

Decision for dispute CAC-UDRP-105705

| | |
|-------------|-----------------|
| Case number | CAC-UDRP-105705 |
|-------------|-----------------|

| | |
|----------------|---------------------|
| Time of filing | 2023-08-18 09:56:57 |
|----------------|---------------------|

| | |
|--------------|--------------------|
| Domain names | novartisjob-us.com |
|--------------|--------------------|

Case administrator

| | |
|------|-----------------------------|
| Name | Olga Dvořáková (Case admin) |
|------|-----------------------------|

Complainant

| | |
|--------------|-------------|
| Organization | Novartis AG |
|--------------|-------------|

Complainant representative

| | |
|--------------|--------------|
| Organization | BRANDIT GmbH |
|--------------|--------------|

Respondent

| | |
|--------------|-----------------------|
| Organization | Sandoz Pharmaceutical |
|--------------|-----------------------|

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

United States of America Trademark Registration No. 4986124 NOVARTIS with a priority date of 12 September 2013 for various pharmaceutical and health related goods and services.

FACTUAL BACKGROUND

The Complainant is the holding company of the Novartis group, which is a global pharmaceutical and healthcare group trading as “Novartis”. It is headquartered in Switzerland and was created in 1996 through a merger of Ciba-Geigy and Sandoz.

In 2022 the Novartis group employed approximately 102,000 full-time employees and acquired net sales of over USD 50 Billion.

The Complainant owns various trademarks consisting of the word NOVARTIS, including the above mentioned US trademark. It is also the registrant for many domain names containing the word NOVARTIS.

The disputed domain name was registered recently on 28 June 2023. At the commencement of the proceedings it resolved to a parking webpage containing pay-per-click advertising.

On 2 August 2023 an internet user received an email from <hr@novartisjob-us.com> purporting to offer employment with “Novartis

Pharmaceuticals Corporation” and detailing a registration process whereby information is requested from the internet user. The email attached a document which displayed the Complainant’s logo. The name “Novartis Pharmaceuticals Corporation” is used by the Novartis group’s United States of America corporate entity.

In the registration details for the disputed domain name the Respondent has provided its name as “Sandoz Pharmaceutical” with an address in “Princeton, New Jersey” in “Romania”

PARTIES CONTENTIONS

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

Preliminary Matters

There are two preliminary matters to be determined in this proceeding.

The first preliminary matter concerns the language of the proceeding. The Complainant has expressly requested that the language of the proceedings be English.

As the Registrar’s agreement is in English, and the Panel has not been made aware of any reason why the proceeding should be conducted in any other language, it is clearly appropriate that the proceeding be conducted in English in accordance with Rule 11.

The second preliminary matter concerns the identity of the Respondent as per the Registrar’s records. As mentioned above, in registering the disputed domain name the Respondent provided the registrant’s name as “Sandoz Pharmaceutical” with an address in “Princeton, New Jersey” in “Romania”. As mentioned above, “Sandoz” was one of the two businesses which merged in 1996 to form the Complainant. Further, it is well known that “Sandoz” is a famous pharmaceutical brand belonging to the Complainant. It is also well known that “Princeton, New Jersey” is a location in the United States of America, not Romania. It is clear the Respondent has provided a pseudonym in lieu of its real name.

Under Rule 15(a) the Panel has a broad power to make a decision in accordance with the Policy, the Rule and any rule and principles of law that it deems applicable. Further, in Rule 10(a) the Panel has the power to conduct the proceedings in such manner as it considers appropriate in the Policy and the Rules.

In applying these Rules the Panel finds that it has the power to direct that the Respondent’s name appear on the decision in a manner that best describes its identity and is not misleading.

The Panel therefore directs that the Respondent's name on the decision appear as "An entity using the pseudonym Sandoz Pharmaceutical".

Decision

Paragraph (4)(a) of the Policy lists three elements that the Complainant must prove to merit a finding that the disputed domain name registered by the Respondent be transferred to the Complainant:

- 1) the disputed domain name is identical or confusingly similar to a trademark or service mark ("mark") in which the Complainant has rights; and
- 2) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- 3) the disputed domain name has been registered and is being used in bad faith.

The Panel is satisfied that the Complainant has satisfied all three elements for the principal reasons set out below.

RIGHTS IN AN IDENTICAL OR CONFUSINGLY SIMILAR TRADEMARK

As mentioned above the Complainant asserts it has an US trademark registration consisting of the word NOVARTIS registered for, inter alia, pharmaceutical and health related goods and services. This registration predates the registration date of the disputed domain names by over a decade.

To satisfy paragraph 4(a)(i) of the Policy it is enough that the Panel is satisfied that the Complainant has registered rights in a trademark that predates the registration of the disputed domain name in a single jurisdiction (even if that single jurisdiction is not one in which the Respondent resides or operates) (Koninklijke KPN N.V. v. Telepathy, Inc D2001-0217 (WIPO 7 May 2001); see also WIPO Case Nos. D2012-0141 and D2011-1436). The Complainant has clearly satisfied such in relation to the trademark NOVARTIS.

The next question is whether the disputed domain name is confusingly similar to the NOVARTIS trademark.

The Panel disregards the gTLD suffix ".com" for the purpose of this comparison. It is of no brand significance and likely to be totally ignored by web users. Such web users are likely to focus entirely on the only distinctive element in the disputed domain name, being the NOVARTISJOB-US element.

In observing this element, the suffix "JOB-US" will also be likely ignored by web-users. It is a descriptive term that merely indicates a business called "Novartis" is offering employment in the United States of America. Hence the similarities between the NOVARTIS trademark and the disputed domain name are striking.

The disputed domain name is therefore confusingly similar to the NOVARTIS trademark.

NO RIGHTS OR LEGITIMATE INTERESTS

The name that the respondent has provided as a registrant name bears no resemblance to "NOVARTIS". Further, the websites to which the disputed domain name resolved do not indicate any right or legitimate interest in the disputed domain name.

The Respondent has no rights or interests in the disputed domain name.

BAD FAITH

The NOVARTIS trademark is very well-known internationally. Further, it is well-known in relation to pharmaceutical and health related goods and services.

It is therefore entirely unforeseeable that a reasonable person could register the strikingly similar disputed domain name that incorporates the NOVARTIS trademark together with a descriptive term without knowledge of the Complainant's rights. This is especially the case when the Respondent has used the domain name to send e-mails in which it clearly seeks to mimic the Complainant.

The Panel finds that the Respondent had such prior knowledge at the time of registering the disputed domain names and therefore its only purpose in registering the disputed domain name was to opportunistically profit from confusing similarity. The Respondent clearly targeted the Complainant's well-known trademark for this purpose.

Further, use of the disputed domain name to mimic the Complainant could only be designed for phishing information from the recipients, which is clearly use in bad faith. A false name was provided in registering the disputed domain name and in absence of any response from the Respondent the panel infers that such phishing is the responsibility of the incorrectly identified Respondent and was carried out for fraudulent and dishonest purposes.

Therefore, in consideration of all the circumstances the disputed domain name has been registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

PANELLISTS

| | |
|------|--------------|
| Name | Andrew Sykes |
|------|--------------|

| | |
|------------------------|------------|
| DATE OF PANEL DECISION | 2023-09-25 |
|------------------------|------------|

| | |
|----------------------|--|
| Publish the Decision | |
|----------------------|--|