

Decision for dispute CAC-UDRP-104239

Case number	CAC-UDRP-104239
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Time of filing	2021-12-16 10:23:46
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Domain names	Novartis.chat
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Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (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	Vision Recoveries
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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 is inter alia the owner of the Australian trademark registration no. 712454 "NOVARTIS", registered on April 24, 1998, for various goods and services in classes 1, 5, 9, 10, 29, 30, 31, and 32 (hereinafter referred to as the "Trademark").

FACTUAL BACKGROUND

The Complainant is the holding company of the Novartis Group, one of the biggest global pharmaceutical and healthcare groups, which was established in 1996 through a merger of two other companies Ciba-Geigy and Sandoz. The Complainant's products are manufactured and sold in many regions worldwide. The Complainant has a strong presence and several subsidiaries and associated companies in Australia, where the Respondent is located. The Complainant is the registered owner of numerous domain names, including <novartis.com> and <novartis.com.au>.

The disputed domain name was registered on December 10, 2021 and is used in connection with a website displaying the name "Vision Recoveries", which appears to be the Respondent's own business, and the sentence "NOVARTIS YOU JUST STOLE MY WEBDOMAINS."

The Respondent has registered domain names including the Trademark in the past and was ordered to transfer the respective domain names in a previous UDRP proceeding before the Czech Arbitration Court (CAC Case No. 104102).

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the disputed domain name is identical to the Trademark as the disputed domain name includes the Trademark in its entirety and as the gTLD ".chat" does not add any distinctiveness to the disputed domain name.

The Complainant also states that the Respondent does not have any rights or legitimate interest with regard to the disputed domain name. The Complainant argues that the parties have never had any previous relationships, nor has the Complainant ever granted the Respondent any rights to use the Trademark in any form, including the disputed domain name. It further contends that the Respondent is neither commonly known by the disputed domain name nor has legitimate interest over the disputed domain name. In addition, the Complainant states that the Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services and not non-commercial or fair. Finally, the Respondent also refers to the previous UDRP proceeding against the Respondent and contends that the Respondent registered the disputed domain name with the intention to take revenge on the Complainant while still trying to attract traffic to its own business for commercial gain.

With regard to bad faith, the Complainant states that the disputed domain name was registered and is being used in bad faith. With regard to bad faith registration, it argues that the Respondent was aware of the Complainant and its Trademark because the Trademark is well-known (which already has been confirmed in prior UDRP decisions) and because the parties have already been involved in a UDRP proceeding concerning domain names including the Trademark before the registration of the disputed domain name. With regard to bad faith use, the Complainant contends that the disputed domain name is used in connection with a website advertising the Respondent's own business and to complain about the Complainant. Furthermore, the Complainant points to the fact that the Respondent previously registered a number of domain names in the same pattern and that his behavior was found to be in bad faith by a previous panel.

RESPONDENT:

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

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 identical to the Trademark.

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. Based on the evidence on file, the Panel cannot find any rights or legitimate interests of the Respondent either. In particular, there is no need for the Respondent to register a domain name including the Trademark to complain about the Complainant.

Furthermore, the Respondent cannot refer to a fair use such as noncommercial free speech because a) the Respondent's website refers to its business and therefore cannot be viewed as noncommercial and b) even a general right to legitimate criticism does not necessarily extend to registering or using a domain name identical to a trademark. Accordingly, the Panel finds that the Complainant has proven that the Respondent has no rights or legitimate interests in respect of the disputed domain name under paragraphs 4(a)(ii) and 4(c) of the Policy.

3. The Respondent registered the disputed domain name in bad faith. It was perfectly aware of the Complainant and the Trademark when registering the disputed domain name because it was involved in a previous UDRP proceeding against the Complainant which also involved the Trademark.

The Panel is also satisfied that the disputed domain name is being used in bad faith under paragraph 4(b)(iii) of the Policy. In the previous UDRP proceeding, the Respondent admitted that it registered domain names including the Trademark with the intent to annoy the Complainant. After having lost the previous UDRP proceeding concerning the domain names <NOVARTIS.GURU>, <NOVARTIS.MEDIA>, <NOVARTIS.NINJA>, <NOVARTIS.PRESS>, <NOVARTIS.SERVICES>, <NOVARTIS.TEAM>, <NOVARTIS.TECHNOLOGY>, and <NOVARTIS.TODAY> (CAC Case No. 104102), the Respondent started using the disputed domain name to complain about the Complainant and the lost proceeding. However, there is no visible need for the Respondent to register a domain name including the Trademark to express his opinion in this regard. The facts of the case allow no other conclusion than that the Respondent registered the disputed domain name to disrupt the Complainant's business, as set out in paragraph 4(b)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **NOVARTIS.CHAT**: Transferred

PANELLISTS

Name **Peter Müller**

DATE OF PANEL DECISION **2022-01-26**

