

Decision for dispute CAC-UDRP-104442

Case number CAC-UDRP-104442

Time of filing 2022-03-24 09:43:18

Domain names novartisah.com

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization Novartis AG

Complainant representative

Organization BRANDIT GmbH

Respondent

Name Yihui Chen

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 owner of several trademark registrations for the term "NOVARTIS" – all around the world – since 1996, including International Registrations nos. IR666218 and IR663765, both also covering China.

Likewise, the Complainant also owns several domain names consisting of the wording "NOVARTIS", all of them registered before the disputed domain name.

FACTUAL BACKGROUND

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

- The Complainant – a global healthcare company based in Switzerland – owns a portfolio of brands including International Registrations nos. IR666218 and IR663765, also covering China.
- The Complainant also owns of a portfolio of domain names including the wording "NOVARTIS" since 1996.

- "NOVARTIS" is a well-known worldwide trademark and such circumstance has been confirmed in several WIPO and ADR.EU cases.

- The Respondent has registered the disputed domain name <novartisah.com> on February 20, 2022, which, as of this day, is connected to a website apparently selling air compressors.

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

RIGHTS

The Panel finds that the disputed domain name is confusingly similar to the trademark "NOVARTIS" and to the relative domain names registered by the Complainant, which has proven to have prior rights since 1996.

The brand "NOVARTIS" is well-known in the pharmaceutical industry due to its wide use and the disputed domain consists of such trademark along with letters "AH".

Given the above – and taking into account the nature and the dimension of the business carried out by the Complainant under the trademark "NOVARTIS" – the addition of such irrelevant letters at the end of the domain name would not prevent a finding of confusing similarity under the first element of the UDRP.

Previous panels have found that the slight spelling variations does not prevent a domain name from being confusingly similar to the complainant's trademark. Adding the above letters at the end of the verbal portion "NOVARTIS" does not take away the confusing similarity between the domain name and the trademark

Simple exchange or adding of letters is not a sufficient element to escape the finding that the disputed domain name is confusingly similar to the Complainant's trademarks and domain names.

NO RIGHTS OR LEGITIMATE INTEREST

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).

The Complainant contends that the Respondent is not affiliated with him nor authorized by them in any way to use their trademarks in a domain name or on a website. The Complainant does not carry out any activity for, nor has any business with the Respondent.

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).

Given the circumstances of the case, including the provided information of the use and reputation of the Complainant's trademark NOVARTIS and the distinctive nature of this mark, it is inconceivable to the Panel in the current circumstances that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant's mark.

The Panel finds that the Respondent has made no use of, or demonstrable preparations to use, neither of the disputed domain name in connection with a bona fide offering of goods or services, nor is making a legitimate non-commercial or fair use of the disputed domain name.

On the contrary, Respondent is using the disputed domain name to intentionally attempt to attract, for commercial gain, internet users to the website, by creating a likelihood of confusion with Complainant's trademarks as to the source, sponsorship, affiliation or endorsement of its website.

As indicated by an established case-law, "Based on the evidence presented to the Panel including [...] the confusing similarity between the Complainant's trademark and the disputed domain name, [...] the failure of the Respondent to respond to the Complaint [...] the Panel draws the inference that on balance the disputed domain name has been registered and is being used in bad faith" (WIPO case No. D2016-0456 Amis Paris v. Amiparis, Amipa).

Consequently, the Panel believes that the disputed domain name was registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **NOVARTISAH.COM**: Transferred

PANELLISTS

Name	Tommaso La Scala
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DATE OF PANEL DECISION 2022-04-29

Publish the Decision