

Decision for dispute CAC-UDRP-104006

Case number	CAC-UDRP-104006
Time of filing	2021-09-03 10:23:51
Domain names	NovartisHrDept.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

Name	Ana Buscano
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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 name.

IDENTIFICATION OF RIGHTS

The Complainant is the registered owner of many trademarks NOVARTIS in several classes including in United States of America (the "USA"), where the Respondent is located.

Reference is made to national trademark registrations for <NOVARTIS> (verbal) in the USA no 5420583 (Registration date: 13 March 2018; goods/services in classes 9, 10, 41, 42, 44, 45) and no 2997235 (Registration date: 20 September 2005 with first use in commerce 1997; goods in class 5; duly renewed).

These trademark registrations predate the registration of the disputed domain name.

FACTUAL BACKGROUND

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

1. The Complainant is a global healthcare company based in Switzerland. Its products are manufactured and sold in many regions worldwide. It results from the evidence provided by the Complainant that it has numerous subsidiaries and associated

companies based in the USA. Moreover, in 2019, 34% of Novartis Group's total net sales were constituted in the USA.

2. It results from the registrar verification that the date of registration of the disputed domain name by the current registrant was 15 July 2021.

3. According to the undisputed evidence provided by the Complainant, the disputed domain name resolved to a pay-per-click page.

4. The Complainant has tried to reach the Respondent by sending a communication note on 12 August 2021 via the Registrar's online form, without, however, receiving any reply from the Respondent.

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.

PRINCIPAL REASONS FOR THE DECISION

1.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks NOVARTIS, paragraph 4(a)(i) of the Policy

The Complainant's registered trademark NOVARTIS is identically included in the disputed domain name. It is the view of this Panel that the combination of the trademark NOVARTIS with the term "hrdept" does not avoid confusing similarity between the disputed domain name and the Complainant's trademark. The added term "hrdept" will be understood directly as referring to the human resources department which is commonly abbreviated as "HR Dept" and which will therefore be understood as describing one department within the Complainant's business organization.

It is acknowledged that where a trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) do not prevent a finding of confusing similarity under the first element (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, at section 1.8).

2.

In the absence of any Response, or any other information from the Respondent indicating the contrary, the Panel further holds that the Complainant successfully presented its prima facie case and that the Respondent has no rights or legitimate interests in respect of the disputed domain name pursuant to paragraph 4(a)(ii) of the Policy.

In particular, the Panel notes that there is no evidence in the record showing could lead the Panel to conclude that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy. In addition, it results from the Complainant's uncontested evidence that the Respondent has no connection or affiliation with the Complainant who has not granted the Respondent any license or consent, express or implied, to use the Complainant's trademark in domain names or in any other manner. Furthermore, use of the disputed domain name for webpages with commercial content excludes any noncommercial use in the sense of paragraph 4(c)(iii) of the Policy from the outset. Finally, said use for commercial web content does - in the Panel's view - not represent a bona fide offering (pursuant to paragraph 4(c)(i) of the Policy). This use rather capitalizes on the reputation and goodwill of the complainant's NOVARTIS marks.

3.

Finally, the Panel finds that the disputed domain name has been registered and is being used in bad faith according to paragraph 4(a)(iii) of the Policy.

It is the view of this Panel that the Respondent has registered and is using the disputed domain name, which fully includes the Complainant's trademark NOVARTIS identically, in order to intentionally attempt to attract, for commercial gain, Internet users to his web site, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of his web site (par. 4(b)(iv) of the Policy). Considering the fact that the disputed domain name identically includes that trademark suggests the Respondent's awareness of the trademark.

Additionally, the Panel also considered the following factors as supporting these findings of bad faith registration and use:

- (i) the high degree of distinctiveness and the worldwide reputation of the Complainant's NOVARTIS marks,
- (ii) the failure of the Respondent to reply to the communication note sent on 12 August 2021,
- (iii) the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good faith use,
- (iv) the Respondent hiding his identity behind a privacy shield, and
- (v) the implausibility of any good faith use to which the disputed domain name may be put.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **NOVARTISHRDEPT.COM**: Transferred

PANELLISTS

Name	Dr. Tobias Malte Müller
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DATE OF PANEL DECISION	2021-10-25
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Publish the Decision
