Decision for dispute CAC-UDRP-106548

Case number	CAC-UDRP-106548
Time of filing	2024-05-30 14:32:56
Domain names	uknovartics.com

Case administrator

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

Complainant

Organization	Novartis AG

Complainant representative

Organization	Abion GmbH

Respondent

Organization	TIMOTHY store

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.

FACTUAL BACKGROUND

The Complainant has evidenced to be the owner of numerous trademarks relating to its company name and brand NOVARTIS, including, but not limited to the following:

- Word trademark NOVARTIS, United States Patent and Trademark Office (USPTO), registration No.: 2336960, registration date: April 4, 2000, status: active;
- Word trademark NOVARTIS, USPTO, registration No.: 4986124, registration date: June 28, 2016, status: active.

Also, the Complainant has substantiated to own, inter alia, since 1996 the domain name <novartis.com>, which resolves to the Complainant's main website at "www.novartis.com", used to promote the Complainant's products and related services in the pharmaceutical industry.

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

First, as regards the Complainant's request that the language of proceeding be English, the Panel notes that according to the Registrar Verification dated June 4, 2024, the language of the registration agreement of the disputed domain name in fact is English.

Second, the Panel finds that the disputed domain name <uknovartics.com> is confusingly similar to the Complainant's NOVARTIS trademark, as it incorporates the latter in its entirety, simply preceded by the term "uk" (the two-letter country code for the "United Kingdom") and added by a letter "c" causing a typo-squatting of Complainant's trademark. Numerous UDRP panels have recognized that incorporating a trademark in its entirety can be sufficient to establish that the disputed domain name is at least confusingly similar to a registered trademark. Moreover, it has been held in many UDRP decisions and has meanwhile become a consensus view among UDRP panels that the mere addition of descriptive or other terms, such as here e.g. the term "uk" being the country-code for the "United Kingdom", is not capable to dispel the confusing similarity arising from such entire incorporation of the Complainant's NOVARTIS trademark in the disputed domain name. Finally, it has also been held in many UDRP decisions and has meanwhile become a consensus view among UDRP panels that a domain name which consists of a common, obvious or intentional misspelling of the complainant's trademark (i.e. a typo-squatting) is still considered to be confusingly similar to the relevant trademark for purposes of the first element under the UDRP. Accordingly, the fact that the disputed domain name obviously includes an intentional misspelling/typo-squatting of the Complainant's NOVARTIS trademark is not at all inconsistent with the finding of confusing similarity, especially given the fact that the Complainant's trademark is still at least recognizable within the disputed domain name.

Therefore, the Complainant has established the first element under the Policy as set forth by paragraph 4(a)(i).

Third, the Complainant contends, and the Respondent has not objected to these contentions, that the Respondent has neither made use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services, nor is the Respondent commonly known under the disputed domain name, nor is the Respondent making a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain. The Respondent has not been authorized to use the Complainant's NOVARTIS trademark, either as a domain name or in any other way. Also, there is no reason to believe that the Respondent's name somehow corresponds with the disputed domain name and the Respondent does not appear to have any trademark rights associated with the term "novartis" on its own. Finally, the Complainant has demonstrated that the disputed domain name did not in the past, and still does not, connect to any relevant content on the Internet, but is passively held by the Respondent instead. Many UDRP panels, however, have recognized that the mere registration of a domain name may not of itself confer rights or legitimate interests in a disputed domain name.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that, therefore, the Complainant has also satisfied paragraph 4(a)(ii) and, thus, the second element of the Policy.

Finally, the Panel holds that the disputed domain name was registered and is being used by the Respondent in bad faith. There is a consensus view among UDRP panelists that a passive holding of a disputed domain name may, in appropriate circumstances, be

consistent with the finding of bad faith, in particular in circumstances in which, for example, a complainant's trademark is well-known, and there is no conceivable use that could be made of the disputed domain name and would not amount to an infringement of the complainant's trademark's rights. In the case at hand, in the absence of any other reasonable explanation as to why the Respondent should rely on the disputed domain name which includes the Complainant's undisputedly well-reputed NOVARTIS trademark (predating the registration of the disputed domain name in March 2024 by decades), and given that the Respondent has brought forward nothing in substance relating to the intended use of the disputed domain name, the Panel finds that the Respondent has registered and is making use of the disputed domain name in a manner which at least takes unjustified and unfair advantage of the Complainant's NOVARTIS trademark's reputation and must, therefore, be considered as registered and being used in bad faith within the meaning of the Policy. Such finding also takes into consideration that MX servers have been activated under the disputed domain name which at least allows the assumption that the Respondent intends to make use at some point of the disputed domain name in connection with email services which – in turn and given that the disputed domain name is an intentional typo-squatted version of the Complainant's NOVARTIS trademark – are inconceivable of being of a good faith nature.

Therefore, the Complainant has also satisfied the third element under the Policy as set forth by paragraph 4(a)(iii).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **uknovartics.com**: Transferred

PANELLISTS

Name	**Stephanie Hartung**

DATE OF PANEL DECISION 2024-07-01

Publish the Decision