Decision for dispute CAC-UDRP-106514

Case number	CAC-UDRP-106514
Time of filing	2024-05-13 10:17:10
Domain names	novartisfrance-pharma.com

Case administrator

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

Complainant

Organization	Novartis AG

Complainant representative

Organization	BRANDIT GmbH

Respondent

Name	Edgard Monsia

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 evidence has established that the Complainant owns a portfolio of registered trademarks for NOVARTIS including the trademark for NOVARTIS registered with the United States Patent and Trademark Office (“USPTO”) on April 4, 2000 and numerous other trademarks for NOVARTIS and derivatives registered nationally and internationally (collectively “the Novartis trademark”).

FACTUAL BACKGROUND

The Complainant is a prominent Swiss company engaged in the provision of pharmaceuticals and related goods and services. It has acquired the aforesaid trademark rights for NOVARTIS which it uses in its business. It has come to the notice of the Complainant that on January 17, 2024, the Respondent registered the Disputed Domain Name which does not resolve to any active content but to an inactive website. The Complainant maintains that the domain name infringes its trademark, is deceptive, disrupts the Complainant's business and has been registered and used in bad faith. It has therefore brought this proceeding under the UDRP and seeks the transfer of the Disputed Domain Name from the Respondent to itself.

PARTIES CONTENTIONS

A. COMPLAINANT

The Complainant made the following contentions.

The Complainant is a Swiss company that is part of the Novartis Group, which is one of the biggest global pharmaceutical and healthcare groups in the world. As such, it manufactures and sells pharmaceuticals and provides related goods and services world-wide.

The Complainant provides its goods and services pursuant to numerous registered trademarks for NOVARTIS. In particular, it has registered trademark rights in the trademark for NOVARTIS registered with the United States Patent and Trademark Office ("USPTO"), Registration Number 2336960, registered on April 4, 2000 and numerous other trademarks for NOVARTIS and derivatives registered nationally and internationally (collectively "the Novartis trademark").

The vast majority of the Complainant's NOVARTIS trademark registrations significantly predate the registration of the Disputed Domain Name, which was on January 17, 2024.

Moreover, previous UDRP panels have found that the NOVARTIS trademark is well-known.

In addition to its NOVARTIS trademark, the Complainant has registered numerous domain names consisting of "novartis" alone, such as <novartis.com>, which it registered on 2 April 1996 and <novartis.us> which it registered on 19 April 2002, and in combination with other terms, such as <novartispharma.com> which it registered on 27 October 1999 and which it has used in its business and in particular for official websites relating to the provision of its goods and services.

The Respondent registered the domain name <novartisfrance-pharma.com> ("the disputed domain name") on January 17, 2024.

The disputed domain name incorporates the Complainant's well-known NOVARTIS trademark in its entirety, to which has been added the geographical term "france", a hyphen, the term "pharma" and the generic Top Level Domain ".com".

As it contains the entirety of the NOVARTIS trademark and as the aforesaid additions cannot negate a finding of confusing similarity that is otherwise present, the disputed domain name is confusingly similar to the NOVARTIS trademark.

The Respondent has no rights or legitimate interests in the Disputed Domain Name.

That is so because:

- the Complainant and the Respondent have never had any previous relationship with each other;

- the Complainant has not granted the Respondent any rights to use the NOVARTIS trademark, either in the disputed domain name or by any other means;

- the Respondent is not commonly known by the disputed domain name; that is so because, when searching for the disputed domain name term "novartisfrance-pharma" in the Google search engine, all top returned results point to the Complainant. Moreover, when searching for the disputed domain name terms "novartisfrance-pharma" in connection with the Respondent's name, "Edgard Monsia", there were no returned results;

- when searching for any trademarks incorporating the disputed domain name terms "novartisfrance-pharma.com" on online trademark search platforms, no registered trademarks were found. Moreover, when searching for any trademarks registered in the name of the Respondent, namely "Edgard Monsia" incorporating the main part of the disputed domain name "Novartis", there are no returned results;

- had the Respondent made proper inquiries, it would have discovered that the NOVARTIS trademark is owned by the Complainant and that the Complainant has used the trademark for its business activities. Despite this, the Respondent still chose to register the disputed domain name;

- the disputed domain name does not resolve to any active content, but resolves only to the Registrar's parking page. Therefore, the disputed domain name is not being used in connection with a bona fide offering of goods or services;

