

Decision for dispute CAC-UDRP-105180

Case number CAC-UDRP-105180

Time of filing 2023-02-07 09:02:26

Domain names nl-novartis.com

Case administrator

Name Olga Dvořáková (Case admin)

Complainant

Organization Novartis AG

Complainant representative

Organization BRANDIT GmbH

Respondent

Name Claude Cecius

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 relies on EU trademark no. 000304857 for the word mark NOVARTIS registered on 25 June 1999 in classes 1, 5, 9, 10, 29, 30 and 32 and EU trademark no. 1544148 for the word mark NOVARTIS registered on 29 June 2020 in class 35.

FACTUAL BACKGROUND

The Complainant is the holding company of one of the biggest pharmaceutical and healthcare groups in the world. The group's house mark is NOVARTIS, which the Complainant has registered in the EU and other countries. The group operates websites at www.novartis.com and other addresses containing "novartis".

The disputed domain name, <nl-novartis.com>, was registered by the Respondent on 3 January 2023 and directed to a holding page. On 5 January 2023 an e-mail was sent purportedly on behalf of Novartis Netherlands B.V. and giving the return address as order@nl-novartis.com. The e-mail was written in English and invited recipients to quote for the supply of computer equipment giving 30 days' credit to facilitate payment. One of the recipients drew it to the attention of the Complainant, describing it as a fake inquiry.

PARTIES CONTENTIONS

The Complainant contends 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 Panel finds that the Complainant has registered rights in the mark NOVARTIS.

The Panel further finds that the disputed domain name is confusingly similar to this mark, from which it differs only in the insertion of "nl-" preceding "novartis" and the generic top level domain suffix, .com. The letters "nl" are the two-letter code for The Netherlands defined in ISO 3166 and are widely used to refer to The Netherlands. They constitute a descriptive term that does not distinguish the disputed domain name from the Complainant's mark. To the contrary, many Internet users are likely to suppose that the disputed domain name is used by a company or division of the Complainant's group based in The Netherlands.

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 Panel is satisfied on the undisputed evidence that the Respondent has not made any use or preparations to use the disputed domain name for any bona fide offering of goods or services or any legitimate non-commercial or fair use. On the contrary, the Panel finds that the Respondent has used the disputed domain name in bad faith as a return e-mail address on an e-mail that invited recipients to supply computer equipment on credit, relying on the financial standing of the Complainant's group, thereby enabling the suppliers to be defrauded.

The Panel also finds on the undisputed evidence that the Respondent is not commonly known by the disputed domain name or any corresponding name and that the Respondent does not have any other ground for claiming any rights or legitimate interests in the disputed domain name.

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

As stated above, the Panel finds that the Respondent has used the disputed domain name in bad faith as part of an attempted fraud on suppliers of computer equipment, exploiting its confusing similarity to the Complainant's mark to assist the attempted deception. This conduct occurred immediately after the disputed domain name was registered and the Panel infers that it was also registered in bad faith for this purpose.

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 Registrar has stated that the registration agreement in respect of the disputed domain name is in French. The Complainant suggests that it is also in English since an English version of the agreement is available on the Registrar's website as well as the French version. However, the Panel notes that the primary language of the Registrar's website is French and that the Respondent appears to have a Francophone name and an address in Liege, in a Francophone area of Belgium. In these circumstances, the Panel considers that it is more likely that the Respondent registered the disputed domain name with reference to the French version of the registration agreement.

In accordance with paragraph 11(a) of the UDRP Rules, unless otherwise agreed or specified in the registration agreement, the language of this proceeding should be the language of the registration agreement, subject to the authority of the Panel to determine otherwise having regard to the circumstances. The Complainant has asked the Panel determine that the proceeding should continue in English to avoid unnecessary expense.

The Panel notes that the e-mail purporting to be from Novartis Netherlands B.V. inviting suppliers of computer equipment to quote for the supply of such equipment on credit was written in English. In these circumstances the Panel is satisfied that the Respondent understands English, could understand the nature of this proceeding, and was in a position to dispute the Complainant's request

that the proceeding continue in English. The Respondent has not disputed the language or substance of the proceedings at all. In these circumstances, the Panel determines that the proceeding should continue in English to avoid unnecessary expense and delay.

The Panel is satisfied that all procedural requirements under the UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Disputed domain name consists of registered trademark together with descriptive or generic elements. Respondent's only use of the disputed domain name has been in bad faith to facilitate fraud.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

PANELLISTS

Name	Jonathan Turner
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DATE OF PANEL DECISION **2023-03-26**

Publish the Decision
