

Decision for dispute CAC-UDRP-105818

Case number **CAC-UDRP-105818**

Time of filing **2023-09-27 09:48:34**

Domain names **novarstis.com**

Case administrator

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

Complainant

Organization **Novartis AG**

Complainant representative

Organization **BRANDIT GmbH**

Respondent

Name **Ralharbi Kuma**

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. The vast majority of these trademark registrations predate the registration of the disputed domain name <novarstis.com>. 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 trademark 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 NOVARTIS mark and its related products and services. The Complainant also enjoys a strong presence online via its official social media platforms.

FACTUAL BACKGROUND

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. Novartis AG (the "Complainant"), with headquarter in Switzerland, created in 1996 through a merger of two other companies Ciba-Geigy and Sandoz, is the holding company of the Novartis Group. The Complainant's products are manufactured and sold in many countries worldwide, including in the United States of America, country where it has an active presence through its subsidiaries and associated companies.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

COMPLAINANT'S CONTENTIONS:

(i) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

The Complainant owns numerous trademarks NOVARTIS registered in numerous jurisdictions (hereafter "the NOVARTIS trademark"), which were registered many years before the registration of the disputed domain name on August 30, 2023.

The disputed domain name incorporates in its second level-portion a misspelled form of the Complainant's well-known trademark NOVARTIS, by adding a letter "s" before the letter "t". As stated in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0"), "[a] domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element" (see also WIPO Case D2022-4365, JCDcaux SA v. SozinhoBasilio). The presence of the generic Top-Level Domain ("gTLD") extension ".com" in the first level portion of the disputed domain name is a standard registration requirement and may be disregarded when assessing whether the disputed domain name is confusingly similar to the trademark in which the Complainant has rights (see Rollerblade, Inc. v. Chris McCrady, WIPO Case No. D2000-0429; Can Pro Pet Products LTD. v. Matthew Dweck, WIPO Case No. D2020-0615; Sanofi v. Aamir Hitawala, WIPO Case No. D2021-1781).

(ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name;

The Complainant has never granted the Respondent any right to use the NOVARTIS trademark in the disputed domain name, nor is the Respondent affiliated to the Complainant in any form. There is no evidence that the Respondent is known by the disputed domain name or owns any corresponding registered trademarks. When conducting online trademark databases searches, no information is found in relation with trademarks corresponding to the terms "novarstis.com" or "novarstis". Moreover, it appears that no trademark is owned by a person named "Raharbi Kuma". The Respondent has not been using, or preparing to use, the disputed domain name in connection with a bona fide offering of goods and services, nor making a legitimate noncommercial or fair use of the disputed domain name. The disputed domain name does not resolve to an active website. 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 noncommercial or fair use of the disputed domain name.

Moreover, the structure of the disputed domain name – incorporating in its second level portion the misspelled version of the NOVARTIS trademark and in its first level portion the gTLD ".com" – reflects the Respondent's intention to create an association, and a subsequent likelihood of confusion, with the Novartis group and its NOVARTIS trademark as well as the Complainant's domain name <novartis.com> in Internet users' mind. The disputed domain name in its structure refers to the Novartis group and its extensively used domain name <novartis.com>. More precisely, by deliberately registering and using the domain name incorporating a misspelled form of the Complainant's NOVARTIS trademark, the Respondent has been involved in "typosquatting". Such conduct aims at capitalizing on Internet users' mistakes when reading the disputed domain name. When "the Domain Name is a typical example of typosquatting" and "registered with a minor variation of a well-known brand name with a view to taking advantage of typographical errors or mistaken perception by Internet users", "such a registration cannot possibly, on the face of it, give rise to rights or legitimate interests on the part of the registrant of a domain name" (Sodexo v. WhoisGuard, Inc. / Linda Carola, WIPO Case No. D2020-2181).

