

Decision for dispute CAC-UDRP-105928

Case number	CAC-UDRP-105928
Time of filing	2023-11-01 10:35:49
Domain names	novartisqh.vip, novartisqh.wiki

Case administrator

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

Complainant

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

Complainant representative

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

Respondent

Organization	The Polka Dot Bear Tavern
--------------	---------------------------

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 holder of several trademarks including the following:

- NOVARTIS, international word mark No. 663765, registered on July 1, 1996, in classes 1, 2, 3, 4, 5, 7, 8, 9, 10, 14, 16, 17, 20, 22, 28, 29, 30, 31, 32, 40, 42;
- NOVARTIS, EU word mark No. 013393641, registered on March 17, 2015, in classes 9 and 10;
- NOVARTIS, US word mark No. 2336960, registered on April 4, 2000, in classes 1, 5, 9, 10, 29, 30, 31, 32, 42;
- NOVARTIS (including logo), US figurative word mark No. 6990442, registered on February 28, 2023 in class 5.

FACTUAL BACKGROUND

The Complainant, NOVARTIS AG, is a pharmaceutical and healthcare company based in Switzerland.

The Complainant is the holder of several trademarks including the following:

- NOVARTIS, international word mark No. 663765, registered on July 1, 1996, in classes 01, 02, 03, 04, 05, 07, 08, 09, 10, 14, 16, 17, 20, 22, 28, 29, 30, 31, 32, 40, 42;
- NOVARTIS, EU word mark No. 013393641, registered on March 17, 2015, in classes 9 and 10;
- NOVARTIS, US word mark No. 2336960, registered on April 4, 2000, in classes 1, 5, 9, 10, 29, 30, 31, 32, 42;
- NOVARTIS (including logo), US figurative word mark No. 6990442, registered on February 28, 2023 in class 5.

The Complainant also claims to own several domain names including:

- <novartis.com>
- <novartispharma.com>

The disputed domain names <novartisqh.vip> and <novartisqh.wiki> were registered on September 11, 2023. According to the Complainant's evidence, the disputed domain name <novartisqh.vip> resolved to a website in Chinese showcasing the NOVARTIS figurative mark and containing links to other webpages showcasing the NOVARTIS mark in prominent positions, including one webpage linked to the other disputed domain name <novartisqh.wiki> mimicking the content available at one of the Complainant's official websites. According to the Complainant's evidence, the disputed domain name <novartisqh.wiki> resolved to an inactive page. Following a takedown action by the Complainant, the Panel observes that the disputed domain names currently both resolve to an inactive web page.

The Complainant shows it tried to contact the registrant but claims it never received a response to its cease and desist letter dated September 15, 2023.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant considers the disputed domain names to be confusingly similar to a trademark in which it has rights. The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain names. According to the Complainant, the Respondent has never been granted any right to use the NOVARTIS trademark in any form, including in the disputed domain names, nor is the Respondent affiliated with the Complainant in any form. The Complainant has not found that the Respondent is known by the disputed domain names. The Complainant claims that there is no evidence showing that the Respondent has been using, or preparing to use, the disputed domain names in connection with a bona fide offering of goods and services or has made a legitimate noncommercial or fair use of the disputed domain names. Finally, the Complainant considers that the disputed domain names were registered and are being used in bad faith. The Complainant contends that the Respondent knew the Complainant and the NOVARTIS trademark at the time it registered the disputed domain names. The Complainant further claims that the disputed domain name <novartisqh.vip> is aimed to attract Internet users to the website linked to it, for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the website and that this disputed domain name is used for illegal activity. According to the Complainant, it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain names by the Respondent that would not be illegitimate.

RESPONDENT:

The Respondent did not reply to the Complainant's contentions.

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

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

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in Paragraph 4 (a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are administrative, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed it must prove, within the meaning of Paragraph 4(a) of the Policy and on the balance of probabilities that:

1. The domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
2. The Respondent has no rights or legitimate interests in respect of the domain names; and
3. The domain names have been registered and are being used in bad faith.

The Panel has therefore dealt with each of these requirements in turn.

1. Identity of confusing similarity

The Complainant must first establish that there is a trademark or service mark in which it has rights. Since the Complainant shows to be the holder of the registered NOVARTIS marks, it is established that there is a trademark in which the Complainant has rights.

The Panel observes that the disputed domain names both incorporate the Complainant's NOVARTIS trademark in its entirety, adding the letters "qh". In the Panel's view, this addition does not prevent the Complainant's trademark from being recognizable within the disputed domain names (see section 1.8 WIPO Overview 3.0; IM PRODUCTION v. Xue Han, CAC Case No. 104877 <isabel-marantus.com>).

