

Decision for dispute CAC-UDRP-105459

Case number **CAC-UDRP-105459**

Time of filing **2023-05-25 09:18:23**

Domain names **novartisloan.com**

Case administrator

Organization **Iveta Špiclová (Czech Arbitration Court) (Case admin)**

Complainant

Organization **Novartis AG**

Complainant representative

Organization **BRANDIT GmbH**

Respondent

Name **gowan fiqmc**

OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the domain name <novartisloan.com> ('the disputed domain name').

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade marks, amongst others:

- Chinese trade mark registration no. 15569053, dated 14 December 2015, for the word mark NOVARTIS, in class 9 the Nice Classification;
- International trade mark registration no. 1349878, dated 29 November 2016, designating, amongst others, China, for the word mark NOVARTIS, in classes 9, 10, 41, 42, 44, and 45; and
- Chinese trade mark registration no. 42520143, dated 7 September 2020, for the word mark NOVARTIS, in class 35 of the Nice Classification.

(hereinafter, individually or collectively 'the Complainant's trade mark'; 'the Complainant's trade mark NOVARTIS'; or 'the trade mark NOVARTIS' interchangeably).

The Complainant has provided evidence of its ownership of domain names composed of the trade mark NOVARTIS. Of particular note, <novartis.com> (registered in 1996) and <novartispharma.com> (registered in 1999).

At the time of writing this decision, the disputed domain name <novartisloan.com> does not resolve to an active website ('the Respondent's website').

FACTUAL BACKGROUND

A. Complainant's Factual Allegations

The Complainant's statements of fact can be summarised as follows:

The Novartis Group is one of the biggest global pharmaceutical and healthcare groups, created in 1996 through a merger of companies Ciba-Geigy and Sandoz.

The Complainant's products are manufactured and sold in many regions around the world, including in China, the Respondent's country of residence and where the Complainant has a strong presence.

B. Respondent's Factual Allegations

The Respondent has failed to serve a Response in this UDRP administrative proceeding, the result of which being that the Complainant's factual allegations are uncontested.

PARTIES CONTENTIONS

A. Complainant's Submissions

The Complainant's contentions can be summarised as follows:

I. The disputed domain name is confusingly similar to a trade mark in which the Complainant has rights

The Complainant avers that the disputed domain name is confusingly similar to the Complainant's well-known trade mark NOVARTIS, in so far as the disputed domain name incorporates the Complainant's trade mark in its entirety. The addition of the descriptive term 'loan' is insufficient to escape the finding that the disputed domain name is confusingly similar to the Complainant's trade mark NOVARTIS. Furthermore, the generic Top-Level Domain (gTLD) suffix (<.com>) is typically disregarded in the assessment of identity or confusing similarity under paragraph 4(a) of the UDRP Policy.

II. The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent does not carry out any activity for, or has any business with, the Complainant. Furthermore, the Respondent has never been given any rights to use the trade mark NOVARTIS in any form, including in the disputed domain name.

The Complainant also asserts that there is no evidence that the Respondent is commonly known by the disputed domain name.

Lastly, at the time the Complainant became aware of, and when it subsequently filed the Complaint against, the Respondent, the disputed domain name resolved to a website in Thai language, which contained references to 'Novartis', including an e-mail address at which to contact the Respondent, namely '<admin@novartisloan.com>'. The Complainant claims that such use is neither bona fide nor legitimate non-commercial or fair use.

III. The Respondent registered and is using the disputed domain name in bad faith

Registration

The Complainant states that the disputed domain name was registered in bad faith, owing to the following indicia:

- The trade mark NOVARTIS is well-known worldwide, including in China, and has been in use well before the registration of the disputed domain name;
- A simple search via online trade mark registers or through Google search engine would have revealed the existence of the Complainant and the trade mark NOVARTIS, such that it is impossible to believe that the Respondent did not have the Complainant in mind at the time of registration of the disputed domain name; and
- Paragraph 3.1.4 of the WIPO Panel Views on Selected UDRP Questions, Third Edition ('WIPO Jurisprudential Overview 3.0') provides that the mere registration of a domain name that is identical or confusingly similar to a famous trade mark, as it is the case here, by an unaffiliated entity, can by itself create a presumption of bad faith.

Use

The Complainant avers that the Respondent has intentionally used the disputed domain name to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation,

or endorsement of the Respondent's website (paragraph 4(b)(iv) of the UDRP Policy).

Additionally, the Complainant advances the following in support of a finding of bad faith: (i) the Respondent has failed to respond to the Complainant's cease and desist letter; (ii) the Respondent has been using a privacy shield to conceal its identity; and (iii) the MX records of the disputed domain name are configured.