- when the Complainant discovered the registration of the disputed domain name and sent a Cease-and-Desist letter to the Respondent on January 31, 2024, a reply came from Elite Corporation (elitecorporation292@gmail.com) stating "Good morning! I acknowledge receipt of your message. the message as received was forwarded to the domain owner. The domain name itself is not used and will not be used, the owner confirmed to me. I will at the same time leave a message to the host with a view to deleting the said domain in order to be sure. Sincerely";

- although the Respondent was given the opportunity to show how it had rights or legitimate interests in the disputed domain name, it failed to do so, and merely had resort to the statement that "the domain name is (was) not currently used and will not be used in the future";

- the disputed domain name carries a risk of implied affiliation with the Complainant that cannot constitute fair use under the UDRP policy;

- the evidence will show that for the foregoing reasons and in all the circumstances the Respondent has no rights or legitimate interests in respect to the disputed domain name.

The disputed domain name was registered in bad faith.

That is so because:

- the registrations of the Complainant's NOVARTIS trademarks predate the Respondent's registration of the disputed domain name;

- the Respondent has never been authorized by the Complainant to register the disputed domain name;

- the wide recognition of the Complainant and its trademark, its substantial presence and the presence of its trademark and its long-standing use and promotion, as well as the Complainant's active presence on social media and the prior UDRP decisions acknowledgement of the fame of the NOVARTIS trademark, all indicate that the Respondent had actual notice of the Complainant and its trademark prior to its registration of the disputed domain name;

- the structure of the disputed domain name followed by the geographical term "france", a country where the Complainant has an established business presence, and the term "pharma", which is relevant to the Complainant's business field, the Complainant being a globally renowned pharmaceutical company, shows that the Respondent registered the dispute domain name having the Complainant and its NOVARTIS trademark in mind;

- the registration of the disputed domain name shows the Respondent's clear intention to create an association, and a subsequent likelihood of confusion, with the Complainant's trademark in Internet users' minds. Indeed, by reading the disputed domain name, Internet users may believe that it is directly connected to or authorized by the Complainant;

- accordingly, the disputed domain name should be deemed as registered in bad faith.

The disputed domain name has been used in bad faith.

That is so because:

- the Respondent has used the disputed domain name with the intention of creating a likelihood of confusion with the Complainant's NOVARTIS trademark within the meaning of paragraph 4 (b)(iv) of the Policy;

- the structure of the disputed domain name reflects the Respondent's intention to create an association and subsequent likelihood of confusion with the Complainant and its NOVARTIS trademark;

- the disputed domain name does not resolve to any active content but to a Registrar's parking page;

- the disputed domain name is passively held within the generally accepted meaning of that expression and having regard to the decision in Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003);

- the NOVARTIS trademark is well-known;

- the aforesaid correspondence shows that Complainant contacted the Respondent who had a chance to provide evidence of actual or contemplated good-faith use of the disputed domain name but failed to do so;

- all of the relevant circumstances show the disputed domain name's capacity to be misleadingly seen as connected to or authorized by the Complainant and accordingly there is no good faith use to which the domain name could be put;

- the aforementioned circumstances show that the Respondent has been using the disputed domain name 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.

PRINCIPAL REASONS FOR THE DECISION

PRELIMINARY ISSUE: LANGUAGE OF THE PROCEEDING

The Complainant notes that the Registrar of the Disputed Domain Name has indicated in its Verification Response that the Registration Agreement relating to the Disputed Domain Name is in the English language and that, consequently, the proceeding would automatically be conducted in that language.

However, it also submits that its own searches have shown that, and to the best of its knowledge, the language of the Registration Agreement is French and, in support, it annexes what purports to be a copy of a Registration Agreement to that effect. Consequently, it submits that, pursuant to Rule 11 that, if that is so, the Panel should find that it is more appropriate that the proceeding be conducted in English and that the Panel should so order.

The language of the proceeding is prescribed in Rule 11, which is as follows:

“Language of Proceedings

(a) Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

(b) The Panel may order that any documents submitted in languages other than the language of the administrative proceeding be accompanied by a translation in whole or in part into the language of the administrative proceeding.”

It should be noted that by use of the word “shall” in Rule 11, the requirement that “the language of the administrative proceeding shall be the language of the Registration Agreement…”, is mandatory.

It is therefore important to ascertain the language of the Registration Agreement. In that process, the Panel takes the view that the guidance of the Registrar itself should be followed, as the Registrar should be able to make an accurate statement of the language of its own Registration Agreement that applied to the disputed domain name.

In that regard, the verification request from the Czech Arbitration Court requested the Registrar to “Confirm that the language of the registration agreement is English.” To this request, the Registrar replied: “I confirm”.

