

Decision for dispute CAC-UDRP-105117

Case number **CAC-UDRP-105117**

Time of filing **2023-01-06 08:08:58**

Domain names **novartis-team.com**

Case administrator

Organization **Denisa Bilík (CAC) (Case admin)**

Complainant

Organization **Novartis AG**

Complainant representative

Organization **BRANDIT GmbH**

Respondent

Name **David Samba**

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 bases its Complaint on the following trademark registrations:

- Swiss trademark No. 2P-427370, "NOVARTIS", registered on July 1, 1996, for goods and services in classes 1, 2, 3, 4, 5, 7, 8, 9, 10, 14, 16, 17, 20, 28, 29, 30, 31, 32, 40 and 42;
- International Trademark Registration No. 663765, "NOVARTIS", registered on July 1, 1996, for goods and services in classes 1, 2, 3, 4, 5, 7, 8, 9, 10, 14, 16, 17, 20, 22, 28, 29, 30, 31, 32, 40 and 42;
- US Trademark Registration No. 4986124, "NOVARTIS", registered on June 28, 2016, for goods and services in classes 5, 9, 10, 41, 42 and 44;
- United Kingdom trademark No. 900304857, "NOVARTIS", registered on June 25, 1999, (priority date February 15, 1996) in classes 1, 5, 9, 10, 29, 30, 31 and 32;
- United Kingdom NOVARTIS No. 913393641, "NOVARTIS", registered on March 17, 2015, in classes 9 and 10.

In addition, the Complainant holds the following domain names:

- <novartis.com> registered in 1996;
- <novartispharma.com> registered in 1999.

FACTUAL BACKGROUND

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

The Complainant’s products are manufactured and sold in many countries worldwide including in the United Kingdom, country where it has an active presence through its subsidiaries and associated companies.

The Complainant is the owner of the registered well-known trademark NOVARTIS in numerous jurisdictions all over the world, including in the United Kingdom. The vast majority of these trademark registrations predate the registration of the disputed domain name <novartis-team.com>.

Moreover, the Complainant asserts that previous UDRP panels have stated that the NOVARTIS trademark is well-known (see *Novartis AG v. Amartya Sinha, Global Webs Link, Novartis RO*, WIPO Case No. D2020-3203).

The Complainant owns numerous domain names composed of its trademark NOVARTIS alone, including <novartis.com> (registered in 1996) or in combination with other terms, such as <novartispharma.com> (registered in 1999). The Complainant asserts that it 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 sustains that it enjoys a strong presence online via its official social media platforms.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

COMPLAINANT:

The Complainant's contentions are the following:

The disputed domain name <novartis-team.com> (registered on October 19, 2022) is confusingly similar to the Complainant's earlier NOVARTIS trademarks as such reproduces the Complainant’s well-known trademark NOVARTIS in combination with the descriptive term “team”, separated by a hyphen.

Furthermore, the Complainant contends that the addition of the gTLD “.com” is irrelevant as it is well established that the generic top-level domain is insufficient to avoid a finding of confusing similarity.

For these reasons, the Complainant concludes that the disputed domain name is confusingly similar to the Complainant’s trademark NOVARTIS.

The Complainant further contends that the Respondent lacks rights or legitimate interests in the disputed domain name for a number of reasons.

First, the Complainant further asserts that the Respondent is not affiliated with the Complainant in any way and has not been authorized by the Complainant to use its NOVARTIS trademark in the disputed domain name.

Further, the Complainant asserts that there is no evidence that the Respondent is known by the disputed domain name or owns any corresponding registered trademarks.

The Registrant name “David Samba” does not correspond to the disputed domain name <novartis-team.com> nor the mention “novartis-team”.

The Complainant asserts that when conducting online trademark databases searches, no information is found in relation with trademarks corresponding to the terms “novartis-team.com”, “novartis-team” or “novartis team”.

Moreover, when such has searched on popular Internet search engines for the terms “novartis”, alone or in combination with the term “team”, the vast majority of the results directly relate to the Novartis group, the Complainant as well as its website, its social medias accounts or related topics.

Also, the Complainant asserts that when conducting a search online on popular search engines associating the Registrant name “David Samba” with the terms “novartis-team.com”, “novartis-team” or “novartis team”, no relevant results were found.