On these bases, the Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent's Submissions

The Respondent has failed to serve a Response in this UDRP administrative proceeding, the result of which being that the Complainant's submissions are uncontested.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the UDRP 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 UDRP 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 UDRP 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

A. General

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy sets out the following threshold for the Complainant to meet for the granting of the relief sought (transfer of the disputed domain name):

- i. The disputed domain name 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 respect of the disputed domain name; and
- iii. The disputed domain name has been registered and is being used in bad faith.

It is incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP proceedings is the balance of probabilities and, on that basis, the Panel will now proceed to determine each of the three UDRP Policy grounds in turn.

B. Identical or Confusingly Similar

The Complainant has established registered rights in the mark NOVARTIS, in China, since 2015.

The disputed domain name <novartisloan.com> was registered in 2023, and is composed of the joint terms 'novartis' and 'loan'.

Paragraph 1.8 of the WIPO Overview 3.0 provides that, where the relevant trade mark is recognisable within the disputed domain name,

the addition of other terms in the string, whether descriptive or otherwise, would not prevent a finding of confusing similarity under the first UDRP Policy ground.

The Complainant's trade mark NOVARTIS is readily recognisable within the disputed domain name. The contiguous term 'loan' does not prevent a finding of confusing similarity as per the above reasons. Furthermore, and as rightly asserted by the Complainant, the gTLD <.com> is typically disregarded by UDRP panels under this Policy ground given that the gTLD is part of the domain name's anatomy.

The Panel therefore finds that the Complainant has met the requirement under paragraph 4(a)(i) of the UDRP Policy.

C. Rights or Legitimate Interests

The Respondent has defaulted in this UDRP proceeding. Nevertheless, the Panel is empowered to draw adverse inferences from the Respondent's silence (Rule 14 (b) of the UDRP Rules).

The Panel notes that the Respondent does not appear to carry out any activity for, or have any business or relationship of any nature with, the Complainant. There is no evidence of any contractual arrangement/endorsement/sponsorship between the parties to that effect, nor has the Complainant otherwise authorised the Respondent to make any use of the Complainant's trade mark or to register the disputed domain name on the Complainant's behalf. In addition, nothing on the record suggests that the Respondent (as an individual, business, or other organisation) has been commonly known by the disputed domain name.

The Panel is likewise unconvinced that, before any notice of this UDRP dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services.

The Respondent has submitted no evidence to refute any of the Complainant's assertions. Instead, there is evidence on the available record suggesting that the Respondent may have attempted to impersonate the Complainant, as discussed under item D. below.

In view of the above, the Panel finds that the Complainant has succeeded under paragraph 4(a)(ii) of the UDRP Policy.

D. Registered and Used in Bad Faith

D.1 Registration in bad faith

The following facts are compelling evidence to this Panel that the disputed domain name was registered in bad faith:

- The Complainant has owned registered rights in the mark NOVARTIS, in China, since 2015;
- The Complainant operates its business activities through various domain name bearing the trade mark NOVARTIS, most notably <novartis.com>, which was registered in 1996;
- The disputed domain name <novartisloan.com> was registered in 2023;
- The lack of any credible evidence-backed rationale for the Respondent's choice of the disputed domain name;
- UDRP panels have consistently held that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trade mark can by itself create a presumption of bad faith (paragraph 3.1.4 of the WIPO Jurisprudential Overview 3.0), and the Panel accepts that the Complainant's trade mark is widely known in its segment of business; and
- The Respondent's default in this UDRP administrative proceeding.

D.2 Use in bad faith

The Complainant alleges that the Respondent has engaged in a conduct which would fall within the remit of paragraph 4(b)(iv) of the UDRP Policy:

'(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 location or of a product or service on the respondent's website or location.'

At the time of writing this decision, the Respondent's website does not display any active content. Nevertheless, the Complainant has adduced evidence of what appears to be a Respondent's attempt to impersonate the Complainant through the use of the disputed domain name.

In order to further determine this UDRP Policy ground, the Panel takes stock of paragraph 3.1.4 of the WIPO Jurisprudential Overview 3.0, according to which panels have found various types of evidence to support a presumption of bad faith under the above circumstances. The most compelling factors in the present matter are: (i) the actual confusion between the Complainant's trade mark NOVARTIS and the disputed domain name; (ii) the lack of the Respondent's own rights to, or legitimate interests in, the disputed domain name; (iii) the Respondent's attempt to gain reputational advantage by redirecting Internet users for a likely fraudulent purpose; and (vi) the absence of any conceivable good faith use of the disputed domain name.

The Panel therefore finds that the Complainant has succeeded under paragraph 4(a)(iii) of the UDRP Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **novartisloan.com**: Transferred

PANELLISTS

Name	Gustavo Moser
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DATE OF PANEL DECISION 2023-06-29

Publish the Decision
