

Decision for dispute CAC-UDRP-104971

Case number	CAC-UDRP-104971
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Time of filing	2022-11-04 09:47:05
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Domain names	novartis-bio.info
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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

Name	PIERRE MARIONE
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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 Novartis Group is one of the biggest global pharmaceutical and healthcare groups in the world. It provides solutions to address the needs of patients worldwide by developing and delivering innovative medical treatments and drugs.

Novartis AG (the Complainant) has its headquarter in Switzerland, that it created in 1996 through a merger of two other companies Ciba-Geigy and Sandoz, and is the holding company of the Novartis Group.

Novartis' products are sold in about 155 countries and reached nearly 769 million people globally in 2020. About 100,000 people of 142 nationalities work at Novartis around the world. The Novartis group produces and markets its products in many parts of the world including in Europe which is one of the principal markets for Novartis. The Complainant employs 45,000 employees in Europe and has 80 sites from R&D to manufacturing, to commercial.

In Cyprus (where the Respondent seems to be located), the Complainant operates via its subsidiary Novartis Pharma Services Inc. (Nikosia).

The Complainant is the owner of the well-known trademark NOVARTIS registered as both a word and device mark in several classes worldwide, including in Cyprus.

The vast majority of the Complainant's trademark registrations significantly predate the registration of the Disputed Domain Name.

Namely, the Complainant's trademark registrations applying to the present proceedings include the following earlier rights:

EU Trademark: NOVARTIS

Reg. no: 000304857

Reg. date: June 25, 1999

International Trademark Registration: NOVARTIS

Reg. no: 1349878

Reg. date: November 29, 2016

International Trademark Registration: NOVARTIS

Reg. no: 1544148

Reg. date: June 29, 2020

The above mentioned trademarks are a non-exhaustive list of the Complainant's trademarks in Europe.

The NOVARTIS trademark is well-known (for instance see Novartis AG v. Amartya Sinha, Global Webs Link, Novartis RO, WIPO Case No. D2020-3203).

FACTUAL BACKGROUND

The Complainant owns numerous domain names composed of its trademark NOVARTIS alone, including (registered in 1996) or in combination with other terms, such as (registered in 1999).

The Complainant uses these domain names to resolve to its official websites through which it informs Internet users and potential consumers about its NOVARTIS mark and its related products and services.

The Complainant also enjoys a strong presence online via its official social media platforms.

The Disputed Domain Name <novartis-bio.info> was registered by the Respondent on 24 October 2019.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

COMPLAINANT'S CONTENTIONS:

(i) The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

The Complainant owns numerous trademarks NOVARTIS registered in numerous jurisdictions. The Disputed Domain Name <novartis-bio.info> incorporates in its second-level portion entirely the Complainant's registered trademark NOVARTIS along with the term "bio", closely connected to the Complainant's business and activities of the Complainant in the world. The NOVARTIS trademark is clearly recognizable within the Disputed Domain Name while the mere addition of a descriptive term would not prevent a finding of confusing similarity to a trademark. The presence of the generic Top-Level Domain ("gTLD") extension ".info" in the first level portion of the Disputed Domain Name is a standard registration requirement and may be disregarded when assessing whether the Disputed Domain Name is confusingly similar to the trademark in which the Complainant has rights.

The Disputed Domain Name is therefore confusingly similar to the Complainant's NOVARTIS trademark.

(ii) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name

The Complainant and the Respondent have never had any previous relationships, nor has the Complainant ever granted the Respondent with any rights to use the NOVARTIS trademark in any forms, 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 interests over the Disputed Domain Name. When searched for "novartis-bio" or "novartis-bio.info" in the Google search engine with or without Respondent's name "Pierre Marione", the search results point to the Complainant as well as another domain name dispute concerning the domain name novartis-bio.eu raised by the Complainant against the Respondent. The Respondent should have already performed a similar search before registering the Disputed Domain Name and should have quickly learnt that the trademarks are owned by the Complainant and that the Complainant has been using its trademarks in many other countries worldwide – in fact, evidence showed that the Respondent obviously knew about the Complainant and its trademark NOVARTIS when it registered the Disputed Domain Name. However, the

Respondent still chose to register the Disputed Domain Name as such.

