

## Decision for dispute CAC-UDRP-104062

Case number CAC-UDRP-104062

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Time of filing 2021-10-06 09:10:02

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Domain names Novartics.com

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### Case administrator

Organization Denisa Bilík (CAC) (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 Antonio Giovanni

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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.

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#### IDENTIFICATION OF RIGHTS

The Complainant is owner of, inter alia, Nigerian trademark NOVARTIS, with registration number 69385, applied for on August 2, 1996 and registered on November 17, 2006, for inter alia, pharmaceutical preparations and substances, and Nigerian trademark NOVARTIS, with registration number 57829, applied for on August 2, 1996 and registered on October 25, 2000 for optical apparatus and instruments. The trademarks shall be referred to as the "NOVARTIS Mark."

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#### FACTUAL BACKGROUND

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

The Novartis Group is one of the biggest global pharmaceutical and healthcare groups. It provides solutions to address the evolving needs of patients worldwide by developing and delivering innovative medical treatments and drugs. The Complainant, created in 1996 through a merger of two other companies Ciba-Geigy and Sandoz, is the holding company of the Novartis Group.

The Complainant's products are manufactured and sold in many regions worldwide including Nigeria where the Respondent

is located. The Complainant's sales figures in Nigeria reached almost CHF 100 million during the years 2005 and 2006.

The disputed domain name was registered on April 2, 2021 and incorporates the Complainant's well-known, distinctive NOVARTIS Mark by merely inserting an extra letter "c" before the last letter "s". The addition of the gTLD ".com" does not add any distinctiveness to the disputed domain name. The disputed domain name should be considered as confusingly similar to the NOVARTIS Mark.

According to the Complainant the Respondent has no right or legitimate interest in respect of the disputed domain name, nor is he using the disputed domain name for any bona fide offering of goods or services. The Complainant and the Respondent never had any previous relationship, nor has the Complainant ever granted the Respondent with any rights to use the NOVARTIS Mark in any form, including the disputed domain name. According to the Complainant the disputed domain name was involved in fraudulent phishing activities on April 20, 2021. As the Respondent has been using the disputed domain name for fraudulent purposes the use of the disputed domain name can never be considered a bona fide offering of goods or services. The Complainant has further not found that the Respondent is commonly known by the disputed domain name or that he has legitimate interest in the disputed domain name.

The Complainant also concludes that the Respondent has registered and used the disputed domain name in bad faith. The registration of the NOVARTIS Mark predates the registration of the disputed domain name and the Respondent has never been authorized by the Complainant to register the disputed domain name. According to the Complaint the incorporation of the well-known NOVARTIS Mark in the disputed domain name is a deliberate and calculated attempt to improperly benefit from the Complainant's rights and reputation. Considering the facts that the Respondent very likely knew about the Complainant and its trademark when he registered the disputed domain name, the NOVARTIS Mark is a distinctive, well-known trademark worldwide and in Nigeria where the Respondent resides, and the Respondent has failed in presenting a credible evidence-backed rationale for registering the disputed domain name, the disputed domain name shall be deemed as registered in bad faith. Because the disputed domain name has been used for phishing, bad faith use has also been demonstrated. In addition, the disputed domain name resolves to a webpage without actual content, which constitutes passive holding and no other legitimate use so that the clear reference to the Complainant's trademark may constitute registration and use in bad faith. Furthermore, the Respondent has been using privacy shield to conceal his identity, which adds up to the finding of bad faith in the given context. Lastly the Respondent is located in Nigeria, but provided an address and telephone number in the USA, thereby deliberately providing false WHOIS information.

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#### PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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#### 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).

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#### 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).

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#### 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).

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#### 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.

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#### PRINCIPAL REASONS FOR THE DECISION

In absence of arguments to the contrary and on the basis of the arguments and evidence submitted by the Complainant, the Panel established that the Complaint satisfied all three elements of paragraph 4(a) of the Policy for the following reasons:

1. The disputed domain name exists of the NOVARTIS Mark in its entirety, with the letter “c” added before the last letter “s.” the addition of the letter “c” does not take away the similarity between the disputed domain name and the NOVARTIS Mark. Consequently, the Panel finds that the disputed domain name is confusingly similar to the NOVARTIS Mark.

2. The Panel finds that the Complainant successfully submitted prima facie evidence that the Respondent has no relationship with the Complainant was not authorized by the Complainant to use the disputed domain name, and used the disputed domain name in the course of fraudulent phishing activities, which can never confer rights or legitimate interests on a respondent which did not use the disputed domain name (cf. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, section 2.13.1).

3. In the absence of a response, the Panel infers that the Respondent must have had the NOVARTIS Mark in mind when he registered the disputed domain name, which was therefore registered in bad faith. The Panel is also satisfied that the Respondent used the disputed domain in order to take advantage of a misspelling of the NOVARTIS Mark in a fraudulent phishing scheme, which clearly constitutes bad faith use of the disputed domain name.

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **NOVARTICS.COM**: Transferred

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## PANELLISTS

Name	<b>Alfred Meijboom</b>
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DATE OF PANEL DECISION 2021-11-17

Publish the Decision

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