

Decision for dispute CAC-UDRP-105661

Case number	CAC-UDRP-105661
Time of filing	2023-07-25 10:23:11
Domain names	comnovartis.com, bovirtis.com, nnovartis.com, noavrtis.com, nocartis.com, noovartis.com, npvartis.com, nvoartis.com

Case administrator

Name	Olga Dvořáková (Case admin)
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Complainant

Organization	Novartis AG
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Complainant representative

Organization	BRANDIT GmbH
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Respondent

Name	yang zhi chao
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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 names.

IDENTIFICATION OF RIGHTS

The Novartis Group is one of the biggest global pharmaceutical and healthcare groups. It provides solutions to address the evolving needs of patients worldwide by developing and delivering innovative medical treatments and drugs. The Complainant Novartis AG is the holding company of the Novartis Group. The Complainant's products are manufactured and sold in many countries worldwide including in China, where the Respondent is allegedly located, a country where it has an active presence through its subsidiaries and associated companies and where it has been playing an active role on the local market and in its society.

The Complainant owns numerous domain names composed of either its trademark NOVARTIS alone, including <novartis.com> (created on 2 April 1996) and <novartis.us> (created on 19 April 2002) or in combination with other terms, such as <novartispharma.com> (created on 27 October 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.

The Complainant is the owner of the registered well-known trademark NOVARTIS in numerous jurisdictions all over the world, including in China. The Complainant's trademark registrations significantly predate the registration of the disputed domain names (May 19, 2023).

FACTUAL BACKGROUND

The Complainant requests that the disputed domain names be transferred to the Complainant. The Respondent in this case has not submitted any Response.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and requests the Panel to order a transfer of the disputed domain names.

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names (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 names have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Complainant requests that the language of this administrative proceeding be English pursuant to UDRP Rule 11(a): Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

Paragraph 10 of the UDRP Rules vests a Panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case. UDRP panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios were summarized into WIPO Jurisprudential Overview 3.0, 4.5.1. In this particular instance, the Complainant tried to request change of languages of proceedings in light of Chinese language Registration Agreement by showing that 1) The dispute domain names resolved to pay-per-click websites with terms in English, such as "Pharmaceutical Companies", "Novartis Stock", and "Pharmaceutical Industry", which demonstrates that the Respondent understands English; 2) The Complainant's Reverse WHOIS search showed that the Respondent has registered numerous other domain names composed by English terms, such as cpapsupplies.com, facebookblueprint.com, etc., which demonstrates that the Respondent understands English; 3) Moreover, a translation of the Complaint to Chinese would entail significant additional costs for the Complainant and delay in the proceedings. Relevant decisions have been cited to support the Complainant's positions.

In light of the scenarios and equity, the Panel is of the view that conducting the proceeding in English is unlikely to heavily burden the Respondent, and it is likely that the Respondent can understand the English language based on a preponderance of evidence test. Without further objection from the Respondent on the issue, the Panel will proceed to issue the decision in English.

PRINCIPAL REASONS FOR THE DECISION

1. The disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

In most of the disputed domain names, the Complainant's trademark "Novartis" or an easily recognized typo squatted version "Novartis" with some misspellings have been incorporated in full. The Complainant also note the repetition of specific characters within the disputed domain names. Similarities can be inferred between the repetition of characters within <bovartis.com>, <nnovartis.com>, <noavrtis.com>, <nocartis.com>, <noovartis.com>, <npvartis.com>, and <nvoartis.com>. gTLDs ".com" are commonly viewed as a standard registration requirement, and as such they are disregarded under the first element confusing similarity test.

The Panel therefore concludes that the disputed domain names are confusingly similar to a trademark in which the Complainant have rights within the meaning of paragraph 4(a)(i) of the Policy.

2. The Respondent has no rights or legitimate interests in respect of the disputed domain names.

Although the Respondent did not file an administratively compliant (or any) response, the Complainant is still required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant in the present case has not licensed or authorized the Respondent to register or use the trademark or the disputed domain names. There is no evidence that the Respondent is known by the disputed domain names or owns any corresponding registered trademarks including the terms "novartis".

The Respondent, "YangZhiChao", also has no connection with the Complainants' brand. The Complainant contends that no evidence suggests that the Respondent has been known in any way by the disputed domain names. The Complainant did not grant any license or authorization to the Respondent to register or use the disputed domain name, nor the use of the Complainant's trademark on pages of the disputed websites.

In addition, The Respondent does not appear to have used the disputed domain names in connection with active websites at any time since the registrations. Currently, a majority of the domain names resolved to Pay-Per-Click pages. The Respondent has not been using the disputed domain names for any bona fide offering of goods or services.

On the basis of preponderance of evidence, and in the absence of any evidence to the contrary or any administratively compliant response being put forward by the Respondent, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain names within the meaning of paragraph 4(a)(ii) of the Policy.

3. The disputed domain names have been registered and is being used in bad faith.

The use and registration of the disputed domain names by the Respondent has been done in bad faith.

Registration of the disputed domain names in bad faith – As far as registration goes, UDRP panels have consistently held that the mere registration of a domain name that is confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. Complainant's trademark registrations predate the registration of the disputed domain name. The fact that the Complainant's trademark is a well-known and that the Respondent has failed in presenting a credible evidence-backed rationale for registering the disputed domain name implied that the Respondent may have had knowledge of the Complainant's trademark at the time of registration of the disputed domain names. It is reasonable to infer that the registrant registered the disputed domain name with the knowledge of the Complainant's trademark and/or brand influence.

Use of the disputed domain names in bad faith – Currently, a majority of the disputed domain names resolve to pay-per-click pages. "Applying UDRP paragraph 4(c), panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users." (WIPO Jurisprudential Overview 3.0 2.9). This this conduct constitutes bad faith as it has been confirmed in previous cases (WIPO Case No. D2016-0245, Heraeus Kulzer GmbH. v. Whois Privacy Services Pty Ltd / Stanley Pace). The Respondent is not making any active use of the disputed domain names. At the same time, the Respondent could have registered the disputed domain names to divert internet users to its own websites. According to paragraph 4(b)(iv) of the Policy, "by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site 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 your web site or location or of a product or service on your web site or location", if found by the Panel, shall be considered evidence of registration and use of the domain name in bad faith.

Moreover, a cease and desist letter was sent to the Respondent on 29 May 2023 and the Respondent never responded. Prior panels have also held that a failure to respond to a cease and desist letter can be evidence of bad faith (see e.g., HSBC Finance Corporation v. Clear Blue Sky Inc. and Domain Manager, WIPO Case No. D2007-0062).

Therefore, in the absence of any evidence to the contrary (or any administratively compliant response) being put forward by the Respondent, the Panel determines that the Complainant provided prima facie evidence undisputed by the Respondent that the disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(a)(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. **comnovartis.com**: Transferred
- 2. **bovartis.com**: Transferred
- 3. **nnovartis.com**: Transferred
- 4. **noavrtis.com**: Transferred
- 5. **nocartis.com**: Transferred
- 6. **noovartis.com**: Transferred
- 7. **npvartis.com**: Transferred
- 8. **nvoartis.com**: Transferred

PANELLISTS

Name	Carrie Shang
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DATE OF PANEL DECISION 2023-09-05

Publish the Decision