Decision for dispute CAC-UDRP-106487

Case number	CAC-UDRP-106487
Time of filing	2024-05-03 16:36:21
Domain names	novartisteam.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Novartis AG

Complainant representative

Organization	BRANDIT GmbH

Respondent

Organization	Novartis

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 owns numerous trademark registrations for NOVARTIS, including the following US trademark registrations:

- Registration number 4986124, registered 28 June 2016;
- Registration Number 2336960, registered 4 April 2000; and
- Registration Number 5420583 registered 13 March 2018.

FACTUAL BACKGROUND

The Complainant is the holding company of the Novartis Group, which is one of the biggest global pharmaceutical and healthcare groups. The Complainant owns numerous trademark registrations for the mark NOVATIS, including in the US where the Respondent is located. These registrations predate the registration of the disputed domain name. The Complainant also owns numerous domain names incorporating its trademark NOVARTIS, including <novartis.com> created on 2 April 1996.

The Respondent registered the disputed domain name on 22 February 2024 using a privacy service.

On 15 March 2024, the Complainant sent a cease and desist letter to the registrant but received no reply.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.
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

Paragraph 4 (a) of the Policy requires the Complainant to prove each of the following three elements:

(i) the disputed 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 the disputed domain name; and

(iii) the disputed domain name has been registered and used in bad faith.

A. IDENTICAL OR CONFUSINGLY SIMILAR

The disputed domain name comprises the Complainant's well-known trademark NOVARTIS, the word "team" plus the top-level domain ".com". The most distinctive part of the disputed domain name is the mark NOVARTIS. Adding the word "team" after the Complainant's trademark does little to avoid the finding that the disputed domain name is confusingly similar to the Complainant's trademark, NOVARTIS. See Hoffmann-La Roche Inc. v. Wei-Chun Hsia, WIPO Case No.D2008-0923.

The addition of the top-level suffix, ".com" is a standard registration requirement and can be disregarded when assessing whether the disputed domain name is confusingly similar to the Complainant's trademark, NOVARTIS.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark and that the requirements of paragraph 4(a)(i) of the Policy have been met.

B. NO RIGHTS OR LEGITIMATE INTEREST

The Complainant asserts that the. Respondent has no rights or legitimate interest in the disputed domain name. The Complainant owns trademark registrations for the mark, NOVARTIS that predate the registration of the disputed domain name. The Complainant states it had no previous relationship with the Respondent, and has not granted the Respondent any rights to use the NOVARTIS trademark or incorporate it in the disputed domain name.

The Complainant has submitted evidence to show that the Respondent is not commonly known by the disputed domain name, and

evidence of trademark searches it conducted that show no registered trademarks for “novartisteam” or in the name of the Respondent. It says the Respondent could have easily performed a similar search for NOVARTIS and would have quickly learnt that the trademark was owned by the Complainant and used for its business activities.

The Complainant has also submitted evidence to show that the disputed domain name was being used for pay per click sponsored links, but did not resolve to any active page when the amended complaint was prepared.

The Complainant has established a prima facie case that the Respondent has no rights or legitimate interest in the disputed domain name. The burden of proof now shifts to the Respondent. The Respondent has not filed a response, nor challenged any of the Complainant’s assertions, nor provided any evidence of her rights or legitimate interests in the disputed domain name. Using the disputed domain name in connection with pay per click links is not a bona fide offering of goods or services but instead appears intended to take advantage of the reputation of the Complainant’s well-known mark.

The Panel finds that the Respondent has no rights or legitimate interest in the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been met.

C. REGISTERED AND USED IN BAD FAITH

The Complainant asserts that the Respondent registered and has used the disputed domain name in bad faith.

The Complainant is a global pharmaceutical company with long-standing rights in the NOVARTIS mark. The Respondent incorporated that mark in the disputed domain name and has used it in connection with pay per click sponsored links. The most obvious explanation is that the Respondent knew of the Complainant and its NOVARTIS mark when it registered the disputed domain name and has in bad faith intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant’s mark.

The disputed domain name is currently held passively, it is possible, in certain circumstances, for inactivity by the Respondent to amount to the domain name being used in bad faith. See Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003.

In the present case:

i. the Complainant’s trademark is well-known;
ii. the Respondent has used a privacy service to hide her identity;
iii. there is no evidence of any actual or contemplated good faith use by the Respondent;
iv. the Respondent failed to reply to a cease and desist letter; and
v. the registrar verification lists the registrant organisation's name as “Novartis”, giving the false impression that it was registered by the Complainant.

Considering all these factors and the evidence submitted with the Complaint, the Panel finds that the Respondent registered and has used the disputed domain name in bad faith and that the requirements of paragraph 4(a)(iii) of the Policy have been met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **novartisteam.com**: Transferred

PANELLISTS

Name	**Veronica Bailey**

DATE OF PANEL DECISION 2024-06-12

Publish the Decision