From that response, which is a confirmation that the Registration Agreement is in English, the Panel concludes that the Registration Agreement is in English.

Applying the provisions of Rule 11 to that finding of fact, the Panel therefore finds that “the language of the administrative proceeding shall be the language of the Registration Agreement…,” namely English, and it so finds.

The Panel is also mindful of the provisions of Rule 10(b), namely:

“(b) In all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case.”

This provision is routinely considered by UDRP panellists when considering language requests under Rule 11 and the present Panel has considered it in this proceeding.

Applying that provision to the finding that the proceeding is conducted in English by virtue of Rule 11(a), the Panel also finds that no prejudice is occasioned to the principle of equality by that finding and the finding itself cannot adversely affect the right of the Respondent to a fair opportunity to present its case. That is because, even if a finding had been made that the Registration Agreement was in the French language, the Panel would have decided that it was more appropriate that the proceeding should be conducted in English for the reasons given by the Complainant in the Complaint. The Complaint has of course been served on the Respondent under the Rules, so it already knows what those grounds are. Accordingly, even if the Panel had decided that the Registration Agreement were in French, it would also have decided that English was a more appropriate language and the proceeding would still be conducted in the English language.

DISCUSSION AND FINDINGS

This is a mandatory administrative proceeding pursuant to Paragraph 4 of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP") of the Internet Corporation for Assigned Names and Numbers ("ICANN"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the CAC Supplemental Rules.

A. Administrative compliance

By notification dated May 13, 2024, and in accordance with paragraph 4 (b) of the Rules, the CAC notified the Complainant that the Complaint was administratively deficient in that the Complaint did not sufficiently identify the Respondent. The notification invited the Complainant to have regard to the Registrar's verification available in the online case file in the form of a non-standard communication regarding the appropriate identification of the Disputed Domain Name holder. Also, on May 15, 2024, the Complainant filed an Amended Complaint and the CAC determined that the Complaint should be admitted to proceed further in the Administrative Proceeding.

The notification also stated that the Complaint was not filed in the language of the administrative proceeding, being French. However, the Panel has found that the language of the Registration Agreement, according to the Registrar, is English as the Registrar itself has verified.

The Panel has reviewed all of the above matters and makes a finding that within the meaning of paragraph 4(b) of the Rules, the administrative deficiencies have been corrected and that this matter has proceeded properly to the Panel in accordance with the Policy and the Rules.

B. Substantive matters

Paragraph 15 of the Rules provides that the Panel is to decide the complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.
In that regard, the Panel also notes that the onus is on the Complainant to make out its case, and past UDRP panels have consistently said that a complainant must show that all three elements of the Policy have been made out before any order can be made to transfer a domain name.
The Panel therefore turns to discuss the various issues that arise for decision on the facts as they are known.
For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:
(i) The 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 in respect of the domain name; and
(iii) The domain name has been registered and is being used in bad faith.

The Panel will therefore deal with each of these requirements in turn.

Identical or Confusingly Similar

The first question that arises is whether the Complainant has a trademark on which it may rely in this proceeding. In that regard, the Complainant has adduced evidence that it owns a series of registered trademarks for NOVARTIS under which it provides its goods and services and which are in evidence. In particular, it has rights in the trademark for NOVARTIS registered with the United States Patent and Trademark Office ("USPTO"), Registration Number 2336960, registered on April 4, 2000 and numerous other trademarks for NOVARTIS and derivatives registered nationally and internationally (collectively "the Novartis trademark"). The Complainant has established those registrations by evidence of the registrations contained in Annex 5 to the Complaint which the Panel has examined and finds to be in order.

The evidence also establishes that the vast majority of these registrations occurred prior to the registration of the disputed domain name by the Respondent, which was on January 17, 2024 as demonstrated by Annex 3 to the Complaint.

The Panel therefore finds that the Complainant "has" a trademark which the Policy requires it to prove and which it has done.

The next question that arises is whether the disputed domain name is identical or confusingly similar to the NOVARTIS trademark. Clearly, the domain name is not identical to the trademark as it includes other features in addition to the trademark. However, the Panel finds that the domain name is confusingly similar to the trademark. That is so for the following reasons.

The domain name, first, includes the NOVARTIS trademark in its entirety. Accordingly, it is clear that the domain name has been inspired by and is an attempt to copy the trademark. It is also clear and has been held many times in prior UDRP decisions that when internet users see an entire trademark used in a domain name in this way, they naturally conclude that the domain name is an official domain name of the trademark owner or at least that it is being used with the permission of the trademark owner.

