

Decision for dispute CAC-UDRP-104190

Case number CAC-UDRP-104190

Time of filing 2021-11-26 11:04:56

Domain names novarspharma.com

Case administrator

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

Complainant

Organization Novartis AG

Complainant representative

Organization BRANDIT GmbH

Respondent

Name Aditya Kumar

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

Complainant is the owner of the following trademark in India:
NOVARTIS, application. no: 700020, application date: 28 February 1996 and user date: 28 July 1997.

FACTUAL BACKGROUND

Complainant requested that the language of the proceedings be English.

According to the evidence submitted by Complainant, Complainant 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. Complainant's products are sold in about 155 countries and reached nearly 800 million people globally in 2018. About 125 000 people of 145 nationalities work at Complainant around the world. Complainant submits that it has a strong presence in India where Respondent is located. Not only does Complainant have several local sites, but it has also been very active in holding various events and initiatives.

The disputed domain name <novarspharma.com> was registered on 26 February 2021. The trademark registration of

Complainant has been issued prior to the registration of the disputed domain name.

According to Complainant the disputed domain name is confusingly similar to Complainant's trademark. It incorporates Complainant's well-known, distinctive trademark NOVARTIS in its entirety, by removing the letters "t" and "i", combined with a generic term "pharma" which is closely related to Complainant and its business activities. The term "novars" is still visually and phonetically similar to NOVARTIS. The addition of the gTLD ".com" does not add any distinctiveness to the disputed domain name.

According to Complainant, Respondent has no rights or legitimate interest in the disputed domain name. Complainant has not found that Respondent is commonly known by the disputed domain name. The disputed domain name used to resolve to active website where internet users were asked to provide their personal information (email, phone number, etc.) if they want to contact the website owner. By the time Complainant prepared the complaint, the disputed domain name did not resolve to any active website. Before accessing the website associated to the disputed domain name, some web security tools would identify it as a suspicious page, which indicates the existence of potential confusion among Internet users.

According to Complainant Respondent deliberately chose to use the term "pharma" combined with a typo of Complainant's distinctive, well-known trademark NOVARTIS in order to confuse Internet users as to the source or sponsorship and therefore cannot be considered to provide a bona fide offering of goods or services.

According to Complainant the disputed domain name is registered and is being used in bad faith. Given the distinctiveness of Complainant's trademark Complainant submits that the registration of Complainant's trademark pre-dates the registration of the disputed domain name, that Respondent very likely knew about Complainant and its trademark NOVARTIS when it registered the disputed domain name. According to Complainant it is inconceivable that the combination of a typo of the distinctive, well-known trademark NOVARTIS and the generic term "pharma" in the disputed domain name is not a deliberate and calculated attempt to improperly benefit from Complainant's earlier rights. Considering that Complainant's trademark is a well-known, distinctive trademark also in India where Respondent is domiciled and that Respondent has been passively holding the disputed domain name, Complainant concludes that Respondent has been using the disputed domain name in bad faith.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

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 Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

Complainant has, to the satisfaction of the Panel, shown 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

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

Under paragraph 11(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), unless otherwise

agreed by the parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement. In the present case, the language of the Registration Agreement is English. Complainant submitted its Complaint in English and requested that the language of the proceeding be English. As the language of the registration agreement is English, the Panel has decided to accept Complainant's filing in English and issue a decision in English.

In the opinion of the Panel the disputed domain name is confusingly similar to Complainant's trademark (Policy, Par. 4 (a) (i)). Many UDRP decisions have found that a disputed domain name is identical or confusingly similar to a complainant's trademark where the disputed domain name incorporates the complainant's trademark or the principal part thereof. Complainant has established that it is the owner of trademark registrations for NOVARTIS. The disputed domain name incorporates the well-known NOVARTIS trademark as its distinctive element, with a misspelling by removal of the letters "t" and "i" of the trademark, combined with the generic and descriptive term "pharma". The gTLD ".com" in the disputed domain name may be disregarded.

The Panel notes that Complainant's registration of its trademark predates the creation date of the disputed domain name.

In the opinion of the Panel Complainant has made a prima facie case that Respondent lacks rights or legitimate interest in the disputed domain name. Complainant has not licensed or otherwise permitted Respondent to use its trademarks or to register the disputed domain name incorporating its marks. Respondent is not making a legitimate non-commercial or fair use of the disputed domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademarks of Complainant. Respondent is not commonly known by the disputed domain name nor has it acquired trademark rights. Complainant has no relationship with Respondent. Based on the undisputed submission and evidence provided by Complainant at the time of the decision there is no website under the disputed domain name. Under these circumstances, the Panel finds that Respondent has no rights or legitimate interests in the disputed domain name (Policy, Par. 4 (a)(ii)).

The Panel finds that the disputed domain name has been registered and is being used in bad faith (Policy, Par. 4(a)(iii)). Complainant has rights in the NOVARTIS trademark. Respondent knew or should have known that the disputed domain name is confusingly similar to Complainant's well-known mark. The Panel notes that there is at the time of the decision no active website at the disputed domain name. Such passive holding of the disputed domain name does not prevent the Panel from finding registration and use in bad faith. The Panel further notes that the current undeveloped use of the website and the prior use of the website under the disputed domain name which incorporates with a misspelling the distinctive part of Complainant's trademark indicates that Respondents possibly registered the disputed domain name with the intention to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the trademark of Complainant as to the source, sponsorship, affiliation, or endorsement of its website or location, which constitutes registration and use in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **NOVARSPHARMA.COM**: Transferred

PANELLISTS

Name	Dinant T.L. Oosterbaan
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DATE OF PANEL DECISION 2021-12-28

Publish the Decision
