

**Decision for dispute CAC-UDRP-105307**

Case number **CAC-UDRP-105307**

Time of filing **2023-03-24 09:10:49**

Domain names **novartiscorp-us.com**

**Case administrator**

Name **Olga Dvořáková (Case admin)**

**Complainant**

Organization **Novartis AG**

**Complainant representative**

Organization **BRANDIT GmbH**

**Respondent**

Organization **MEDTRONIC, INC**

**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 registered well-known trademark NOVARTIS in numerous jurisdictions all over the world, including in the United States. The Complainant has an international portfolio of marks including:

- US Trademark Registration for the word mark, NOVARTIS, No. 4986124 registered on 28 June 2016 in classes: 5, 9, 10, 40, 41, 42, 44;
- US Trademark Registration for the word mark, NOVARTIS, No. 5420583 registered on 13 March 2018 in classes: 9, 10, 41, 42, 44, 45
- International Registration, the word mark, NOVARTIS No. 1544148 registered on 29 June 2020 in classes: 9, 35, 38, 42 in Australia, Brazil, Canada, Colombia, European Union, UK, Israel, India, Japan, Korea (Republic of), Mexico, Malaysia, New Zealand, Philippines, Singapore, Thailand, Tunisia, Türkiye, USA, Azerbaijan, Belarus, China, Iran (Islamic Republic of), Morocco, Republic of North Macedonia, Serbia, Russian Federation.

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 word mark NOVARTIS alone, including <novartis.com> (registered in 1996) or in combination with other terms, such as <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 products and services. The Complainant also enjoys a strong presence online via its official social media platforms.

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## FACTUAL BACKGROUND

The Novartis Group is a global pharmaceutical and healthcare group. It develops innovative medical treatments and drugs. Novartis AG (the "Complainant") is headquartered in Switzerland and was created in 1996 through a merger of two other companies and is now the holding company of the Novartis Group. The Complainant's products are manufactured and sold in many countries worldwide including in the U.S., a country where it has an active presence through its subsidiaries and associated companies. The Complainant has an active role on the local market and in its society.

One of the Complainant's business partners in the US is a company called Medtronic, Inc. Medtronic is a company that develops and manufactures healthcare devices and technologies. Medtronic Inc has its headquarters in Parkway, Minneapolis, US and the address as stated in the WHOIS record is indeed the address of the Medtronic headquarters. The disputed domain name was registered on 8 March 2023. The WHOIS records for the disputed domain name identify the Respondent as:

Brandon Seppelt  
MEDTRONIC, INC  
710 Medtronic Parkway  
Minneapolis  
MN,55432  
US  
+1.8773055505  
Admin Email: [brandonseppelt@outlook.com](mailto:brandonseppelt@outlook.com)

Medtronic has formally confirmed that the disputed domain name has not been registered by them and that the name of their employee, Brandon Seppelt has been falsely stated in the WHOIS records and that the e-mail address as stated in the WHOIS address is also false.

The disputed domain name does not resolve to any active page and shows the message "[www.novartis.com](http://www.novartis.com) refused to connect" and it has not previously pointed to any website.

The real Respondent has not come forward.

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## PARTIES CONTENTIONS

### COMPLAINANT:

The disputed domain name <novartiscorp-us.com> incorporates the Complainant's well-known word mark, Novartis, in its entirety and adds the terms "corp" and "us" separated by hyphen. Corp" is an abbreviation of "corporation" and "us" is an abbreviation for the "United States (of America)". The addition of such descriptive/generic terms would not prevent a finding of confusing similarity to the trademark (see *Minerva S.A. c. Domain Administrator, Fast Serv Inc. d.b.a. QHoster.com*, WIPO Case No. D2019-2767 and see *Novartis AG v. Black Roses*, CAC Case No. 102137).

The Complainant has never granted the Respondent any right to use its trademark. There is no evidence showing that the Respondent has been using, or preparing to use, the disputed domain name in connection with a bona fide offering of goods and services or has made a legitimate non-commercial or fair use of the disputed domain name.

Before filing this Complaint the Complainant has reached out to Medtronic to verify whether the disputed domain name was registered by it. Medtronic has confirmed that the disputed domain name has not been registered internally, that the name of their employee, Brandon Seppelt had been falsely stated in the WHOIS records and that the e-mail address as stated in the WHOIS address is also false. The Complainant provided that e-mail correspondence in evidence. The Respondent has therefore provided false WHOIS data impersonating an officer of Medtronic. Previously Panels have held: "A false name also appears to have been provided to the WhoIS database which has been commonly been held in UDRP decisions to be bad faith". See *Etex N.V. and ETEX Services N.V. v. Privacy service provided by Withheld for Privacy ehf / maggi numi* WIPO Case No. D2022-2637. This also shows that the Respondent was well aware of the Complainant, their trademarks and activities when registering the disputed domain name.

At the time of filing of the Complaint the disputed domain name did not resolve to any active page and showed the message "[www.novartis.com](http://www.novartis.com) refused to connect". The disputed domain name has been passively held but previous UDRP Panels have held, under the doctrine of passive holding, that "the non-use of a domain would not prevent a finding of bad faith" see *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003.

The disputed domain name entirely comprises the Complaint's well-known trademark NOVARTIS. In similar circumstances, the high degree of distinctiveness or reputation of the Complainant's trademark is considered as an indication of bad faith registration and use of the disputed domain name by the Respondent (see *Navasard Limited v. Vadzim Yushko*, WIPO Case No. D2019-2081; *P.M.D. v. Dengpinghua* (), WIPO Case No. D2020-2410; see also *ArcelorMittal (Société Anonyme) v. Registration Private, Domains By Proxy, LLC / Joel Tinoco, Pixel Design Costa Rica, supra*). It is likely that the Respondent has malicious intent as the MX records (and so the e-mail capability of the domain name) are enabled in relation to the disputed domain name. Active MX records means likely misuse.

RESPONDENT:

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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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).

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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).

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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).

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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.

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PRINCIPAL REASONS FOR THE DECISION

There is no question about the rights of the Complainant. It has Rights in a name and mark identical/similar to the disputed domain name. This Panel concurs that the registered word mark is a well-known mark.

By use of the whole mark in the disputed domain name, the impression is given that the site is official and there is a risk of impersonation. The addition of the terms “corp” and “us”, reinforce that impression compounding the risk. The “us” suggests it is the US office or branch or subsidiary and again suggests it is the Complainant. The suffix has no bearing at the first factor.

There is obvious knowledge of the Complainant, and the Respondent has not come forward to provide any legitimate right or interest and none is obvious on the face of the matter.

There is no use as such to be bona fide use at the second factor. While passive holding is not Bad Faith per se, it is fact sensitive. Here it appears that the likely purpose of the Registrant/Respondent was for email purposes as the MX records are enabled. That purpose will very likely be for phishing and illegitimate and possibly criminal. That pushes passive holding over the line.

Under clause 2.2 of the Registration Agreement, a Registrant must provide their correct name and address details. This is derived from a domain name registrant's obligation under ICANN's Registrar Accreditation Agreement (RAA) to “provide accurate information.” Here there is clear evidence that false information was provided. That is a ground of Bad Faith in itself. See *Facebook Inc. v. te5gfh gtfghbfh*, WIPO Case No. D2018-2433 (Providing false information for the WHOIS database to shield a registrant's identity is evidence of bad faith).

The Complainant has made out its case on all three limbs of the Policy.

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **novartiscorp-us.com** : Transferred

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**PANELLISTS**

Name	<b>Victoria McEvedy</b>
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DATE OF PANEL DECISION	2023-04-26
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Publish the Decision

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