Secondly, the geographic indicator "france" has been added to the trademark. Internet users would clearly understand that this means that the domain name relates to the activities of the Complainant in France, where the evidence also shows that the Complainant is active.

Thirdly, the domain name also includes a hyphen, but it has long been held that such minor additions cannot negate a finding of confusing similarity that is otherwise demonstrated, as it is in this proceeding.

Fourthly, the word “pharma” has been added, putting it beyond doubt that the overall impression of the domain name is that the domain name relates to the provision of pharmaceuticals by the Complainant, for which it is renowned.

Finally, the domain name includes the generic Top Level Domain “.com” but, again, it has long been held that such an addition cannot negate a finding of confusing similarity that is otherwise present.

Accordingly, the fact that the domain name has been created by making those additions to the trademark suggests instantly that the Respondent is about some activity designed to do damage to the Complainant by some means involving copying and using its trademark in the disputed domain name. In fact, it can be assumed that internet users would believe that the domain name was an official domain name of the Complainant or one created with the approval of the Complainant as trademark owner and that it was being used or could be used for a legitimate purpose involving the provision of pharmaceutical goods and services, at least in France, neither of which is true.

Internet users would also conclude that the domain name would lead to an official website of the Complainant, which is also not true.

Taken as a whole, internet users would look at the domain name and conclude that it is obviously similar to the trademark and also that it is confusingly similar, because it gives rise to a question mark as to whether it really is an official domain name of the Complainant or not.

The Panel therefore finds that the disputed domain name is confusingly similar to the NOVARTIS trademark and that this conclusion is supported by the prior UDRP decisions cited by the Complainant.

The Complainant has thus made out the first of the three elements that it must establish under the UDRP.

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 name.

But by virtue of paragraph 4(c) of the Policy, it is open to a respondent to establish its rights or legitimate interests in a domain name, among other circumstances, by showing any of the following elements:
(i) before any notice to you [respondent] of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
(ii) you [respondent] (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
(iii) you [respondent] are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Thus, if a respondent proves any of these circumstances or indeed anything else that shows that it has a right or legitimate interest in the domain name, the complainant will have failed to discharge its onus and the complaint will fail.

It is also well-established that a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests and that when such a prima facie case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent cannot do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Panel, after considering all of the evidence in the Complaint, finds that the Complainant has made out a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name.

In the first place, the evidence is such that the Respondent clearly could not bring itself within any of the criteria specified in paragraph 4(c) of the Policy which, if they were proved, would give it a right or legitimate interest in the domain name:

(a) the domain name is inactive and therefore has not been used for a bona fide offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy and nor have any demonstrable preparations been shown as being intended for the domain name to be used for such an offering; the domain name has not been used to offer any goods or services; nor can it be bona fide to do what has been proved as having been done by the Respondent, namely to take a trademark of another party without permission and fashion it into a domain name clearly designed to suggest that it is the domain name of the trademark owner or one constructed with the permission of the trademark owner; there is nothing bona fide about such conduct;

(b) there is no evidence that the Respondent is known by the domain name within the meaning of paragraph 4(c)(ii), either commonly or at all; all of the evidence tends to the conclusion that the Respondent is Edgard Monsia and that, at least prima facie, he is commonly known as such and not by the domain name;

(c) there is no evidence that the Respondent has made a legitimate non-commercial or fair use of the domain name; that is because the whole modus operandi of the Respondent is illegitimate, its use of the domain name must be presumed to be for the purpose of some financial advantage and it is, hence, commercial; nor is it fair in any sense of the word to register a domain name that copies the Complainant's trademark and gives the impression that it is an official domain name of the Complainant that may be used legitimately.

Thus, this analysis shows that the Respondent could not bring itself within any of the specific criteria of paragraph 4 (c) of the Policy.

Those criteria and not exclusive and other factors may be relied on. However, there is no evidence of any other conduct of the Respondent that could give rise to a right or legitimate interest in the domain name. In fact, the evidence shows the contrary. It shows that the Complainant has not granted the Respondent any rights to use the NOVARTIS trademark, either in the disputed domain name or by any other means; that the domain name has not been used for any active content at all; that the Respondent has to all intents and purposes conceded in the correspondence described above that it has no right to the domain name and would be prepared to relinquish it; and that there is a risk of implied affiliation with the Complainant that cannot constitute fair use of the domain name.

Accordingly,, both the creation of the domain name and the use to which it has been put show that the Respondent has no right or legitimate interest in the disputed domain name and the Panel so finds.