By reading the disputed domain name, Internet users may not realize the misspelled form to the NOVARTIS trademark and believe that it is directly connected or authorized by the Complainant and that the disputed domain name will resolve to the Complainant's official website, which is not the case. In accordance with previous UDRP Panel decisions and as indicated in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0"), section 2.5, "a respondent's use of a domain name will not be considered 'fair' if it falsely suggests affiliation with the trademark owner". In the present case, the Respondent has aimed at making Internet users believe that the disputed domain name is directly linked to, or operated by, the Complainant. In similar circumstances, it has been held that "the nature of the disputed domain name carries a risk of implied affiliation" (see Instagram, LLC v. Registration Private, Domains By Proxy, LLC / Murat Sander, WIPO Case No. D2021-0526). Furthermore, the Registrant has used the disputed domain name for the purpose of perpetrating a fraud, more precisely in a phishing scheme. An email impersonating one of Novartis' counterparties – sent from a highly similar misspelled e-mail address – was sent on September 6, 2023, to another counterparty of Novartis. To give the impression the fraudulent e-mail is genuine and sent by one of Novartis' counterparties, it included in copy e-mail addresses including names of Novartis' employees and the disputed domain name ("[FIRST NAME].[FAMILY NAME]@novarstis.com"). By quoting the name of Novartis' employee, the Respondent has aimed at luring the recipient in making him/her believe that the fraudulent e-mail dated September 6, 2023, was a genuine message sent by one of Novartis' counterparties, which is not the case. The maneuver of sending an e-mail, in which e-mail addresses incorporating the disputed domain name are put in copy, has aimed at impersonating Novartis and its employee to divert payments.

The Respondent has used the disputed domain name in a phishing scheme in which it has expressly referred to the Novartis group by quoting its employees' names in e-mail addresses. The disputed domain name has therefore not been used in any ways in connection with a bona fide offering of goods and services. Such acts do not constitute a fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers. In similar situations, when "the disputed domain name was used for a phishing

scheme targeting Complainant's employees and vendors" and the complainant has provided "direct evidence that Respondent is engaged in illegal activity as part of a fraudulent email phishing scheme" it has been considered that the "use of a domain name for illegal activity – including the impersonation of the complainant and other types of fraud – can never confer rights or legitimate interests on a respondent" (see Ivax LLC v. Contact Privacy Inc. Customer0161280011/ Name Redacted, WIPO Case No. D2021-2097; see also Auchan Holding v. Domains ByProxy, LLC / NAME REDACTED, WIPO Case No. D2019-2045).

(iii) The domain name was registered and is being used in bad faith.

a) Registration of the disputed domain name in bad faith

As mentioned above, most of the Complainant's trademark registrations predate the registration of the disputed domain name and the Respondent has never been authorized by the Complainant to register the disputed domain name. The Respondent registered the disputed domain name many years after the registrations of the Complainant's NOVARTIS trademarks. As indicated above the Novartis group has an established business presence in the United States where companies of the group are based and operate. The Respondent is based in the United States.

The NOVARTIS trademark is a widely known trademark registered in many countries, including in the United States, and the Complainant enjoys a strong online presence. The Complainant is very active on social media to promote its mark, products and services (see Laboratoires M&L v. Zhaoxingming, CAC Case No. 102277). By conducting a simple online search regarding the name "Novartis" alone on popular search engines, the Respondent would have inevitably learnt about the Complainant, its trademark and business (see Intesa Sanpaolo S.p.A. v. Abayomi Ajileye, CAC Case No. 102396).

The disputed domain name has been included in copy of an email correspondence used in a phishing scheme. In the corresponding fraudulent email, the Respondent has clearly referred to Novartis' employees. Such fraudulent activity clearly shows that the Respondent registered the disputed domain name having the Complainant and the NOVARTIS group in mind and for the purpose of conducting a phishing scheme.

Therefore, the Respondent had knowledge of the Complainant and the NOVARTIS trademark at the time of the registration of the disputed domain name.

b) Use of the disputed domain name in bad faith

As explained above, the Respondent has registered and used the disputed domain name to take advantage of the Complainant's well-known trademark NOVARTIS and engage in a phishing scheme. As previously indicated, a misspelled form of the NOVARTIS trademark is included in the disputed domain name as well as in e-mail addresses put in copy to the fraudulent email. Such use of the disputed domain name aims at misleading the recipient of the email into believing that the sender was connected to the Novartis group, which has not been the case. Moreover, it appears from the associated correspondence that the Respondent's goal has been to obtain a financial benefit by conducting such fraud. In a similar case when "the Respondent has operated a phishing scheme to the detriment of the Complainant and of the companies with which it established contacts" and used "misleading email addresses, to impersonate the Complainant" it has been stated that "the Respondent lured potential providers and attracted them for its commercial gain" and that such use of the domain name in bad faith (see Auchan Holding v. Domains By Proxy, LLC / NAME REDACTED, WIPO Case No. D2019-2045). Moreover, in the WhoIs associated with the disputed domain name a Privacy shield covers the Registrant information. It is very likely that the Respondent is trying to conceal its identity which is further evidence of bad faith (see Asendia Management v. Registration Private, Domains By Proxy, LLC / Emily Wittman, WIPO Case No. D2020-2884).

