

Decision for dispute CAC-UDRP-105891

Case number CAC-UDRP-105891

Time of filing 2023-10-20 09:33:47

Domain names n0vartls.com

Case administrator

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

Complainant

Organization Novartis AG

Complainant representative

Organization BRANDIT GmbH

Respondent

Name Rocky Cooper

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 submitted evidence that it is the registered owner of the following:

(i) international trademark registration No. 663765 for "NOVARTIS", registered since 1 July 1996 for the international classes 1, 2, 3, 4, 5, 7, 8, 9, 10, 14, 16, 17, 20, 22, 28, 29, 30, 31, 32, 40 and 42, designating numerous countries; and

(ii) US trademark registration No. 2336960 for "NOVARTIS", registered since 4 April 2000 for the international classes 1, 5, 9, 10, 29, 30, 31, 32 and 42.

The Complainant claims that its trademark "NOVARTIS" is well-known and supports such claim by referring to decisions of previous UDRP panels, particularly the WIPO Case No. D2020-3203.

The Complainant also provided information, supported by evidence, that it is the registered holder of numerous domain names composed of either its trademark NOVARTIS alone, including <novartis.com> (created on 2 April 1996) or in combination with other terms, e.g. <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. In addition, the Complainant alleges to enjoy 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. The Complainant, with headquarter in Switzerland, was created in 1996 through a merger of two other companies Ciba-Geigy and Sandoz, and 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, a country where it has an active presence through its subsidiaries and associated companies, including in the United States.

The disputed domain name was registered on 8 August 2023.

The Registrar confirmed that the Respondent is the current registrant of the disputed domain name and that the language of the registration agreement is English.

The Respondent has not filed a Response.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The Complainant made the following contentions:

1. THE DISPUTED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR

The Complainant is the owner of the registered well-known trademark NOVARTIS in numerous jurisdictions all over the world, including in the United States, which was registered before the registration of the disputed domain name. The disputed domain name incorporates, in its second level portion, a typo of the Complainant's trademark NOVARTIS by replacing the letter "o" with the number "0", and by replacing the letter "i" with the letter "l". The Complainant submits that it is a typosquatting situation: the Complainant's trademark has been misspelt on purpose – by substituting the letters "o" and "i" with the similar appearing characters "0" and "l" respectively – in the second level portion of the disputed domain name in order to capitalize on errors (in typing or reading) made by Internet users searching for, or trying to communicate with, the Complainant on the Internet. The NOVARTIS trademark is clearly recognizable within the disputed domain name. The disputed domain name should be therefore considered as confusingly similar to the trademark NOVARTIS.

2. RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTEREST IN RESPECT OF THE DISPUTED DOMAIN NAME

Furthermore, the Complainant and the Respondent have never had any previous relationships, nor has the Complainant ever granted the Respondent with any rights to use the NOVARTIS trademark in any forms. The Complainant has not found that the Respondent is commonly known by the disputed domain name or that it has legitimate interest over the disputed domain name. When searching for the term "n0vartls" in the Google search engine, the latter immediately showed results for "Novartis", and the returned results all pointed to the Complainant and its business activities. Moreover, when searching for the term "n0vartls" in the Google search engine in connection with the name of the Respondent as revealed by the Registrar verification, and namely "rocky cooper", there are no returned results, and there are also no results of searches for the Respondent's trademarks or its name online. The Complainant suggests that the Respondent could have easily performed a similar search before registering the disputed domain name and would have quickly learn that the trademarks are owned and used by the Complainant. However, the Respondent still chose to register the disputed domain name.

By the time the Complainant became aware of the disputed domain name (August 2023), the latter resolved to a parking page showcasing pay per click links. Such use of the disputed domain name is aimed at attracting Internet users for commercial gain by creating a likelihood of confusion with the Complainant's trademark as to the sources, sponsorship, affiliation, or endorsement of the aforementioned PPC page.

From the Complainant's perspective, such use of the disputed domain name cannot be considered as a bona fide offering of goods or services nor as legitimate noncommercial or fair use. At the time of filing this complaint, the disputed domain name does not resolve to any active website. The disputed domain name is passively held. 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 reflects the Respondent's intention to create an association, and a subsequent likelihood of confusion, with the Complainant, its trademark and the Novartis group in Internet users' mind. Such use of an obvious misspelled version of the Complainant's well-known trademark NOVARTIS in the disputed domain name shows the Respondent's evident attempt to capitalize on Internet users' possible errors when reading the disputed domain name.

By deliberately registering and using the disputed domain name incorporating a misspelled form of the Complainant's trademark, the Respondent has been involved in "typosquatting". As previously mentioned, such conduct aims at capitalizing on Internet users' misspelling mistakes, when typing the Complainant's name, trademark or domain name <novartis.com>.

In addition, the Complainant tried to reach the Respondent by sending a Cease and Desist letter and a following reminder using the

anonymized e-mail address as available in WHOIS records. The Respondent replied to the Complainant's Cease and Desist letter reminder stating the following: "Hello, We will look into this and cancel the domain which will not be used anymore. Thanks Rocky". The Complainant's representative subsequently asked for proof of cancellation but such request was left unanswered by the Respondent. The Respondent's communication showing his willingness to cancel the disputed domain name upon the Complainant's request, should be considered by the Panel as a clear admission of the Respondent's absence of rights or legitimate interests in respect of the disputed domain name.