The Complainant asserts that the disputed domain name resolves to a Pay-Per-Click page (“PPC page”). PPC pages generate revenues when Internet users click on the links displayed on the page. The PPC page associated to the domain name <novartis-team.com> displays relevant sponsored links which clearly refer to the Complainant and its business activity as they are entitled “Pharma”, “Website Pharmacy” and “Laboratorios” as per the Complainant assertions.

Thus, in the Complainant’s view, the Respondent is obtaining a financial benefit when Internet users are clicking on the aforementioned

links. Such use of the disputed domain name aims at attracting Internet users for commercial gain by creating a likelihood of confusion with the Complainant's NOVARTIS trademark as to the sources, sponsorship, affiliation, or endorsement of the aforementioned PPC page, as per the Complainant's view.

Moreover, in the Complainant's view, the structure of the disputed domain name – incorporating in its second level portion the NOVARTIS trademark, the term “team” as well as, in its first level portion, the gTLD “.com” – reflects the Respondent's intention to create an association, and a subsequent likelihood of confusion, with the Complainant and its NOVARTIS trademark in Internet users' mind. The disputed domain name in its structure directly refers to the Complaint, its trademark and business and the term “team” may indeed be a reference to Novartis group's staff, as per the Complainant's assertions.

Further, the Complainant sustains that by reading the disputed domain name, Internet users may believe that it is directly connected or authorized by the Complainant and that the disputed domain name will resolve to the Complainant's official website, which is not the case.

Moreover, the Complainant asserts that it appears that the Respondent deliberately chose to use the well-known trademark NOVARTIS in the disputed domain name to benefit from the Complainant's worldwide renown trademark and to confuse Internet users as to the source of the disputed domain name and the associated web page. Such use of the disputed domain name cannot therefore be considered as a *bona fide* offering of goods or services nor as legitimate noncommercial or fair, as per the Complainant's assertions.

For these reasons, the Complainant concludes that, the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant further contends that the disputed domain name was registered and is being used in bad faith.

To this end, the Complainant argues that most of the Complainant's trademark registrations predate the registration of the disputed domain name and the Respondent has never been authorized by the Complainant to register the disputed domain name. The Respondent registered the disputed domain name many years after the registrations of the Complainant's NOVARTIS trademarks as per the assertions made by the Complainant.

The Complainant sustains that the NOVARTIS trademark is a widely known trademark registered in many countries and the Complainant enjoys a strong online presence. The Complainant is very active on social media to promote its mark, products and services and that by conducting a simple online search regarding the name “Novartis” alone or in combination with the term “team” on popular search engines, the Respondent would have inevitably learnt about the Complainant, its trademark and business, as per the Complainant's view.

Furthermore, the Complainant contends that the registration of the disputed domain name – which include in its second-level portion the well-known trademark NOVARTIS and the descriptive term “team” which relates to the Complainant and its business activity is deliberate. The structure of the disputed domain name shows that the Respondent registered it having the Complainant and its NOVARTIS trademark in mind, as per the assertions made by the Complainant. 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. By reading the disputed domain name, the Internet users may believe that it is directly connected to or authorized by the Complainant, as per the assertions made by the Complainant.

Therefore, in the Complainant's view, the Respondent had knowledge of the Complainant and the NOVARTIS trademark at the time of the registration of the disputed domain name.

Moreover, the Complainant contends that the disputed domain name resolves to a PPC page which is likely to generate revenues when Internet users click on the links displayed therein.

The Respondent is obtaining a financial benefit when Internet users are clicking on the aforementioned links. The Complainant argues that such use of the disputed domain name aims at attracting Internet users for commercial gain by creating a likelihood of confusion with the Complainant's NOVARTIS trademark as to the sources, sponsorship, affiliation, or endorsement of the aforementioned PPC page.

Further, the Complainant sustain that such 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. Such behavior may infer bad faith, according to the Complainants.

Furthermore, the Complainant argues that, it is likely that the Respondent is trying to conceal its identity regarding the ownership of the disputed domain name – as, at the time of the filing of the Complaint on January 4, 2023, his name and contact details were covered by a privacy shield in the corresponding Whois record – which is further evidence of bad faith.

