

Decision for dispute CAC-UDRP-104151

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| Case number | CAC-UDRP-104151 |
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| Time of filing | 2021-11-10 09:51:17 |
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| Domain names | Novartix.org |
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Case administrator

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

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| Organization | Novartis AG |
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Complainant representative

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| Organization | BRANDIT GmbH |
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Respondent

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| Name | Ugobestiky Ugo |
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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 owns several trademark registrations across various jurisdictions, inter alia the trademark No. 11253 "NOVARTIS", registered on October 21, 2016, trademark No. 57829 "NOVARTIS", registered on October 25, 2000 and trademark No. 69385 "NOVARTIS", registered November 17, 2006 (hereinafter cumulatively referred to as the "Trademark"). These trademark registrations are registrations in Nigeria, where the Respondent is located.

FACTUAL BACKGROUND

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, Novartis AG, was created in 1996 through a merger of two other companies Ciba-Geigy and Sandoz, and it is the holding company of the Novartis Group.

The Complainant has an active presence in Nigeria where the Respondent is located, dated back to 2004 and has been active since then, inter alia with scientific programs against Malaria.

The Complainant owns numerous domain names composed of either its trademark NOVARTIS alone, including <novartis.com>, <novartis.net> or in combination with other terms, e.g. <novartispharma.com>.

The disputed domain name <novartix.org> was registered on October 17, 2021 and has been used in connection to an active website, mirroring the Novartis UK website.

According to the Response, the Respondent is a freelance Web Developer, who was hired to create the website under the disputed domain name.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to the Trademark.

Furthermore, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. In this regard, the Complainant states that the Respondent is not commonly known by the disputed domain name, that it is not affiliated with nor authorized by the Complainant in any way, that the Complainant does not carry out any activity for, nor has any business with the Respondent, and that neither license nor authorization has been granted to the Respondent to make any use of the Trademark or apply for registration of the disputed domain name by the Complainant.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. It contends that the Respondent must have been aware of the Complainant and its well-known Trademark at the time of registration of the disputed domain name and that the Respondent's use of the disputed domain name is evidence of bad faith.

RESPONDENT:

The Respondent has filed an administratively compliant Response, however he does not argue against the Complainant. The Respondent recognises the Trademark and Complainant's rights in it and asserts that the website has been taken down after the reception of the formal Complaint.

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

I. Language of the Proceedings

The language of the Registration Agreement for the disputed domain name is English. Pursuant to the Rules, paragraph 11, in the absence of an agreement between the parties, or unless specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement.

The Respondent received the Complaint and considering that he responded to the Complaint without contesting Complainant's

request thereof, the Panel finds that there is no argument on this matter.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceedings shall be English.

II. Suspension Request

Since in his Response the Respondent offered to transfer the domain name to the Complainant, the Parties had the right to negotiate a settlement and the proceedings were suspended for a limited period of time.

Upon the Suspension Request by the Complainant, the proceedings were suspended.

However, as the settlement has not been successfully negotiated, the proceedings continued.

Having considered all the above, 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

Under paragraph 4(a) of the Policy, the Complainant must prove that each of the following three elements is present:

- (i) the disputed domain name is identical or confusingly similar to the Complainant's trademark; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

1. The Panel accepts that the disputed domain name is confusingly similar to the Trademark as it fully incorporates it. It is well established that a domain name that wholly incorporates a trademark may be confusingly similar to such trademark for purposes of the Policy despite the misspelling / typosquatting.

2. The Complainant has substantiated that the Respondent has no rights or legitimate interests in the disputed domain name. The Panel finds that the Complainant has fulfilled its obligations under paragraph 4(a)(ii) of the Policy. The Respondent did not deny these assertions in any way and therefore failed to prove any rights or legitimate interests in the disputed domain name.

3.1 The Panel is satisfied that the Respondent registered the disputed domain name with full knowledge of the Complainant and its rights in the Trademark as the Trademark is highly distinctive and well-established.

3.2 Furthermore, the Panel accepts the Complainant's contentions that the disputed domain name has been used in bad faith. It is apparent from the evidence in the file that with respect to the use in bad faith, the Respondent's use of the disputed domain name was to attract, for commercial gain, internet users to his website or other online location, by creating a likelihood of confusion with the Complainant's mark, which qualifies as bad faith registration and use under paragraph 4(b)(iv) of the Policy.

The Respondent contends - however, not with certainty ("I think (..)") - that the disputed domain name was not used for any commercial purpose. Nonetheless, no evidence is provided to support this position and therefore the Panel accepts that the third criteria element set out in paragraph 4(a) of the Policy is also satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **NOVARTIX.ORG:** Transferred

PANELLISTS

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| Name | Stefania-Despoina Efstathiou, LL.M. mult. |
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| DATE OF PANEL DECISION | 2021-12-26 |
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Publish the Decision