The Complainant has therefore made out the second of the three elements that it must establish.

Registration and Use in Bad Faith

The Complainant must prove on the balance of probabilities both that the disputed domain name was registered in bad faith and that it has been used in bad faith.

Paragraph 4(b) of the Policy sets out four circumstances, any one of which is evidence of the registration and use of a domain name in bad faith, although other circumstances may also be relied on, as the four circumstances are not exclusive.

The four specified circumstances are:

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the site or location.

The Complainant is obliged to prove only one of the grounds set out in paragraph 4 (b). That is made clear by the use of the word "or" when enumerating the grounds. Moreover, and as with rights and legitimate interests, the specific grounds are not exclusive, and other grounds not enumerated in paragraph 4(b) may also be relied on. But it is clear that the following grounds have been established within the meaning of paragraph 4(b).

First, as the domain name has not been used for resolving to any active content, there must be another reason why the Respondent has registered such a deceptive domain name and yet not put it to any practical use. Taking the evidence as a whole, the Panel finds that on the balance of probabilities the Respondent registered the domain name with the intention of selling it to the Complainant if it could, and by that means making money from such a sale or other proscribed use. The Respondent's intention was clearly not bona fide as it has in effect stolen a trademark, altered it to leave no-one in doubt that the domain name was intended to be seen as a legitimate domain name that actually honed in on one of the regions where the Complainant is known to be in business, namely France, and that it could be used for promoting pharmaceutical products which the Complainant is renowned for producing. It would therefore be very naive not to believe that the primary reason for creating the domain name was to make money out of it by selling it to the most likely buyer who could be intimidated or induced into buying it, namely the Complainant. The Panel therefore finds that the Respondent registered the domain name in bad faith and used it in bad faith by retaining it with a view to selling it, if and when that result could be brought about, bringing the case squarely within paragraph 4(b)(i).

Secondly, the evidence also brings the case within paragraph 4 (b)(iii). That is because the domain name clearly disrupts the business of the Complainant. The Complainant is presently faced with the situation that there is a current domain name that uses its trademark and announces to the world that it is an official domain name or one that exists with the approval of the Complainant and is crafted to specify a country where it is in business and to invoke the actual business of the Complainant. This must disrupt the Complainant's business because it creates confusion, requires the Complainant to take action to negate it, where there is a risk that some potential customers may take their business away from the Complainant and direct it to the Respondent or some other party that might acquire the domain name, and where the market may well conclude that if it wishes to deal in NOVARTIS pharmaceuticals in France it should do so via the domain name and not directly with the Complainant. On any fair test, that is a disruption of the Complainant's business.

Thirdly, the case also comes within paragraph 4(b)(iv). The Respondent must have intended to create confusion by copying the Complainant's trademark and suggesting in the domain name that it is genuine and could be used for the sale of NOVARTIS pharmaceuticals in France. The confusion created is whether the domain name would be seen by the market as an official domain name of the Complainant or one approved by it.

Thus, there are at least 3 grounds in paragraph 4(b) that have been made out and where the evidence shows that the Respondent has registered and used the domain name in bad faith.

There are also other grounds not enumerated in the Policy that the Complainant can rely on to show bad faith. In particular, the Respondent had actual knowledge of the Complainant and its trademark when it registered the disputed domain name. The Respondent registered the domain name on January 17, 2024. By that date the Complainant's principal trademarks for NOVARTIS had been registered and, in any event, by that date the Complainant had achieved renown in its field. Thus, the Respondent must have known by that date what its target was and it went to specific lengths in creating the domain name to leave no doubt in anyone's mind that its target was the Complainant, and by that means it set about targeting the Complainant. It even went to the length of putting the Complainant's name and trademark into its domain name. That is an extreme act of bad faith registration.

Furthermore, the Complainant has made out 3 other grounds of bad faith registration and use on the evidence, namely that the disputed domain name is passively held within the generally accepted meaning of that expression and having regard to the decision in Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003); the NOVARTIS trademark is and was at all material times well-known and the aforesaid correspondence set out under the parties' contentions section of this decision shows that the Complainant contacted the Respondent who then had a chance to provide evidence of actual or contemplated good-faith use of the disputed domain name but failed to do so.

Thus, it can be said that all of the conduct of the Respondent revealed by the evidence shows that it has registered and used the disputed domain name in bad faith.

The Complainant has therefore made out the third of the three elements that it must establish.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **novartisfrance-pharma.com**: Transferred

PANELLISTS

Name	**Neil Brown**

DATE OF PANEL DECISION 2024-06-11

Publish the Decision