For these reasons, the Complainant concludes that, the Respondent the disputed domain name was registered and is being used in bad faith.

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

I. Identity/confusing similarity

The Panel agrees that the disputed domain name incorporates the Complainant's earlier NOVARTIS trademark and that the addition of the term "team", separated by a hyphen is insufficient to avoid a finding of identity / confusing similarity.

The addition of the extension ".com" is not to be taken into consideration when examining the identity between the Complainant's trademarks and the disputed domain name (WIPO Case No. D2005-0016, Accor v. Noldc Inc.). The mere adjunction of a gTLD such as ".com" is irrelevant as it is well established that the generic Top Level Domain is insufficient to avoid a finding of identity / confusing similarity (WIPO Case No. 2013-0820, L'Oréal v Tina Smith, WIPO Case No. D2008-0820 Titoni AG v Runxin Wang and WIPO Case No. D2009-0877, Alstom v. Itete Peru S.A.).

Therefore, the Panel is satisfied that the first condition under the Policy is met.

II. Lack of Respondent's rights or legitimate interests

The Complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of proof shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP.

Based on the available evidence, the Respondent does not appear to be known by the disputed domain name. The Respondent is not a licensee of, nor has any kind of relationship with, the Complainant. The Complainant has never authorised the Respondent to make use of its trademark, nor of a confusingly similar trademark in the disputed domain name.

Also, based on the available evidence, the Respondent did not demonstrate use of, or demonstrable preparation to use, the disputed domain name in connection with a bona fide offering of goods or services.

The disputed domain name has been registered with a privacy shield service which leads to the assumption that it was made in order to hide his identity and also to prevent the Complainant from contacting him.

The disputed domain name incorporates the Complainant's well-known NOVARTIS trademark in its entirety, and the addition of the term "team" could be viewed as a reference to NOVARTIS GROUP's staff creating thus, a possible likelihood of confusion with the Complainant and its NOVARTIS trademark in Internet users' mind.

The above does not amount to a bona fide offering of goods or services, or to a legitimate noncommercial or fair use of the disputed domain name.

The Panel notes that the Respondent had an opportunity to comment on the Complaint's allegations by filing a Response, which the Respondent failed to do.

Thus, the Panel is satisfied that the Complainant has at least established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. Accordingly, the Panel takes the view that also the second requirement under the Policy is met.

III. Bad Faith

The Complainant's NOVARTIS trademark is a well-known one as recognized also by past panels and the disputed domain name is incorporating the NOVARTIS trademark in its entirety. Therefore, the Panel concludes that at the time of registration of the disputed domain name, the Respondent was well aware of the Complainant's trademark and has intentionally registered the disputed domain name in order to benefit from the reputation of the Complainant's trademark.

In the present case, the following factors should be considered:

- (i) the Complainant's trademark is a well-known one, being also highly distinctive;
- (ii) the Respondent failed to submit any response and has not provided any evidence of actual or contemplated good faith use of the disputed domain name;
- (iv) the Respondent registered the disputed domain name containing in its entirety a well-known trademark;
- (v) any good faith use of the disputed domain name would be implausible, as the trademark NOVARTIS is univocally linked to the Complainant and the Respondent has no business relationship with the Complainant, nor was ever authorised to use/register a domain name identical / similar to the Complainant's trademark;
- (vi) the Respondent registered the disputed domain name through the use of a privacy shield service to hide his identity in order to prevent the Complainant from contacting him;
- (vii) the disputed domain name appears to resolve to a Pay-Per-Click page which is likely to generate revenues when Internet users click on the links displayed therein;
- (viii) a cease and desist letter was sent by the Complainant to the Respondent informing of the Complainant's rights regarding the NOVARTIS trademark, to which the Respondent did not reply.

In light of the foregoing, the Panel concludes that the Respondent has registered and has been using the disputed domain name in bad faith. Thus, also the third and last condition under the Policy is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **novartis-team.com**: Transferred

PANELLISTS

| | |
|------|-----------------------------|
| Name | Delia-Mihaela Belciu |
|------|-----------------------------|

DATE OF PANEL DECISION 2023-02-15

Publish the Decision