

Decision for dispute CAC-UDRP-105079

Case number CAC-UDRP-105079

Time of filing 2022-12-22 09:47:06

Domain names novartis-check.com

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization Novartis AG

Complainant representative

Organization BRANDIT GmbH

Respondent

Name Viktor A Nizenkovskij

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 the trademark NOVARTIS which is registered as a word mark for a.o. pharmaceutical products in numerous countries all over the world, such as:

- International word mark NOVARTIS, registered on June 29, 2020, under number 1544148;
- International word mark NOVARTIS, registered on July 1, 1996, under number 663765;
- Russian combined mark NOVARTIS, registered on August 6, 2013, under number 526567.

FACTUAL BACKGROUND

According to the Complainant, the Novartis group is a pharmaceutical and healthcare group, which provides solutions to address the evolving needs of patients, by developing and delivering innovative medical treatments and drugs. The Complainant's products are manufactured and sold in many countries worldwide, including Russia.

The Complainant is the owner of a large domain name portfolio, which includes domain names with the wording NOVARTIS, such as <novartis.com>, registered since 1996, or <novartispharma.com>, registered since 1999.

The disputed domain name <novartis-check.com> was registered on October 31, 2022.

PARTIES CONTENTIONS

The Complainant submits that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

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

1. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights

According to the Complainant, the disputed domain name incorporates in full the Complainant's trademark NOVARTIS, and, separated by a hyphen, the term CHECK. Past panels have held that the addition of a descriptive term does not prevent the disputed domain name from being confusingly similar to the trademark concerned (see Novartis AG v. Black Roses, CAC Case No. 102137).

The generic Top-Level Domain extension of the disputed domain name, in this case ".com", is typically disregarded under the confusing similarity test, as it is a standard requirement for registration.

Therefore, the Complainant concludes, and the Panel agrees, that the disputed domain name is confusingly similar to the Complainant's trademark.

2. The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant states that the Respondent is not affiliated with nor has been granted any rights by the Complainant to make any use of the Complainant's trademark in the disputed domain name. Moreover, the Complainant shows that there is no evidence that the Respondent is known by the disputed domain name or owns any corresponding registered trademarks.

The Complainant further demonstrates that the vast majority of searches on popular internet search engines for the terms NOVARTIS alone or in combination with the term CHECK, directly relate to the Complainant as well as its website, its social medias accounts or related topics.

The Complainant states that the Respondent deliberately chose to use the well-known trademark NOVARTIS as the main part of the disputed domain name to benefit from the Complainant's worldwide renown trademark and to confuse internet users as to the source or sponsorship. The Respondent's use of the domain name can therefore not be considered as a bona fide offering of goods or services nor as a legitimate non-commercial or fair use of the disputed domain name.

The Complainant further demonstrates that the disputed domain name resolved to a website mimicking the Complainant's official website by following the structure of the Complainant's website, displaying highly similar font and colours, reproducing a photograph originally displayed in Novartis Social Business Report 2018 and reproducing the Complainant's NOVARTIS trademark. The Complainant contends that the Respondent has used the disputed domain name with the intent to impersonate the Complainant in order to carry out fraudulent activities. Moreover, the Complainant also demonstrates that by clicking on the term "Partnership" on the main page, internet users were directed to a form requesting personal information such as their email address and suggests that therefore, there is a risk that such online forms are used for phishing purposes.

Furthermore, the Complainant asserts that the disputed domain name has been suspended as a result of an abuse report filed by the Complainant.

The Panel finds that the Complainant has shown that the Respondent has not made legitimate use of the disputed domain name for a bona fide offering of goods or services. In lack of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the domain name.

3. The disputed domain name is registered and is being used in bad faith

The Complainant states that the Complainant's NOVARTIS trademark is a widely known trademark registered in many countries and the Complainant enjoys a strong online presence. The Complainant demonstrates that with a simple online search for the name NOVARTIS alone or in combination with the term CHECK on popular search engines, the Respondent would have inevitably learnt about the Complainant, its trademark and its business.

According to the Complainant, the structure of the domain name shows that the Respondent registered it having the Complainant and its NOVARTIS trademark in mind. The Complainant believes that it reflects the Respondent's clear intention to create an association, and a subsequent likelihood of confusion, with the Complainant's trademark in internet users' mind.

Moreover, the Complainant asserts that, by mimicking the Complainant's website and by using forms that may be used for phishing purposes, the Respondent uses the disputed domain name to intentionally attract, for commercial gain, internet users to the website by creating a likelihood of confusion with the Complainant's trade mark.

The Complainant states that it has sent a cease-and-desist letter to the Respondent informing of the Complainant's rights regarding the NOVARTIS trademark, to which the Respondent did not reply. The Complainant refers to past panels that have held that such behaviour infers bad faith (see *Altarea v. Loretta Zayas*, WIPO Case No. D2020-2337).

Furthermore, the Complainant states that the Respondent uses a privacy shield and although use of a privacy or proxy registration service is not in itself an indication of bad faith, the manner in which such service is used can in certain circumstances constitute a factor indicating bad faith. The Complainant emphasized that the Respondent is trying to conceal its identity regarding the ownership of the disputed domain name, which does not reflect good faith.

In lack of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has registered and used the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. novartis-check.com : Transferred

PANELLISTS

Name	Tom Heremans
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DATE OF PANEL DECISION **2023-02-02**

Publish the Decision
