

Decision for dispute CAC-UDRP-107139

Case number	CAC-UDRP-107139
Time of filing	2024-12-10 08:54:05
Domain names	novartismeetingsolutions.com

Case administrator

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

Organization	Novartis AG
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Complainant representative

Organization	Abion GmbH
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Respondent

Name	Sinead Best
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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 has established by evidence that it owns several trademarks for NOVARTIS including the following:

- the Swiss trademark for NOVARTIS, No.2P-427370, registered on July 1, 1996;
- the International trademark for NOVARTIS, number 663765, registered on July 1, 1996,

together with numerous other trademarks for NOVARTIS registered internationally (collectively “the NOVARTIS trademark”).

FACTUAL BACKGROUND

The Complainant is a very prominent Swiss company operating internationally and engaged in the provision of goods and services in the pharmaceutical and healthcare industries and it has been so engaged since 1996.

It is the registered owner of the aforesaid NOVARTIS trademark. It also registered the <novartis.com> domain name on April 2, 1996 which it uses in its business and particularly for its website at www.novartis.com where it promotes its goods and services under the NOVARTIS trademark. The Complainant has continuously used the NOVARTIS trademark since its registration to designate its goods and services provided under the trademark.

The NOVARTIS trademark has attracted substantial goodwill and is uniquely associated with the Complainant's goods and services.

The Respondent registered the <novartismeetingsolutions.com> domain name on August 6, 2024, ("the disputed domain name") but has not used it for any purpose other than to allow or cause it to resolve to an error message and to configure MX servers. The Complainant is concerned that the Respondent has registered the disputed domain name which incorporates the NOVARTIS trademark together with the two generic words "meeting" and "solutions" as it suggests that it is an official domain name of the Complainant, which it is not, and has the potential to mislead internet users. Accordingly, the Complainant has instituted this proceeding to have the disputed domain name transferred to itself.

PARTIES CONTENTIONS

A. COMPLAINANT

The disputed domain name is confusingly similar to the NOVARTIS trademark. That is so because it embodies, without the consent of the Complainant, the NOVARTIS trademark and the Respondent in registering the domain name has added to the trademark the words "meeting" and "solutions" and the generic Top Level Domain ".com", none of which can negate a finding of confusing similarity that is otherwise made out, as it is in the present case.

The Respondent has no rights or legitimate interests in the disputed domain name. That is so because:

- the Respondent is not related in any way to the Complainant and the Complainant does not carry on any business with the Respondent; nor has the Complainant given any licence or authority to the Respondent to use the NOVARTIS trademark or register the disputed domain name;
- the Respondent is not commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the UDRP Policy;
- the Respondent could have easily ascertained that the Complainant had trademark rights in the NOVARTIS trademark but either did not do so, or ignored the results and went ahead and registered the disputed domain name;
- the Respondent had no trademark or other intellectual property rights that could justify the registration of the disputed domain name;
- the Respondent has caused or allowed the disputed domain name to resolve to a "404 error" page;
- the disputed domain name is thus passively held by the Respondent;
- the Respondent has not used the disputed domain name for a *bona fide* offering of goods or services;
- the Respondent's conduct shows an intention to suggest that it has an association with the Complainant, thus generating confusion with the Complainant and its trademark; and
- the Respondent has not responded to cease-and-desist letters sent to it giving it the opportunity to show how it has any right or legitimate interest in the disputed domain name.

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

That is so because:

- the Respondent registered the disputed domain name many years after the Complainant acquired its aforesaid rights in the famous NOVARTIS trademark;
- the Respondent has never been authorized by the Complainant to register the disputed domain name;
- the Respondent could have easily ascertained that the Complainant had its aforesaid trademark rights and it either did not do so or it ignored the results;
- the registration of the disputed domain name in the terms chosen by the Respondent shows that it intended to generate the notion of there being an association between itself and the Complainant which there is not;
- the Respondent had actual knowledge of the Complainant and its famous trademark when it, the Respondent, registered the disputed domain name;
- the Respondent has sought to generate confusion with the Complainant within the meaning of paragraph 4 (b)(iv) of the Policy by registering the confusingly similar disputed domain name;
- the disputed domain name redirects to a "404 error page" showing that the Respondent has engaged in passive holding of the disputed domain name which is tantamount to bad faith;
- the NOVARTIS trademark had such a degree of distinctiveness and reputation that it must be concluded that the registration and use of a domain name incorporating the trademark were in bad faith;
- the Respondent has not responded to cease-and-desist letters sent to it inviting it to transfer the disputed domain name to the Complainant voluntarily or to avail itself of the opportunity to show that there was good faith registration and use of the disputed domain name;
- by using a privacy shield, the Respondent has sought to conceal its identity;
- MX records have been established showing the potentiality of the disputed domain name being used for a nefarious purpose;
- the Respondent may well have engaged in at least one other case of abusive domain name registration; and
- all of the relevant acts, facts, matters and circumstances revealed by the evidence will show that the Respondent has registered and used the disputed domain name in bad faith.

It is therefore submitted that as the Complainant will be able to show all of the elements that it must prove it is entitled to the relief it

seeks, namely the transfer of the disputed domain name to itself.

B. RESPONDENT

The Respondent failed to 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

A. Administrative compliance

By notification dated December 10, 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 does not provide the name of the Respondent (domain-name holder) and all information (including any postal and e-mail addresses and telephone and fax numbers) known to Complainant regarding how to contact Respondent or any representative of Respondent, including contact information based on pre-complaint dealings, in sufficient detail to allow the CAC to send the Complaint as described in Paragraph 2(a) [Rules, Paragraph 3(b)(v)]. On December 11, 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 Panel has reviewed all of the above matters and makes a finding that within the meaning of paragraph 4(b) of the UDRP 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(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that the Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- the domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- Respondent has no rights or legitimate interests in respect of the domain name; and
- the domain name has been registered and is being used in bad faith.

In view of Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations set forth in a

complaint; however, the Panel may deny relief where a complaint contains mere conclusory or unsubstantiated arguments. See: eGalaxy Multimedia Inc. v. ON HOLD By Owner Ready To Expire, FA 157287 (Forum June 26, 2003) (“Because Complainant did not produce clear evidence to support its subjective allegations [. . .] the Panel finds it appropriate to dismiss the Complaint”).

Identical and/or Confusingly Similar

The first question that arises is whether the Complainant has rights in a trademark or service mark on which it may rely. The evidence has established that the Complainant is the registered owner of several trademarks for NOVARTIS including the following:

- the Swiss trademark for NOVARTIS, No.2P-427370, registered on July 1, 1996;
- the International trademark for NOVARTIS, number 663765, registered on July 1, 1996,

together with numerous other trademarks for NOVARTIS registered internationally (collectively “the NOVARTIS trademark”).

The Complainant has established those registrations by documentary evidence that the Panel has examined and finds to be in order.

The Complainant has thus established its trademark rights and hence its standing to bring this proceeding.

The next question that arises is whether the disputed domain name is identical or confusingly similar to the NOVARTIS trademark. The Panel finds that the disputed domain name is confusingly similar to the NOVARTIS trademark for the following reasons. The disputed domain name embodies, without the consent of the Complainant, the NOVARTIS trademark and the Respondent in registering the disputed domain name has added to the trademark “meeting” and “solutions” and the generic Top Level Domain “.com”. It is clear and well established that if a domain name includes a trademark, as in the present case, it is more likely than not that the domain name is both similar to the trademark and confusingly similar. That is so in the present case. The addition of the words “meeting” and “solutions”, which are generic words, gives to the disputed domain name the meaning that it is invoking the NOVARTIS trademark, the provision of facilities for meetings to be held by or for the Complainant and the solution to any issues arising with respect to those meetings relating to goods and services offered under the Complainant’s NOVARTIS trademark. Thus, internet users would undoubtedly read the disputed domain name as dealing with those matters, either by the Complainant itself or by some other entity authorized by the Complainant. Finally, the generic Top Level Domain “.com” or any other TLD has long been held to have no effect in the comparison between a domain name and a trademark, as all domain names must have such an extension. The Panel therefore finds that the disputed domain name is similar to the trademark and confusingly so, the confusion being that it raises a question mark whether it is a genuine domain name of the Complainant or not.