The Complainant noticed that the website associated to the Disputed Domain Name displays content displaying NOVARTIS trademark and logo in prominent position with the text “Product Validation” and a field “Enter Code” with the message “Please Enter Security Code” and the button “send”. Moreover, the also has different fields including “Somatropin Human Growth Hormone” which is manufactured by the Complainant. The website associated with the Disputed Domain Name info@novartis-bio.eu and other fields such as “About Us”, “Partnership” and others which do not resolve to any content but lead to error page when clicking on the same. The website associated with the Disputed Domain Name “NOVARTIS-BIO does not sell any pharmaceutical products online. We do not sell to the public. We do not ship any products. We are not directly or indirectly associated with any websites that may engage in selling same or similar products. Information contained within this website is not a prescription to use and is intended for INFORMATION purposes only”. There is no information or statement about the absence of any relationship between the Complainant and the Respondent and the Respondent’s website. Considering the content of the web-site that impersonates the Complainant by displaying the logo in the prominent position as well as including the contact information as “Novartis – Bio, Switzerland EU” it is clear that the consumers might be easily misled into believing that the website associated with the Disputed Domain Name is controlled by the Complainant. The Complainant filed an abuse report to the hosting provider in order to remove the misleading content. The Website has been removed on 28 October 2022. By the time of filing of this complaint the content had not been removed. The Complainant has also filed the complaint regarding the disputed domain name <bio-novartis.eu> (the e-mail associated to the mentioned domain name is displayed at the website associated to the Disputed Domain Name in the contact field) before Czech Arbitration Court. The holder of the domain name was not active in the mentioned proceedings and also the contact details of the Respondent differ, and namely, the Respondent in the .eu proceedings was disclosed as: PIERRE MARIONE, Address: 99 ,Rue du Président Édouard Herriot, Lyon, 7740, France. It therefore seems that the respondent provides inaccurate WHOIS data. The decision was rendered in favor of the Complainant. The Respondent has been impersonating the Complainant and has been trying to mislead internet user into believing that the Website was authorized by / associated with the Complainant. The Respondent has not been using the Disputed Domain Name for any bona fide offering of goods or services.

(iii) The Disputed Domain Name was registered and is being used in bad faith.

1. Registration of the Disputed Domain Name in bad faith

The registration of the Complainant’s trademarks pre-dates the registration of the Disputed Domain Name and the Respondent has never been authorized by the Complainant to use the NOVARTIS trademark nor to register the Disputed Domain Name. The Respondent has chosen to incorporate the distinctive trademark NOVARTIS in the Disputed Domain Name in its entirety. The Complainant enjoys a strong online presence. By conducting a simple online search regarding the terms “novartis-bio”, the Respondent would have inevitably learnt about the Complainant, its trademark and business. It is therefore inconceivable that the Respondent was unaware of the existence of the Complainant when it registered the Disputed Domain Name. It is very likely that the Respondent registered the Disputed Domain Name incorporating the trademark NOVARTIS intentionally in order to take advantage of reputation of the trademark NOVARTIS and the Complainant’s goodwill.

2. The Disputed Domain Name is being used in bad faith

The Disputed Domain Name along with the relevant term “bio” directly referring to the business of the Complainant being one of the leading pharmaceutical companies in the world. The Respondent has used the Complainant’s trademark NOVARTIS on the Website without any authorization from the Complainant, moreover the Respondent also displays “Novartis-Bio, Switzerland EU” as the contact name. By using the Disputed Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website. According to the Registrar Verification, the Respondent appears as PIERRE MARIONE, 8 Mersinies, Tochn, Cyprus. At the same time, in the proceedings against <novartis-bio.eu> domain name, the Respondent under the same name has different address and country of Residence. It therefore seems that the Respondent provides false WHOIS data.

It shall be concluded that the Complainant registered and used the Disputed Domain Name in bad faith and its conduct falls within the meaning of Paragraph 4(a)(iii) of the Policy.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Disputed Domain Name is 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

LANGUAGE OF PROCEEDINGS

The language of the proceeding is English.

The English as language of this proceedings comes into effect in accordance with Paragraph 11 of the UDRP Rules.

The Complainant sued to decide first about the language of proceedings contending to be the English and submitted that the registration agreement was in English.

The Panel evidenced that according to the Registrar Verification, the language of the registration agreement of the Disputed Domain Name <novartis-bio.info> is English.

The Panel cannot find any reason to determine other language of the proceedings as the English because it is evidenced that the language of the registration agreement of the Disputed Domain Name <novartis-bio.info> is English. The other Parties' agreement on language of the proceedings was neither contended nor proved.

PRINCIPAL REASONS FOR THE DECISION ON MERITS

In order to succeed in its claim, the Complainant has to prove that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied:

- (i) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) The Respondent has no rights or legitimate interests with respect to the disputed domain name; and
- (iii) The disputed domain name has been registered and is being used in bad faith.

It is well established that the Complainant is among others the proprietor of the worldwide trademark NOVARTIS.

A. THE DISPUTED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR

The Complainant owns numerous trademarks NOVARTIS registered in numerous jurisdictions.

The Panel finds that the Disputed Domain Name <novartis-bio.info> incorporates in its second-level portion entirely the Complainant's registered trademark NOVARTIS along with the term "bio". The NOVARTIS trademark is clearly recognizable within the Disputed Domain Name while the mere addition of a descriptive term would not prevent a finding of confusing similarity to a trademark.

The presence of the generic Top-Level Domain ("gTLD") extension ".info" in the first level portion of the Disputed Domain Name is a standard registration requirement and may be disregarded when assessing whether the Disputed Domain Name is confusingly similar to the trademark in which the Complainant has rights.

The Panel comes to the view that the Disputed Domain Name was registered only on 24 October 2019 and incorporated the Complainant's distinctive trademark NOVARTIS combined with the term "bio", closely connected to the Complainant's business and activities of the Complainant in the world while the gTLD ".website" does not create any distinctiveness to the Disputed Domain Name.

