

Decision for dispute CAC-UDRP-105302

Case number **CAC-UDRP-105302**

Time of filing **2023-03-24 09:11:14**

Domain names **novartishcp.com**

Case administrator

Name **Olga Dvořáková (Case admin)**

Complainant

Organization **Novartis AG**

Complainant representative

Organization **BRANDIT GmbH**

Respondent

Organization **Carolina Rodrigues (Fundacion Comercio Electronico)**

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 (the "Domain Name").

IDENTIFICATION OF RIGHTS

The Complainant is the owner of a number of registered trade marks that comprise or incorporate the term 'Novartis'. They include:

- United States trade mark no. 4986124 with a registration date of 28 June, 2016 for "NOVARTIS" as a standard character mark in classes 5, 9, 10, 41, 42 and 44.
 - International trade mark registration no. 1544148 with a registration date of 29 June, 2020 for "NOVARTIS" as a standard character mark in classes 9, 35, 38 and 42, which has proceeded to registration in over 20 territories.
 - Panamanian trade mark no. 80548, with a registration date of 25 April, 1996 for "NOVARTIS" in the form of what appears to be a word mark in class 5; and
 - Panamanian trade mark no. 253960, with a registration date of 25 October, 2016 for "NOVARTIS" in the form of what appears to be a word mark in class 9.
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FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT

The Complainant is part of the Novartis Group, which is one of the biggest global pharmaceutical and healthcare groups. The Complainant is headquartered in Switzerland, was created in 1996 through a merger of two other companies Ciba-Geigy and Sandoz, and is the holding company of the Novartis Group.

The Complainant's products are manufactured and sold in many countries worldwide, including in Panama, where Respondent is located. Subsidiaries of the Complainant in Panama include "Novartis Pharma (Logistics), Inc" and "Novartis Panama, SA".

The Complainant owns numerous domain names incorporating its trade mark NOVARTIS, including <novartis.com> (registered in 1996) and <novartispharma.com> (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.

According to the publicly available WHOIS records, the Domain Name was registered on 22 February, 2022.

At the time of filing of this complaint, the Domain Name resolves to an active Pay Per Click page displaying various links such: "Laboratorios", "Healthcare", "Sales"

The Complainant sent a "cease and desist" letter in respect of the Domain Name on 1 March 2023. The cease and desist Letter was been sent via on-line form as provided by the Registrar – GoDaddy LLC as well as via abuse contact of the Registrar. There was no response from the Respondent.

The Respondent has been involved in numerous domain name disputes and appears as a respondent in many decisions of different providers, including WIPO, ADR Forum, CAC. The Respondent holds numerous other domain names including those with incorporate the trade marks of third parties.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the 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 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 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

The Complainant clearly is the owner of various registered trade marks that comprise or incorporate the term "Novartis". The Panel accepts that Domain Name can most sensibly be read as the term "Novarits" combined with the letters "hcp" and the ".com" generic Top-Level Domain. Given this, the trade mark is clearly recognisable in the Domain Name. This is sufficient for a finding of confusing similarity under the Policy (see sections 1.7 of the WIPO Overview 3.0). The Complainant has, therefore, satisfied the requirements of paragraph 4(a)(i) of the Policy.

It is clear from the large number of cases under the UDRP in which the Respondent has been involved, that it is an inveterate cybersquater who has cynically operated a business model of deliberately registering domain names that incorporate the trade mark others, with a view to financial gain including by way of the using these domain names to draw internet used to pay per click pages. One online database records the Respondent as having been the unsuccessful respondent in over 300 such cases. The Complainant has also filed evidence that the Respondent's activity continues unabated and that it still holds numerous other domain names that incorporate third party trade mark rights. This Domain Name clearly incorporates the trade mark of the Complainant. The Panel has no doubt that this inclusion of the Complainant's mark is deliberate and provides yet another example of a domain name registered in accordance with the Respondent's business model.

The registering and holding of a domain name pursuant to such a business model provides no right or legitimate interest in that domain names. On the contrary, it provides positive evidences that no such right or legitimate interest exists (see section 2.5.2 of the WIPO Overview 3.0). Registering and holding a domain name in this manner are also clear cut examples of bad faith registration and use. Further, the pay-per-click use made of the Domain Name falls within the scope of the example of circumstances indicating bad faith set out in paragraph 4(b)(iv) of the Policy.

The Complainant has, therefore, satisfied the requirements of paragraph 4(a)(ii) and (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. **novartishcp.com**: Transferred

PANELLISTS

Name	Matthew Harris
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DATE OF PANEL DECISION 2023-04-19

Publish the Decision
