Decision for dispute CAC-UDRP-106780

Case number	CAC-UDRP-106780
Time of filing	2024-08-09 14:42:40
Domain names	novartispharmal.com

Case administrator

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

Complainant

Organization	Novartis AG

Complainant representative

Organization	Abion GmbH

Respondent

Name	Ben Bruz

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 (the "Domain Name").

IDENTIFICATION OF RIGHTS

The Complainant is the owner of numerous trade marks that incorporate or comprise the term "Novartis".

They include:

(i) United States registered trade mark no: 5420583 for NOVARTIS as a standard character mark registered on 13 March 2018 in classes 9, 10, 41, 42, 44 and 45; and

(ii) International registered trade mark no 1349878 for NOVARTIS as a standard character mark filed 29 November 2016 in classes 9, 10, 41, 42, 44 and 45 and proceeding to registration at least to some degree in approximately 70 jurisdictions.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT

The Complaint is part of, and is the holding company of, the Novartis global pharmaceutical and healthcare group. Its headquarters are in Switzerland, and it was created in 1996 through a merger of two other companies Ciba-Geigy and Sandoz. In 2023, Novartis

achieved net sales of USD 45.4 billion, and total net income amounted to USD 14.9 billion and employed approximately 76 000 full-time equivalent employees as of 31December 2023. In the US, Novartis has nearly 16 000 full-time equivalent employees in skilled positions, including more than 5,500 scientist, physicians and other R&D professionals.

The Complainant owns numerous domain names composed of either its trademark NOVARTIS alone, including <novartis.com> (created on 2 April 1996) and <novartis.us> (created on 19 April 2002) or in combination with other terms, such as <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.

At the time the Complainant found out about Domain Name on 8 July 2024 and as at the filing of the Complaint it resolved to “Index Of” page.

When the Complainant found out about the registration of the Domain Name it sent a Cease-and-Desist letter on 8 July 2024 to the privacy e-mail address as available in WHOIS records. The Complainant further sent reminders but there was no response from the Respondent.

The Respondent under the name “Ban Bruz” and using the e-mail address used in respect of the Domain Name has already appeared in similar UDRP proceedings raised by the Complainant; namely, in UDRP proceedings CAC-UDRP-106552 related to the domain name <novartispharmac.com>, in which the Respondent used an address which is the address of the Complainant’s subsidiary in Belgium. That domain name was used for a phishing scheme.

Active MX records are associated with the Domain Name.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the 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 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 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 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

The Complainant has demonstrated trade mark rights for NOVARTIS and the Domain Name can only be sensibly read as that term combined with the ordinary word "pharma", the letter "l" and the ".com" gTLD. Accordingly, the Complainant’s trade mark is clearly recognisable in the Domain Name. This is sufficient for a finding of confusing similarity under the Policy (see sections 1.7 of the WIPO Overview 3.0). The Complainant has, therefore, satisfied the requirements of paragraph 4(a)(i) of the Policy.

The Panel also accepts that the Domain Name, deliberately and inherently impersonates the Complainant and its trade marks. In particular, it is clear that that the Domain Name was intended by the Respondent to be a typosquatting variant of the words "Novartis Pharma" with an additional letter at the end of those words. The Complainant has also provided evidence that the Respondent has previously registered a domain name that takes the same form and used it in order to engage in a phishing scheme. Accordingly, the Panel accepts absent any argument or evidence to the contrary that the Respondent has registered the Domain Name for a similar purpose.

There is no right or legitimate interest in impersonating a trade mark holder in order to engage in a phishing scheme and this provides positive evidence that no rights or legitimate interests exist. Further registering and holding such a domain name for such a purpose involves registration and use of the Domain Name in bad faith. (see for example sections 2.13 and 3.1.4 of the WIPO Overview 3.0).

The Complainant has, therefore, satisfied the requirements of paragraphs 4(a)(ii) and (iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **novartispharmal.com**: Transferred

PANELLISTS

Name	**Matthew Harris**

DATE OF PANEL DECISION 2024-09-12

Publish the Decision