The Panel therefore considers the Disputed Domain Name to be confusingly similar to the trademark NOVARTIS in which the Complainant has rights and its conduct falls within the meaning of paragraph 4(a)(i) of the Policy.

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

The Panel does not find that the Complainant and the Respondent have ever had any previous relationships, nor that the Complainant has ever granted the Respondent with any rights to use the NOVARTIS trademark in any forms, including the Disputed Domain Name. The Panel does not find that the Respondent is commonly known by the Disputed Domain Name or that it has legitimate interests over the Disputed Domain Name. The Panel searches for "novartis-bio" or "novartis-bio.info" in the Google search engine with or without Respondent's name "Pierre Marione" while the research results point to the Complainant as well as another domain name dispute concerning the domain name <novartis-bio.eu> raised by the Complainant against the Respondent.

The Panel concluded that the Respondent should have already performed a similar search before registering the Disputed Domain Name and should have quickly learnt that the trademarks are owned by the Complainant and that the Complainant has been using its trademarks in many other countries worldwide. Nevertheless, the Panel finds that the evidence shows that the Respondent obviously knew about the Complainant and its trademark NOVARTIS when it registered the Disputed Domain Name and chose to register the Disputed Domain Name as such.

The Panel finds that the website associated to the Disputed Domain Name displays content displaying NOVARTIS trademark and logo in prominent position with the text “Product Validation” and a field “Enter Code” with the message “Please Enter Security Code” and the button “send”. The Respondent has also different fields including “Somatropin Human Growth Hormone” which is manufactured by the Complainant. The website associated with the Disputed Domain Name displays the contact information as: Novartis – Bio, Switzerland EU with the e-mail address info@novartis-bio.eu and other fields such as “About Us”, “Partnership” and others which do not resolve to any content but lead to error page when clicking on the same. The Panel evidenced that the website associated with the Disputed Domain Name also displays the disclaimer as follows: “NOVARTIS-BIO does not sell any pharmaceutical products online. We do not sell to the public. We do not ship any products. We are not directly or indirectly associated with any websites that may engage in selling same or similar products. Information contained within this website is not a prescription to use and is intended for INFORMATION purposes only”. The Panel does not find any information about the absence of any relationship between the Complainant and the Respondent and the Respondent’s website. By displaying the logo in the prominent position as well as including the contact information as “Novartis – Bio, Switzerland EU” does lead the Panel to the conclusion that the consumers might be easily misled into believing that the website associated with the Disputed Domain Name is controlled by the Complainant. The Complainant proved that it filed an abuse report to the hosting provider in order to remove the misleading content and that the website has been removed on 28 October 2022. Nevertheless, the Panel finds that at present the content of the said website is not being removed. It is obvious that the Respondent was impersonating the Complainant and has been trying to mislead internet user into believing that the website was authorized by/associated with the Complainant. The Panel concludes that the Respondent is not using the Disputed Domain Name for any bona fide offering of goods or services.

The Panel therefore finds that the Respondent does not have rights or legitimate interests in the Disputed Domain Name and its conduct falls within the meaning of paragraph 4(a)(ii) of the Policy).

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

1. Registration of the disputed domain name in bad faith

The Panel concludes that the registration of the Complainant’s trademarks pre-dates the registration of the Disputed Domain Name and the Respondent has never been authorized by the Complainant to use the NOVARTIS trademark nor to register the Disputed Domain Name. The Respondent has chosen to incorporate the distinctive trademark NOVARTIS in the Disputed Domain Name in its entirety. The Complainant enjoys a strong online presence. By conducting a simple online search regarding the terms “novartis-bio”, the Respondent would have inevitably learnt about the Complainant, its trademark and business. It is therefore inconceivable that the Respondent was unaware of the existence of the Complainant when it registered the Disputed Domain Name. The Panel concluded that the Respondent registered the Disputed Domain Name incorporating the trademark NOVARTIS intentionally in order to take advantage of reputation of the trademark NOVARTIS and the Complainant’s goodwill.

2. The disputed domain name is being used in bad faith

The Panel finds that the Disputed Domain Name in its second level portion incorporates the Complainant’s registered trademark NOVARTIS entirely along with the relevant term “bio”. The Respondent has used the Complainant’s trademark NOVARTIS on the Website without any authorization from the Complainant, moreover the Respondent also displays “Novartis-Bio, Switzerland EU” as the contact name. The Panel concludes that by using the Disputed Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website. It was proven that after the Registrar Verification, the Respondent appears as PIERRE MARIONE, 8 Mersinies, Tochn, Cyprus which is a different denomination as the Complainant alike which leads to the conclusion of the Panel that the Respondent might provide false WHOIS data.

In view of the above, the Complainant registered and used the Disputed Domain Name in bad faith and its conduct falls within the meaning of paragraph 4(a)(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-bio.info** : Transferred

PANELLISTS

Name	Vojtěch Trapl
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DATE OF PANEL DECISION 2022-12-13

Publish the Decision