

Decision for dispute CAC-UDRP-104085

Case number	CAC-UDRP-104085
Time of filing	2021-10-18 09:31:30
Domain names	LoadingNovartisCare.site

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	Yu Wu
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OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that are pending or decided and that relate to the Disputed Domain Name.

IDENTIFICATION OF RIGHTS

Complainant states, and provides evidence to support, that it is the owner of at least 177 trademark registrations that consist of or contain the mark NOVARTIS (the "NOVARTIS Trademark"), including Int'l Reg. No. 666,218 for NOVARTIS (registered October 31, 1996).

FACTUAL BACKGROUND

Complainant states that it is "the holding company" of Novartis Group, which is "one of the biggest global pharmaceutical and healthcare groups" and was "created in 1996 through a merger of two other companies Ciba-Geigy and Sandoz." Complainant further states that its "products are manufactured and sold in many regions worldwide including China" and that it "has a strong presence in China where the Respondent is located."

The Disputed Domain Name was created on August 18, 2021, and is being used in connection with what appears to be a monetized pay-per-click ("PPC") parking page and also is being advertised for sale for US \$5,000.

Complainant contends, in relevant part, as follows:

Paragraph 4(a)(i): Complainant states that the Disputed Domain Name is confusingly similar to the NOVARTIS Trademark because it “incorporates the Complainant’s well-known, distinctive trademark NOVARTIS in its entirety combined with the terms ‘Loading’ and ‘Care’, which is closely related to the Complainant and its business activities.”

Paragraph 4(a)(ii): Complainant states that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because, inter alia, “Complainant has never granted the Respondent any right to use the NOVARTIS trademark within the Disputed Domain Name, nor is the Respondent affiliated to the Complainant in any form”; “Complainant has not found that the Respondent is commonly known by the Disputed Domain Name”; “the Respondent is named “Wu Yu”, which is not related to the Complainant nor to the term ‘Novartis’ in any way”; and because the Disputed Domain Name “resolve[s] to a pay-per-click website..., the Respondent has not been using the Disputed Domain Name for any bona fide offering of goods or services.”

Paragraph 4(a)(iii): Complainant states that the Disputed Domain Name was registered and is being used in bad faith because, inter alia, “incorporating the well-known trademark NOVARTIS in the Disputed Domain Name is a deliberate and calculated attempt to improperly benefit from the Complainant’s rights and reputation”; previous panels have found that using a disputed domain name in connection with a PPC site, as here, constitutes bad faith; and by listing the Disputed Domain Name for sale, “Respondent intends to collect commercial gain by selling the Disputed Domain Name which incorporates the Complainant’s well-known, distinctive trademark NOVARTIS.”

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 UDRP).

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 UDRP).

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 UDRP).

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

Identical or Confusingly Similar: Paragraph 4(a)(i):

Based upon the trademark registrations cited by Complainant, it is apparent that Complainant has rights in and to the NOVARTIS Trademark.

As to whether the Disputed Domain Name is identical or confusingly similar to the NOVARTIS Trademark, the relevant comparison to be made is with the second-level portion of the Disputed Domain Name only (i.e., “loadingnovartiscare”) because “[t]he applicable Top Level Domain (‘TLD’) in a domain name (e.g., ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.” WIPO Overview of WIPO Overview 3.0, section 1.11.1.

Here, the Disputed Domain Name contains the NOVARTIS Trademark in its entirety plus the words “loading” and care”. As set forth in section 1.7 of WIPO Overview 3.0, “in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.” Further, section 1.8 of WIPO Overview 3.0 states: “Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.”

Accordingly, the Panel finds that Complainant has proven the first element of the UDRP.

Rights or Legitimate Interests: Paragraph 4(a)(ii)

Complainant states that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because, *inter alia*, “Complainant has never granted the Respondent any right to use the NOVARTIS trademark within the Disputed Domain Name, nor is the Respondent affiliated to the Complainant in any form”; “Complainant has not found that the Respondent is commonly known by the Disputed Domain Name”; “the Respondent is named “Wu Yu”, which is not related to the Complainant nor to the term ‘Novartis’ in any way”; and because the Disputed Domain Name “resolve[s] to a pay-per-click website..., the Respondent has not been using the Disputed Domain Name for any bona fide offering of goods or services.”

WIPO Overview 3.0, section 2.1, states: “While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of ‘proving a negative’, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.”

The Panel finds that Complainant has established its prima facie case and without any evidence from Respondent to the contrary, the Panel is satisfied that Complainant has satisfied the second element of the UDRP.

Registered and Used in Bad Faith: Paragraph 4(a)(iii)

Whether a domain name is registered and used in bad faith for purposes of the UDRP may be determined by evaluating four (non-exhaustive) factors set forth in paragraph 4(b) of the UDRP: (i) circumstances indicating that the registrant has registered or the registrant has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the registrant’s documented out-of-pocket costs directly related to the domain name; or (ii) the registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the registrant has engaged in a pattern of such conduct; or (iii) the registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the registrant has intentionally attempted to attract, for commercial gain, Internet users to the registrant’s website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the registrant’s website or location or of a product or service on the registrant’s website or location.

Numerous panels under the UDRP have found the registration and use of a domain name that is confusingly similar to a complainant’s trademark to constitute bad faith pursuant to paragraph 4(b)(iv) of the UDRP where, as here, the domain name is associated with a monetized parking page that could be construed as associated with the complainant. See, e.g., Wal-Mart Stores, Inc. v. Whois Privacy, Inc., WIPO Case No. D2005 0850; Columbia Pictures Industries, Inc. v. North West Enterprise, Inc., WIPO Case No. D2006-0951; and Dr. Martens International Trading GmbH, Dr. Maertens Marketing GmbH v. Private Whois Service, WIPO Case No. D2011-1753.

Accordingly, the Panel finds that Complainant has proven the third element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **LOADINGNOVARTISCARE.SITE:** Transferred
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PANELLISTS

Name	Douglas M. Isenberg
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DATE OF PANEL DECISION 2021-11-22

Publish the Decision