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

Rights or Legitimate Interests

It is now well-established that the Complainant must first make a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name under Policy 4(a)(ii) and that, if the prima facie case is made out, the burden then shifts to the Respondent to show that it does have such rights or legitimate interests. See Advanced International Marketing Corporation v. AA-1 Corp, FA 780200 (Forum Nov. 2, 2011) (finding that a complainant must offer some evidence to make its prima facie case and satisfy Policy 4(a)(ii)).

The Panel finds on the evidence that the Complainant has made out the requisite *prima facie* case that arises from the following considerations that are the basis of the Complainant’s submissions, dealt with in the order in which they have been advanced by the Complainant:

- the Respondent is not related in any way to the Complainant and the Complainant does not carry on any business with the Respondent; nor has the Complainant given any licence or authority to the Respondent to use the NOVARTIS trademark or register the disputed domain name; the Panel accepts the evidence to this effect; thus it could not be said that a case could be made out that the disputed domain name was registered with any sort of consent or approval by the Complainant;
- the Respondent is not commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the UDRP Policy; there is no evidence that the Respondent is known by the domain name and no evidence that it is known by any name other than its own;
- the Respondent could have easily ascertained that the Complainant had trademark rights in the NOVARTIS trademark but either did not do so, or ignored the results and went ahead and registered the disputed domain name; this is certainly true on the facts, as the Respondent must be said to have had the opportunity to make such inquiry; indeed the fact that the trademark is so famous puts an obligation on the Respondent to make some such inquiry; thus, if it did not do so it was irresponsible and if it did, but ignored the result that must have shown that the Complainant held trademark rights in NOVARTIS, the Respondent must have had the intention to asserting something that it knew was untrue; following either course could not give the Respondent a right or legitimate interest in the disputed domain name;
- the Respondent had no trademark or other intellectual property rights that could justify the registration of the disputed domain name; there is no evidence that the Respondent ever had any such rights; moreover, it has had every opportunity to bring forward any evidence in existence to show such rights if they exist but it has not done so;
- the Respondent has caused or allowed the disputed domain name to resolve to a “404 error” page; the evidence to this effect shows that the Respondent has had control of the disputed domain name and has therefore caused or allowed it to resolve to the error page instead of using it for a legitimate purpose; that is a very shaky foundation on which to build a right or legitimate interest and certainly does not justify that conclusion; indeed, it generates the idea that the Respondent could re-activate the registration and use it for some improper purpose in the future;
- the disputed domain name is thus passively held by the Respondent; the conduct just described is the basis for saying, as it

sometimes is, that a registrant who owns a domain name, but does not use it, is passively holding the domain name; this is generally accepted as a basis for finding on appropriate evidence that the registrant has no right or legitimate interest in the domain name in question and the Panel will make that finding in the present case;

- the Respondent has not used the disputed domain name for a *bona fide* offering of goods or services; there is nothing *bona fide* in taking another party's famous trademark and using it in a domain name that is clearly designed to influence internet users to conclude that it is an official domain name of the trademark owner, especially when the wording of the domain name suggests that the registrant had a specific and improper use in mind for it;
- the Respondent's conduct shows an intention to suggest that it has an association with the Complainant, thus generating confusion with the Complainant and its trademark; there can be no doubt that this was the intention of the Respondent for it would not otherwise have chosen such a prominent name as the centre-piece of its domain name; it clearly wanted internet users to think that the disputed domain name was an official domain name of the prominent Complainant so that it could be used for whatever purpose the Respondent had in mind;
- clearly the Respondent has had very opportunity to show how it could have a right or legitimate interest in the dispute domain name; the fact that it has not tried to do so leads almost irresistibly to the conclusion that it is not able to show any fact that could give it such a right or interest.