3. THE DISPUTED DOMAIN NAME WAS REGISTERED AND IS BEING USED IN BAD FAITH

Turning to the bad faith argument, the Complainant states that 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 registration of the Complainant's trademarks. The NOVARTIS trademark is a widely known trademark registered in many countries. Furthermore, the structure of the disputed domain name shows that the Respondent registered it having the Complainant and its NOVARTIS trademark in mind. It reflects the Respondent's clear intention to create an association, and a subsequent likelihood of confusion, with the Complainant's trademark in Internet users' mind. By reading the disputed domain name, Internet users may indeed mistakenly believe that it is directly connected to or authorized by the Complainant.

The Complainant also enjoys a strong online presence. The Complainant is very active on social media to promote its mark, products and services. Indeed, by conducting a simple online search regarding the term "n0vartls" on popular search engines, the Respondent would have inevitably learnt about the Complainant, its trademark and business. Considering that the NOVARTIS trademark is well known, the structure of the disputed domain name and that the Novartis group is a globally renowned pharmaceutical company, it clearly appears that the Respondent knew the Complainant and the NOVARTIS trademark at the time it registered the disputed domain name.

The disputed domain name is passively held. It does not resolve to an active website. Therefore, there is no evidence of any actual or contemplated good-faith use of the disputed domain name.

Furthermore, it is likely that the Respondent is trying to conceal its identity regarding the ownership of the disputed domain name – as his name and contact details are covered by a privacy shield in the corresponding Whois record – which is further evidence of bad faith.

Moreover, the disputed domain name had active MX records associated with it which, given the confusing similarity between the disputed domain name and the Complainant's official domain name <novartis.com>, further increases the possibility of Internet users to be misdirected by phishing emails sent by e-mail addresses connected to the disputed domain name (such as ... @n0vartls.com).

Therefore, the overall described circumstances are clear demonstration of 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).

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.

This is a proceeding under Paragraph 4 of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") and the CAC Supplemental Rules.

Paragraph 15 of the Rules provides that the Panel shall decide the complaint based on the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

According to Paragraph 4(a) of the Policy, a complainant must prove each of the following: (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; (ii) the respondent has no rights or legitimate interests in respect of the domain name; (iii) the domain name has been registered and is being used in bad faith.

1. Identical or confusingly similar domain name

The Complainant demonstrated that it owns the asserted trademark registrations for the mark "NOVARTIS", which was registered long before the disputed domain name. It is well established that a nationally or regionally registered trademark confers on its owner sufficient rights to satisfy the requirement of having trademark rights for the purposes of standing to file a UDRP case. Therefore, the Panel finds that the Complainant has established such rights. Furthermore, this Panel concurs with the Complainant (and also earlier panel decisions) that the Complainant's trademark "NOVARTIS" can be considered a well-known trademark, especially because of its extensive use and international repute.

It is also well established that the generic top-level suffix .com may be disregarded when considering whether a disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

The disputed domain name incorporates a misspelt version of the Complainant's trademark NOVARTIS, where the letter "o" is replaced with the number "0", and the letter "i" is replaced with the letter "l". Obviously, such minor changes where two letters are replaced by visually the most similar characters are by no means sufficient to prevent or diminish the confusing similarity with the Complainant's trademark.

The Panel, therefore, finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

2. Lack of rights or legitimate interests

The Respondent has not filed a Response and has neither provided any other information that would oppose the Complainant's allegations. Therefore, the Panel holds that the Complainant successfully presented its prima facie case that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

In particular, the Respondent is not in any way connected with the Complainant, nor is it authorized to use the Complainant's trademark for its commercial activities. In addition, the Respondent is not commonly known by the disputed domain name pursuant to Paragraph 4(c)(ii) of the Policy. Furthermore, it was demonstrated by evidence submitted by the Complainant that the disputed domain name has not been used for a bona fide offering of goods or services or a legitimate non-commercial or fair use.

The Panel, therefore, finds that the Respondent has no rights or legitimate interest in the disputed domain name.

3. Registration and use of the disputed domain name in bad faith

With respect to the bad faith argument, the Complainant essentially states that (a) the disputed domain name is confusingly similar to its well-known trademark; (b) the Respondent had actual knowledge of the Complainant's rights in its trademarks; (c) the disputed domain name is not active; (d) the disputed domain name was set up with MX records; and (e) the Respondent conceals its identity by the privacy shield.

The Panel has already found that the disputed domain name is confusingly similar to the Complainant's trademark "NOVARTIS". It is well established that the mere registration of a domain name that is confusingly similar to a trademark by an unaffiliated entity can lead to the presumption of bad faith.

In addition, the Panel believes that the Complainant submitted evidence that sufficiently demonstrates the Respondent must have (or should have) been aware of the existence of the Complainant, its well-known trademark, and its domain name. It is difficult to find any good faith reason for the registration of the disputed domain name by the Respondent.

As this is a rather clear example of typo-squatting, it is fair to conclude that the Respondent indeed registered and has been using the disputed domain name to attract Internet users for commercial gain. In the absence of any plausible explanation by the Respondent, the Panel finds this a blatant example of bad faith use of a domain name.

With that in mind, the Panel concludes that several signs of bad faith in registering and use of the disputed domain name by the Respondent can be found in this case. Therefore, the Panel finds that the disputed domain name has been registered and has been used by the Respondent in bad faith.

In conclusion, the Panel finds that all three elements required by Paragraph 4(a) of the Policy were met and makes the following decision.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **n0vartls.com**: Transferred

PANELLISTS

Name	Vojtěch Chloupek
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DATE OF PANEL DECISION **2023-11-27**

Publish the Decision
