Decision for dispute CAC-UDRP-106912

Case number	CAC-UDRP-106912
Time of filing	2024-10-07 11:48:12
Domain names	novortis.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Novartis AG

Complainant representative

Organization	Abion GmbH

Respondent

Name	Susan Grace

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 owner of the International trademark NOVARTIS with registration No. 663765, registered on 1 July 1996 for goods and services in International Classes 1, 2, 3, 4, 5, 7, 8, 9, 10, 14, 16, 17, 20, 22, 28, 29, 30, 31, 32, 40 and 42 (the “NOVARTIS trademark”).

FACTUAL BACKGROUND

The Complainant is a global pharmaceutical and healthcare group with headquarters in Switzerland. In 2023, it achieved net sales of USD 45.4 billion and employed about 76 000 full-time equivalent employees.

The Complainant is the owner of the domain name <novartis.com>, registered on 2 April 1996, which resolves to its official website.

The disputed domain name was registered on 22 April 2024. It is currently inactive.

PARTIES CONTENTIONS

COMPLAINANT

The Complainant states that the disputed domain name is confusingly similar to its NOVARTIS trademark, because it incorporates a misspelled version of the trademark, replacing the letter “a” by the letter “o”. According to the Complainant, its trademark was misspelled to capitalize on Internet users’ possible typing or reading errors when they are looking for information about the Complainant or trying to communicate with it online.

The Complainant maintains that the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it has not been authorized by the Complainant to use the NOVARTIS trademark, is not affiliated to it, and is not commonly known by the disputed domain name. The Complainant notes that the disputed domain name is not being used in connection with a bona fide offering of goods or services, and the Respondent is not carrying out any legitimate or fair use of the disputed domain name, as the same resolves to a blank webpage.

The Complainant notes that on 21 August 2024 it sent a cease-and-desist letter to the Respondent and reminders on 3 September 2024, and 9 September 2024, to which the Respondent did not reply.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. It notes that the Respondent registered it many years after the Complainant registered its NOVARTIS trademark, the Respondent must have been aware of the existence of the Complainant’s trademark when it registered the disputed domain name. According to the Complainant, by deliberately registering and using the disputed domain name incorporating a misspelled form of the Complainant’s NOVARTIS trademark, the Respondent has engaged in typosquatting with the intention to create confusion in Internet users’ minds.

The Complainant maintains that the non-use of the disputed domain name does not prevent a finding of bad faith, since it represents a misspelled version of the Complainant’s NOVARTIS trademark, the Respondent is not making any good-faith use of it and did not respond to the Complainant’s cease-and-desist letter, and there is no plausible good faith use to which the disputed domain name may be put.

RESPONDENT:

The Respondent did not submit a Response in this proceeding.

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

Pursuant to the Policy, paragraph 4(a), a complainant must prove each of the following to justify the transfer of a domain name:

(i) the 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 respect of the domain name; and

(iii) the domain name was registered and is being used in bad faith.

In this case, the Provider has employed the required measures to achieve actual notice of the Complaint to the Respondent, and the Respondent was given a fair opportunity to present its case.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: "[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name …"

In this proceeding, the Respondent has not used the opportunity provided to it under the Rules and has not submitted a substantive Response addressing the contentions of the Complainant and the evidence submitted by it.

Identical or confusingly similar

The Complainant has provided evidence and has thus established its rights in the NOVARTIS trademark.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the general Top-Level Domain ("gTLD") section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). The Panel sees no reason not to follow the same approach here, so it will disregard the ".com" gTLD section of the disputed domain name.

The relevant part of the disputed domain name is therefore the sequence "novortis", which appears as a misspelling of the NOVARTIS trademark with the replacement of the letter "a" with "o". As discussed in section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the "WIPO Overview 3.0"), a domain name which consists of a common or obvious misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element.

Taking the above into account, the Panel finds that the disputed domain name is confusingly similar to the NOVARTIS trademark in which the Complainant has rights.

Rights and legitimate interests

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, because it was not authorized to use the NOVARTIS trademark and is not commonly known under the disputed domain name. The Complainant adds that the disputed domain name is a typosquatted version of the Complainant's trademark. Thus, the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not submitted a Response and has not provided an explanation of the reasons why it has registered the disputed domain name and how it intends to use it.

In the Panel's view, the circumstances of this case do not support a finding that the Respondent has rights and legitimate interests in the disputed domain name. It appears as an intentional misspelling of the distinctive NOVARTIS trademark, of the Complainant's trade name and of its domain name, and this may create an impression in Internet users that it is related to the Complainant. In the lack of any arguments or evidence to the contrary, the above leads the Panel to the conclusion that it is more likely than not that the Respondent, being well aware of the goodwill of the Complainant's NOVARTIS trademark, has registered the disputed domain name targeting this trademark in an attempt to exploit its goodwill by confusing Internet users that the disputed domain name is affiliated to the Complainant. The Panel does not regard such conduct as giving rise to rights or legitimate interests in the disputed domain name.

Therefore, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

Bad faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

"(i) circumstances indicating that you have registered or you have 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 your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location."

The Respondent is not using the disputed domain name for a website. As noted in section 3.3 of the WIPO Overview 3.0, from the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.

The distinctive NOVARTIS trademark was registered in 1996. It had been extensively used for 28 years when the disputed domain name was registered in 2024. The disputed domain name represents an obvious misspelling of the NOVARTIS trademark, of the Complainant's business name and of the domain name which it uses for its official website, which may lead Internet users to believe that it is affiliated to the Complainant, and the Respondent has not provided any plausible explanation of its choice of a domain name and its plans how to use it.

In these circumstances, the Panel is not aware of any good faith use to which the disputed domain name may be put without the consent of the Complainant, and accepts that the Respondent has registered the disputed domain name targeting the Complainant's trademark rights and with the intention of taking advantage of its goodwill.

This satisfies the Panel that the disputed domain name has been registered and used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **novortis.com**: Transferred

PANELLISTS

Name	**Assen Alexiev**

DATE OF PANEL DECISION 2024-11-25

Publish the Decision