

Decision for dispute CAC-UDRP-104633

Case number	CAC-UDRP-104633
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Time of filing	2022-06-06 10:30:41
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Domain names	NovartisPlc.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

Organization	ca domains
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OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant's trademark registrations in Canada include:

Trademark: NOVARTIS

Reg. no: TMA523129

Registration date: February 15, 2000

FACTUAL BACKGROUND

The following facts have been asserted by the Complainant and have not been 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 has a strong presence in Canada, where the Respondent is located. The roots of the Novartis Group in Canada date back to the 1920s when both Ciba and Sandoz were established in Montreal and to the 1940s when J.R. Geigy opened in Toronto. Novartis AG (the "Complainant"), created in 1996 through the merger of Ciba-Geigy and Sandoz, is the

holding company of the Novartis Group.

In Canada, among the five distinct companies that Novartis owns, Novartis Pharmaceuticals Canada Inc. is a leading research-based company with a wide-ranging program for developing and marketing innovative prescription medications. The Company's national head office building, completed in 2003, is located in Dorval, Quebec.

The Complainant owns the well-known trademark "NOVARTIS," registered as both a word and device mark in several classes worldwide, including Canada. The vast majority of the Complainant's trademark registrations significantly predate the disputed domain name's registration.

The disputed domain name was registered on April 6, 2022.

PARTIES CONTENTIONS

COMPLAINANT:

A. THE DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR

The disputed domain name, which was registered on April 6, 2022, incorporates the Complainant's well-known, distinctive trademark NOVARTIS in its entirety in combination with the term "PLC", which could be easily interpreted by the public as the company form "public limited company", therefore is closely related to the Complainant and its business activities.

The addition of the gTLD ".com" does not add any distinctiveness to the disputed domain name.

The disputed domain name should be considered confusingly similar to the trademark NOVARTIS.

B. RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTEREST IN RESPECT OF THE DOMAIN NAME

The Complainant and the Respondent have never had any previous relationships, nor has the Complainant ever granted the Respondent any rights to use the NOVARTIS trademark in any form, including the disputed domain name.

The Complainant has not found that the Respondent is commonly known by the disputed domain name or that it has legitimate interest over the disputed domain name. When searched for "Novartisplc" in the Google search engine, the search results all pointed to the Complainant and its business activities.

The Respondent should have already performed a similar search before registering the disputed domain name and should have quickly learned that the Complainant owns the trademarks and that the Complainant has been using its trademarks in Canada, where the Respondent resides and in many other countries worldwide. However, the Respondent still chose to register the disputed domain name as such.

In addition, according to the Registrar Verification, the Respondent is named "ca domains / Mark Miller", which is in no way related to the Complainant nor the term "Novartis".

By the time the Complainant prepared Complaint on June 2, 2022, the disputed domain name resolved to a web page under construction. Accordingly, the Respondent has not used the disputed domain name for any bona fide offering of goods or services.

In addition, when Internet users, who search for information about the Complainant and/or about the brand "Novartis", see the unfinished page, they would very likely be confused and be led to believe that the disputed domain name is somehow related to the Complainant and be disappointed as they would not find the information as expected – which will lead to trademark tarnishment for the Complainant.

From the Complainant's perspective, the Respondent deliberately chose to incorporate a sign that is confusingly similar to the

well-known, distinctive trademark NOVARTIS in the disputed domain name, clearly intending to collect commercial gain by benefiting from the Complainant's worldwide renown.

For the preceding reasons, it shall be concluded that the Respondent has no right or legitimate interest in the disputed domain name and has not been using it for any bona fide offering of goods or services.

C. THE DOMAIN NAME WAS REGISTERED AND IS BEING USED IN BAD FAITH

i. THE DOMAIN NAME WAS REGISTERED IN BAD FAITH

It should be highlighted that most of the Complainant's trademark registrations predate the disputed domain name's registration. The Complainant has never authorized the Respondent to register the disputed domain name. Considering the renown of the Complainant and its trademark NOVARTIS, and the overall composition of the disputed domain name, i.e., using the Complainant's well-known, distinctive trademark NOVARTIS in its entirety in combination with the term "plc", which is closely related to the Complainant and its business activities, it follows that 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.

Considering the facts that:

- The Respondent very likely knew about the Complainant and its trademark;
- The Complainant's trademark NOVARTIS is a distinctive, well-known trademark worldwide and in Canada, where the Respondent resides;
- 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.

ii. THE DOMAIN NAME IS BEING USED IN BAD FAITH

Taking into account the fact that the Complainant is well-known worldwide, the Complainant considers that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or location by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location.

As noted in the previous paragraphs, the disputed domain name resolved to an unfinished page, which constitutes passive holding. Additionally, the Complainant tried to reach the Respondent with the notice of cease-and-desist letter sent on April 20, 2022, to the Respondent's email as provided in the WHOIS. However, until the Complainant prepared this Complaint, it has not received a response from the Respondent.

Furthermore, the Respondent has been using a privacy shield to conceal its identity, adding to the finding of bad faith.