Finally, it is well established that the Top-Level Domains ("TLDs") such as ".vip" and ".wiki" may be disregarded when considering whether a disputed domain name is identical or confusingly similar to the trademark in which the Complainant has rights (see section 1.11 WIPO Overview 3.0).

Therefore, the Panel finds that the disputed domain names are confusingly similar to the Complainant's trademark. Accordingly, the Complainant has made out the first of the three elements that it must establish.

2. No rights or legitimate interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

It is established case law that it is sufficient for the Complainant to make a prima facie showing that the Respondent has no right or legitimate interest in the disputed domain names in order to shift the burden of proof to the Respondent (see section 2.1 WIPO Overview 3.0 and Champion Innovations, Ltd. V. Udo Dussling (45FHH), WIPO case No. D2005-1094; Croatia Airlines d.d. v. Modern

Empire Internet Ltd., WIPO case No. D2003-0455; Belupo d.d. v. WACHEM d.o.o., WIPO case No. 2004-0110).

The Panel notes that the Respondent has not been commonly known by the disputed domain names and that the Respondent has not acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is known as “Jacqueline k” from the organization “The Polka Dot Bear Tavern”. The Respondent’s use and registration of the disputed domain names was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent existed.

Beyond looking at the domain name(s) and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, such as the content of the website linked to the disputed domain name and the absence of a response, support a fair use or not (see sections 2.5.2 and 2.5.3 of the WIPO Overview 3.0).

According to the Complainant’s evidence, the disputed domain name <novartisqh.vip> resolved to a website in Chinese, showcasing the NOVARTIS figurative mark right above a login interface inviting internet users to input personal information, such as email address and password. In the Panel’s view, in the circumstances of the present case, there is a risk of fraudulent use of the (personal) data of unsuspecting Internet users gathered through such login interface. Moreover, according to the Complainant’s evidence, the website linked to the disputed domain name <novartisqh.vip> also contained links to other webpages showcasing the NOVARTIS mark in prominent positions, including one webpage linked to the other disputed domain name <novartisqh.wiki> mimicking the content available at one of the Complainant’s official websites. In the Panel’s view, this can never be considered as a bona fide offering of goods and services.

The Panel observes that the disputed domain names currently resolve to an inactive webpage. In the circumstances of this case, the Panel finds that this does not amount to any legitimate noncommercial or fair use either.

The Respondent had the opportunity to demonstrate rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the prima facie case established by the Complainants has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the disputed domain names. In light of the above, the Complainant succeeds on the second element of the Policy.

3. Bad faith

The Complainant must prove on the balance of probabilities that the disputed domain names were registered in bad faith and that these are being used in bad faith (see section 4.2 WIPO Overview 3.0 and e.g. Telstra Corporation Limited v. Nuclear Marshmallow, WIPO Case No. D2000-0003; Control Techniques Limited v. Lektronix Ltd, WIPO Case No. D2006-1052).

According to the Panel, the awareness of a respondent of the complainant and/or the complainant’s trademark rights at the time of registration can evidence bad faith (see Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz, WIPO Case No. D2011-2209; Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite, WIPO Case No. D2001-1070).

In the present case, the Panel finds that the Respondent must have been aware of the Complainant and its trademark rights when it registered the disputed domain names as:

- the disputed domain names incorporate the Complainant’s trademark in its entirety with the addition of 2 letters;
- the Complainant’s mark predates the disputed domain names by more than 27 years ;
- the website linked to the disputed domain name <novartisqh.vip> included the Complainant’s logo and referred to the Complainant;
- the website linked to the disputed domain name <novartisqh.vip> contained links to other webpages showcasing the NOVARTIS mark, including one webpage linked to the other disputed domain name <novartisqh.wiki> mimicking the content available at one of the Complainant’s official websites.

In view of the above, the Panel finds that the Respondent intentionally aimed to attract Internet users to visit this website for commercial gain, by creating a likelihood of confusion with the Complainant’s marks as to the source, sponsorship, affiliation, or endorsement of the website or location and of the products advertised on the website (see Simyo GmbH v. Domain Privacy Service FBO Registrant / Ramazan Kayan, WIPO Case No. D2014-2227).

Given the totality of the circumstances discussed above, the current state of the disputed domain names referring to inactive web pages does not prevent a finding of bad faith under the doctrine of passive holding (see section 3.3 of the WIPO Overview 3.0).

Finally, the Respondent did not formally take part in the administrative proceedings. According to the Panel, this serves as an additional indication of the Respondent’s bad faith.

Therefore, the Panel finds that, on the balance of probabilities, it is sufficiently shown that the disputed domain names were registered and are being used in bad faith. In light of the above, the Complainant also succeeds on the third and last element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **novartisqh.vip**: Transferred
 2. **novartisqh.wiki**: Transferred
-

PANELLISTS

Name	Flip Petillion
------	----------------

DATE OF PANEL DECISION 2023-12-12

Publish the Decision
