

Decision for dispute CAC-UDRP-105346

Case number CAC-UDRP-105346

Time of filing 2023-04-18 09:41:02

Domain names novartisz.com

Case administrator

Name Olga Dvořáková (Case admin)

Complainant

Organization Novartis AG

Complainant representative

Organization BRANDIT GmbH

Respondent

Name sabrina djerrai

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 owns the following trademark registrations for NOVARTIS:

- EU trademark registration number 000304857, registered on 25 June 1999 in classes 1, 5, 9, 10, 29, 30, 32; and
- EU trademark registration number 1544148, registered on 29 June 2020 in class 35.

The Complainant also owns numerous domain names composed of its trademark NOVARTIS, including <novartis.com>, registered in 1996, and <novartispharma.com>, registered in 1999.

FACTUAL BACKGROUND

The Complainant was created in 1996 and is the holding company of the Novartis Group. It is one of the biggest global pharmaceutical and healthcare groups. Its headquarters are in Switzerland. It has a local presence in the Netherlands where the Respondent has her address.

The Complainant owns trademark registrations for NOVARTIS that predate the registration of the disputed domain name.

The disputed domain name was created on 8 March 2023 using a privacy service.

On 12 April 2023, the Complainant filed a takedown request with the registrar and hosting provider of the disputed domain name.

The Respondent did not file a Response to the Complaint.

PARTIES CONTENTIONS

COMPLAINANT:

A. The Complainant asserts that the disputed domain name is confusingly similar to the Complainant's NOVARTIS trademark and states:

- i. it owns numerous trademarks for NOVARTIS that were registered many years before the registration of the disputed domain name;
- ii. the Complainant's well-known trademark NOVARTIS is clearly recognisable in the disputed domain name; and
- iii. the Respondent is typo-squatting by adding the letter "z" to the Complainant's trademark to form the disputed domain name.

B. The Complainant asserts that the Respondent has no rights or legitimate interests in the disputed domain name and states:

- i. the Complainant and the Respondent have not had any previous relationship, nor has the Complainant ever granted the Respondent any rights to use the NOVARTIS trademark in any form;
- ii. the Respondent is not commonly known by the disputed domain name, nor has any legitimate interest in it, and is not using it for any active website;
- iii. an internet search by the Respondent would have revealed the NOVARTIS trademarks owned and used by the Complainant in many countries around the world; and
- iv. the disputed domain name has been used fraudulently for a phishing scheme to reach out to a supplier regarding new bank details for future payments to the Complainant.

C. The Complainant asserts the Respondent registered and used the disputed domain name in bad faith and states:

- i. the Respondent registered the disputed domain name many years after the Complainant registered its NOVARTIS trademarks, and the Respondent had them in mind when she registered the disputed domain name; and
- ii. on the same day the disputed domain name was registered, the Respondent used it for an email impersonating an employee of the Complainant to deceive Complainant's supplier, which demonstrates that the Respondent did not act randomly but knew of the Complainant and its trademark when she registered and used the disputed domain name.

RESPONDENT:

No administratively compliant Response has been filed.

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

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements:

- i. the disputed domain is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- ii. the Respondent has no rights or legitimate interests in the disputed domain name; and
- iii. the disputed domain name has been registered and used in bad faith.

A. IDENTICAL OR CONFUSINGLY SIMILAR

The disputed domain name is comprised of the Complainant's well-known trademark NOVATIS plus the letter "z" and the suffix ".com". This is a clear case of typo-squatting. The addition of the letter "z" to the Complainant's trademark does not avoid a finding that the disputed domain name is confusingly similar to the Complainant's mark.

The top-level domain ".com" is a standard registration requirement. It does not add any distinctiveness to a domain name and can be disregarded when assessing whether the disputed domain name is confusingly similar to the Complainant's trademark.

The Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademark and that the requirements of Paragraph 4(a)(i) of the Policy have been met.

B. NO RIGHTS OR LEGITIMATE INTERESTS

The Respondent has no previous relationship with the Complainant and is not authorised to use the Complainant's trademark. The Respondent is not commonly known by the disputed domain name and has used a privacy service to hide her identity. The disputed domain name is not being used for any active website and evidence submitted by the Complainant shows that it has been used fraudulently in connection with an email to reach out to a supplier regarding new bank details for future payments to the Complainant.

The Complainant has established a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent now has the burden of demonstrating that she has relevant rights or a legitimate interest. She has not filed a Response nor disputed any of the Complainant's assertions. There is no evidence to show that the Respondent has any relevant rights or legitimate interest in the disputed domain name.

Taking these factors not consideration, the Panel finds that the Respondent has no rights or legitimate interest in the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been met.

C. REGISTERED AND BEING USED IN BAD FAITH

The disputed domain name is confusingly similar to the Complainant's trademark, which is well-known and predates the registration of the disputed domain name. It is registered in numerous countries, including the Netherlands where the Respondent has her address.

Evidence submitted with the Complaint shows that on the same day that the Respondent registered the disputed domain name, it was used for a fraudulent email using the name of an employee of the Complainant regarding future payments to the Complainant. It is inconceivable that the Respondent did not know of the Complainant when she registered the disputed domain name that incorporated the Complainant's well-known mark (see *Tetra Laval Holdings & Finance S.A. v. VistaPrint Technologies Ltd*, WIPO Case No. D2014-1387).

Under paragraph 4(b)(iv) of the Policy, evidence of registration and use of the disputed domain name in bad faith includes where the Respondent has intentionally attempted to attract, for commercial gain, Internet users to their website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or of a product or service on their website or location.

The Respondent has not filed a Response, nor challenged any of the Complainant's assertions or any of the evidence submitted. Use of the disputed domain name in connection with a fraudulent email for commercial gain is evidence of use in bad faith.

Taking these factors into account, the Panel concludes that the disputed domain name was both registered and used in bad faith and that the requirements of paragraph 4(a)(iii) of the Policy have been met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **novartisz.com** : Transferred

PANELLISTS

Name	Veronica Bailey
------	------------------------

DATE OF PANEL DECISION **2023-05-24**

Publish the Decision