SUMMARY

- NOVARTIS is a well-known, distinctive trademark worldwide.
- Complainant's trademark registration predates the registration of the disputed domain name.
- Respondent has no rights in the mark NOVARTIS, bears no relationship to the Complainant, and is not commonly known by the disputed domain name - accordingly, it has no legitimate interest in the disputed domain name.
- It is improbable that Respondent was unaware of Complainant's prior rights in the trademark NOVARTIS when registering the disputed domain name, given the Complainant's worldwide renown.
- Respondent has been using the disputed domain name to resolve an unfinished page.
- Respondent has not responded to Complainant's cease-and-desist communication.
- Respondent has been using a privacy shield to conceal its identity.

Consequently, the Respondent should be considered to have registered the disputed domain name confusingly similar to the Complainant's well-known, distinctive trademark NOVARTIS. Accordingly, the Complainant has not found that the Respondent is of any legitimate right or interest in using the disputed domain name but registered and has been using the disputed domain name in bad faith.

RESPONDENT

No administratively compliant Response was filed.

RIGHTS

To the satisfaction of the Panel, the Complainant has shown that the disputed domain name is identical or confusingly similar to the trademark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

To the satisfaction of the Panel, the Complainant has 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

To the satisfaction of the Panel, the Complainant has 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 have been met, and there is no other reason why it would be unsuitable for providing the Decision.

PRINCIPAL REASONS FOR THE DECISION

A. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has shown it owns rights in the trademark "NOVARTIS" trademark, with various registration, with evidence provided dating the trademark registration back to February 15, 2000.

Turning to analyze if there is a confusing similarity between the disputed domain name and the trademark, the Panel notes, based on the record at hand, that the disputed domain name reproduces the trademark in its totality, namely "NOVARTIS", with one exception. This exception is the addition of the three letters "PLC". PLC can mean many things, such as Programmable Logic Controller (PLC) or Public Limited Company (PLC) in some jurisdictions. In this instance, the Complainant argues that the "PLC" in the disputed domain name stands for Public Limited Company (PLC). Unfortunately, the Respondent did not provide any arguments to dispel this interpretation, and based on the evidence at hand, and the Panel is persuaded by the interpretation put forth by the Complainant.

Furthermore, the addition of the three letters, namely "PLC", is immaterial to dispel the confusing similarity between the disputed domain name and the Complainant's trademarks.

In addition, the term "PLC" appears to misrepresent the origin of the disputed domain name for it to appear as an official channel of an organization. In this case, that organization seems to be the Complainant. However, an analysis of this will be done under the elements below.

Consequently, the Panel determines that the Complaint has satisfied the Policy's first element set under paragraph 4(a)(i).

B. Rights or Legitimate Interests

Based on the evidence on record and acknowledging that the Respondent failed to produce any allegations or evidence necessary to demonstrate its rights or legitimate interests in the disputed domain name, the Panel must turn to the uncontested facts.

The uncontested facts indicate that a) the Respondent has no license or authorization to use the trademarks; b) the Respondent is not authorized to carry out any activity for the Complainant; c) the Respondent is not affiliated with the Complainant; d) the Respondent has no business dealings with the Complainant; e) the Respondent is not commonly known by the disputed domain name; f) the Respondent is not using the disputed domain name and has not demonstrable plans to use the disputed domain name legitimately.

The Respondent also did not reply to the Complainant's cease and desist letter. In addition, the Respondent failed to respond to the Complainant's contentions; the Respondent has not rebutted the prima facie case, as described in paragraph 2.1 of WIPO 3.0 Overview.

In addition to this, the Respondent's use of the trademark plus the term "PLC", which likely refers to Public Limited Company (PLC), seems to indicate, on the balance of probabilities, that the Respondent not only was aware of the Complainant but deliberately targeted the Complainant to benefit from the appearance of legitimate association to the Complainant and confuse Internet users as to the source of sponsorship. A practice like this can never be considered a bona fide offering under the Policy.

These facts lead the Panel to conclude that the Respondent did not have rights or legitimate interests in the disputed domain name.

Consequently, the Panel determines that the Respondent has no rights or legitimate interests in the disputed domain name. Subsequently, the Complainant has fulfilled the second requirement set under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Per the record and evidence at hand, the Panel finds that the Respondent was likely aware of the Complainant and had the Complainant's trademark in mind when registering the disputed domain name. This is further reinforced by the fact that NOVARTIS is a well-known, distinctive trademark worldwide. Additionally, this conclusion is supported by the fact that the Respondent seems to evoke a connection to the Complainant's trademark by including the term "PLC", which appears to misrepresent the origin of the disputed domain name for it to appear as an official channel of an organization. In this case, that organization seems to be the Complainant. If this is indeed the case, the Respondent appears to have targeted the Complainant on the balance of probabilities.

All the preceding analysis leaves the Panel no other option than to conclude that the most likely intention of the Respondent was to intentionally attempt to attract, for commercial gain, Internet users to its website/disputed domain name, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and/or disputed domain name, as per illustrated under paragraph 3.1 of WIPO 3.0 Overview.

In light of the case's circumstances, based on the available records, the Panel finds that the Complainant has proven that the disputed domain name was registered and is used in bad faith according to paragraph 4(a)(iii) of the Policy.

D. Decision

For the preceding reasons and in concurrence with the provisions specified under Paragraph 4(i) of the Policy and Paragraph 15 of the Rules, the Panel orders the transfer of the disputed domain name to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **NOVARTISPLC.COM**: Transferred

PANELLISTS

Name	Rodolfo Carlos Rivas Rea
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DATE OF PANEL DECISION	2022-07-05
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Publish the Decision
