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar The Complainant has established the fact that it has valid trademark rights for "NOVARTIS".

The disputed domain names differ in its second level domains only by the descriptive and not distinctive element „Care“, which has no relevant influence on the distinctiveness of the other element „Novartis“ and accordingly on the high similarity of the disputed domain names with Complainant's mark.

The Panel therefore considers the disputed domain names to be confusingly similar to the trademark NOVARTIS in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Respondent has no rights or legitimate interests in the disputed domain names, since the Respondent is not a licensee of the Complainant nor has the Complainant granted any permission or consent to the Respondent to use its trademarks or designations confusingly similar to its trademarks. Furthermore, the Respondent has no rights or legitimate interests in the disputed domain names, since there is no indication that the Respondent is commonly known by the name "NOVARTIS" or that the Respondent is using the disputed domain names in connection with a bona fide offering of goods or services.

The Panel therefore finds that the Respondent does not have rights or legitimate interests in the disputed domain names.

C. Registered and Used in Bad Faith

The panel follows the assessment of the Panel in the WIPO Case Novartis AG v. Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org, / Sergei Lir Case No. D2016-1688 that "NOVARTIS" is a well-known mark. Accordingly, the Respondent must have been aware of the Complainant and its trademarks when registering the disputed domain names. The Complainant has not authorized the Respondent to make use of a designation which is highly similar to its marks. This Panel does not see any conceivable legitimate use that could be made by the Respondent of these particular domain names without the Complainant's authorization.

Also the further circumstances in relation to the disputed domain names <novartiscare.life and novartiscare.live>, in particular the use of a partly redacted contact information, the use of terms in the scope of business of the Complainant for pay per click websites indicate that the Respondent registered and uses the disputed domain name primarily with the intention of attempting to attract, for commercial gain, Internet users to its potential website or other online locations, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of such website or location, or of a product or service on such website or location. The Panel therefore considers these disputed domain names to have been registered and used in bad faith in accordance with paragraph 4(a)(iii) of the Policy.

The disputed domain name <novartiscare.site> was not resolving to an active website at the time of filing. However, the consensus view amongst panellists since the decision Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003, <telstra.org> is that "the apparent lack of so-called active use (e.g., to resolve to a website) of the domain name without any active attempt to sell or to contact the trade mark holder (passive holding), does not as such prevent a finding of bad faith. The panel must examine all the circumstances of the case to determine whether the respondent is acting in bad faith. Examples of what may be cumulative circumstances found to be indicative of bad faith include that no response to the complaint is filed, the registrant's concealment of its identity and the implausibility of any good faith use to which the domain name may be put." In the present case, the Panel is convinced that such circumstances are given. Accordingly, the present circumstances do not prevent a finding of bad faith under the UDRP.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **NOVARTISCARE.SITE**: Transferred
2. **NOVARTISCARE.LIVE**: Transferred
3. **NOVARTISCARE.LIFE**: Transferred

PANELLISTS

Name	Dietrich Beier
------	----------------

DATE OF PANEL DECISION 2021-10-04

Publish the Decision
