

Decision for dispute CAC-UDRP-105081

Case number CAC-UDRP-105081

Time of filing 2022-12-27 11:40:52

Domain names novartis.com

Case administrator

Organization Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization Novartis AG

Complainant representative

Organization BRANDIT GmbH

Respondent

Name James Green

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 proprietor of a number of marks in respect of the string NOVARTIS; see for example the international (Madrid) registration 1349878, on the basis of a Swiss mark (10 November 2016) in multiple classes with protection in many territories. The Complainant draws the Panel's specific attention to its registrations in the Respondent's jurisdiction of Nigeria (including no. 69385, registered 2 August 1996, in class 5, for the string NOVARTIS).

FACTUAL BACKGROUND

The Complainant, a corporation with shareholders (Aktiengesellschaft) with its seat in Basel, Switzerland, is a large operator in the fields of pharmaceutical and healthcare products, with global operations. It is active in states including Nigeria (the assumed domicile of the Respondent). In connection with its own activities, it maintains websites at domain names including <NOVARTIS.US> (first registered 19 April 2002) and <NOVARTIS.COM> (first registered 27 October 1999), and is also active in other online media e.g. social media.

The Respondent, an individual with an address in Abuja, Nigeria, registered the disputed domain name on 25 September 2022.

PARTIES CONTENTIONS

No administratively compliant Response has been filed. Neither the written notice of the Complaint nor the advice of delivery thereof was returned to the Provider. One email message was successfully sent but neither notice of delivery or undelivery was received by the Provider; the Respondent never accessed the online platform.

The Complainant submits that all aspects of the Policy have been met and that the disputed domain name should be transferred to it. It provides references for a number of similar cases and to provisions of the WIPO Jurisprudential Overview, and sets out in detail relevant evidence in Annexes, properly indexed and with crossreferences throughout the main body of the Complaint.

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).

The disputed domain name differs from the marks in which the Complainant has rights in two respects. The first - the use of the top level domain .COM - is disregarded in accordance with established practice under the Policy. The second - the presence of the additional character 'r' in the disputed domain name - is easily understood as confusing similarity, given the minor nature of the variation; see further WIPO Jurisprudential Overview, version 3.0, para. 1.9.

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).

The Complainant has satisfied its obligation to present a prima facie case regarding the absence of any rights or legitimate interests. It declares, without contradiction from the Respondent, that it has not granted the Respondent any rights to use any of its marks, and that it has no relationship with it. The Panel notes that the Respondent is known as James Green which has no relationship with the disputed domain name; moreover, there is nothing apparent from accessing the domain name that could serve as relevant evidence of rights or legitimate interests. Instead, the user accesses a link to a folder which itself does not contain any accessible material.

The Panel also places due weight on the Respondent's apparent failure to respond to the 'cease and desist' correspondence sent to the email address it provided at the point of registration. Such correspondence was first sent on 31 October 2022 and a reminder issued; as noted elsewhere in this decision, the Respondent has also failed to participate in these present proceedings.

Finally, the Panel notes the Complainant's submissions in respect of the well-known nature of its mark (including search results), which are considered further below.

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).

In respect of registration, the Panel accepts that the Complainant and its marks are well-known, and that it is highly likely that the Respondent will have had such in mind when registering the disputed domain name. The Complainant's extensive evidence in this regard, including the results of a number of web searches, is noted, as is the absence of any contrary explanation or evidence provided by or capable of being inferred in respect of the Respondent. Of further relevance is the very slight difference between the Complainant's mark and the disputed domain name, as well as the lack of any further meaning associated with the disputed domain name, meaning that the Complainant's submission that the present dispute is one of 'typosquatting' is well founded.

As for use, the Panel accepts that the present dispute falls within the example outline in paragraph 4(b)(iv) of the Policy - that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of its website. This is because the use of a misspelled name of a well-known mark, with no further evidence as to possible good faith use (or response to the Complainant's correspondence or the Provider's notice of this dispute), leaves the Panel with no other plausible finding. Further evidence is found in the lack of use of the dispute domain name for a readable website, coupled with the configuration of MX records, which the Complainant submits indicates the possibility of the disputed domain name being used for malicious ends (e.g. phishing). This intersects with the possibility that the 'Telstra' doctrine in respect of passive holding would also apply (see *Telstra Corporation v Nuclear Marshmallows*, WIPO Case No. D2000-0003); the factors under said doctrine, consisting of as the distinctiveness of the mark, the lack of a Response, the concealing of identity, and the implausibility of good faith use, uniformly favour the Complainant and its thorough submission and evidence.

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

The reasons for the decision are as set out above. In the absence of any Response from the Respondent, or any other information indicating the contrary, the Panel concluded that the Respondent has no rights or legitimate interests in respect of the disputed domain name. On the other hand, it is clear that the Complainant has rights in respect of the trade mark NOVARTIS, and that the variation of one character (NOVRARTIS) does not prevent a finding of confusing similarity with the Complainant's marks. It is likely, in light of the nature of the Complainant's mark and activities, and the degree to which the disputed domain name departs from the Complainant's mark (as a 'typo'), that the Respondent would have been aware of the Complainant and its particular activities, and that the Respondent is intentionally using the disputed domain name to attract Internet users to its online activities and/or is engaged in 'passive holding' within the terms of the Telstra doctrine. The Panel takes into account the evidence supplied by the Complainant, including the configuration of MX records, the well-known nature of its mark, and its specific rights and operations in the Respondent's territory, Nigeria. The Panel can find for these reasons that the disputed domain name was registered and is being operated in bad faith, and that the Respondent, through its failure to participate in these proceedings and its further failure to respond to the Complainant's earlier correspondence, has not pointed to any rights, legitimate interests, or the absence of bad faith registration or use. The requirements for the acceptance of a Complaint under paragraph 4 of the Policy have therefore been met, and the Panel ordered that the disputed domain name be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **novrartis.com**: Transferred

PANELLISTS

Name	Daithi Mac Sithigh
------	---------------------------

DATE OF PANEL DECISION **2023-02-03**

Publish the Decision