The overall described circumstances are clear demonstration of that the registration and use of the disputed domain name are in bad faith.

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).

This is a case of "typosquatting", i.e. the disputed domain name contains an obvious misspelling of the Complainant's trademark. It is well established that the specific top level of a domain name such as ".com", does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.

Previous panels have found that the slight spelling variations does not prevent a domain name from being confusingly similar to the complainant's trademark. Adding the letter "s" between the 5th and the 6th letter of the trademark NOVARTIS to spell NOVARSTIS does not take away the confusing similarity between the domain name and the trademark.

Simple exchange or adding of letters is not a sufficient element to escape the finding that the disputed domain name is confusingly similar to the Complainant's trademarks and domain names.

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).

The Complainant contends that the Respondent is not affiliated with him nor authorized by them in any way to use their trademarks in a domain name or on a website. The Complainant does not carry out any activity for, nor has any business with the Respondent.

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).

Given the circumstances of the case, including the provided information of the use and reputation of the Complainant's trademark NOVARTIS and the distinctive nature of this mark, it is inconceivable to the Panel in the current circumstances that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant's mark.

The Panel therefore finds that the disputed domain name was registered in bad faith.

The disputed domain name does not currently resolve to an active website. In this case the Complainant has however evidenced that the disputed domain name enables the Respondent to send e-mails using an e-mail address that contains the disputed domain name.

The Complainant has evidenced actual examples of such use to the Panel clearly documenting that an e-mail address connected to the disputed domain name has been used for a phishing scheme. Furthermore, it is inconceivable that the Respondent will be able to make any good faith use of the disputed domain name as part of an e-mail address. The Panel notes in this connection that passive holding of a domain name does not prevent a finding of bad faith use under paragraph 4(a)(iii) of the Policy, therefore the panel finds that the disputed domain name was registered and is being used in bad faith.

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

1. The three essential issues under the paragraph 4(a) of the Policy are whether:

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

2. The Panel reviewed carefully all documents provided by the Complainant. The Respondent did not provide the Panel with any documents or statements. The Panel also visited all available websites and public information concerning the disputed domain name, namely the WHOIS databases.

3. The UDRP Rules clearly say in its Article 3 that any person or entity may initiate an administrative proceeding by submitting a complaint in accordance with the Policy and these Rules.

4. The Panel therefore came to the following conclusions:

a) The Complainant states and proves that the disputed domain name is confusingly similar to its trademarks and its domain names. Indeed, the trademark is partially incorporated in the disputed domain name.

The disputed domain name is therefore deemed confusingly similar.

b) The Respondent is not generally known by the disputed domain name and have not acquired any trademark or service mark rights in the name or mark, nor is there any authorization for the Respondent by the Complainant to use or register the disputed domain name.

The Panel therefore finds that the Respondent does not have rights or legitimate interest with respect to the disputed domain name.

c) It is clear that the Complainant's trademarks and website(s) were used by the Complainant long time before the disputed domain name was registered. There is no present use of the disputed domain name but the disputed domain name enables the Respondent to send e-mails using an e-mail address that contains the disputed domain name. A concrete example of such use has been presented to the Panel clearly documenting that the e-mail address has been used as part of a phishing scheme, it furthermore seems inconceivable that the Respondent will be able to make any good faith use of the disputed domain name as part of an e-mail address. It is concluded that the Respondent makes bad faith use of the disputed domain name.

The Panel therefore finds that the disputed domain name has been registered and is being used in bad faith.

For the reasons stated above, it is the decision of this Panel that the Complainant has satisfied all three elements of paragraph 4(a) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **novarstis.com**: Transferred

PANELLISTS

Name	Lars Karnoe
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DATE OF PANEL DECISION 2023-11-02

Publish the Decision