The Complainant has therefore convincingly made out all of the grounds it relies on to show a *prima facie* case that the Respondent does not have a right or legitimate interest in the disputed domain name.

The Respondent has not filed a Response or attempted by any other means to rebut the Complainant's contentions. That being so, the Panel finds on the evidence that there is a *prima facie* case that the Respondent does not have a right or legitimate interest in the disputed domain name and that the *prima facie* case has not been rebutted.

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

Registration and Use in Bad Faith

It is clear that to establish bad faith for the purposes of the Policy, the Complainant must show that the disputed domain name was registered and used in bad faith. It is also clear that the criteria set out in paragraph 4(b) of the UDRP Policy are not exclusive but that domain name proceedings may also rely on conduct that is bad faith within the generally accepted meaning of that expression.

The Complainant has submitted on several grounds that the Respondent has registered and used the disputed domain name in bad faith. Some of those grounds inevitably overlap and may be considered together. Moreover, it should be noted that the evidence already dealt with is just as applicable to bad faith as it is to rights and legitimate interests and it is not necessary to repeat it. On that basis the Panel finds that the Complainant has made out its case on the evidence. In particular, the evidence shows that:

- the Respondent registered the disputed domain name many years after the Complainant acquired its aforesaid rights in the famous NOVARTIS trademark; that is a matter of chronological fact and it shows that the Respondent must have been motivated by the intention to copy that well-established trademark; that is an element of bad faith registration in itself;
- the Respondent has never been authorized by the Complainant to register the disputed domain name; clearly the Complainant has never consented and could not conceivably consent to its trademark being purloined in this way;
- the Respondent could have easily ascertained that the Complainant had its aforesaid trademark rights and either did not do so or ignored the results; the fact that the Respondent either made no such inquiries or ignored the results, shows a bad faith motivation on the part of the Respondent;
- the registration of the disputed domain name in the terms chosen by the Respondent shows that it intended to generate the notion of there being an association between itself and the Complainant which there is not; the Respondent clearly wanted to acquire the benefit of the goodwill and reputation attached to the Complainant and its famous trademark and it tried to do so without any permission or consent from the Complainant; this is simply bad faith conduct;
- the Respondent had actual knowledge of the Complainant and its famous trademark when it, the Respondent, registered the disputed domain name; the Respondent could not but have had actual knowledge of the Complainant and its trademark; the trademark is famous and the Respondent aimed at it because of its fame;
- the Respondent has sought to generate confusion with the Complainant within the meaning of paragraph 4 (b)(iv) of the Policy by registering the confusingly similar disputed domain name; it is not known what ultimate plans the Respondent had in mind for its domain name but whatever they were, they depended on confusing internet users into thinking that the disputed domain name was either a domain name of the Complainant itself or one that was authorized by it;
- the disputed domain name redirects to a "404 error page" showing that the Respondent has engaged in passive holding of the disputed domain name which is tantamount to bad faith;
- the NOVARTIS trademark had such a degree of distinctiveness and reputation that it must be concluded that the registration and use of a domain name incorporating the trademark was both registered and used in bad faith; this has already been established by the evidence;
- the Respondent has not responded to cease-and-desist letters sent to it inviting it to transfer the disputed domain name to the Complainant voluntarily or to avail itself of the opportunity to show that there was good faith registration and use of the disputed domain name; again, it must be said that the Respondent has had every opportunity to put forward evidence showing that it has not registered and has not used the disputed domain name in bad faith; the fact that it has not brought forth any such evidence strongly suggests that there is no such evidence;
- by using a privacy shield for registration, establishing MX records and apparently engaging in at least one other case of abusive domain name registration also suggests that the Respondent has a propensity to improper conduct when it comes to domain names.

All of the foregoing considerations show that the Respondent has registered and used the disputed domain name in bad faith and the

Panel so finds.

Finally, in addition to the specific provisions of the UDRP Policy and having regard to the totality of the evidence, the Panel finds that, in view of the Respondent's registration of the disputed domain name and its use of the Complainant's trademark and in view of the conduct of the Respondent as shown by all of the available evidence, the Respondent registered and used the disputed domain name in bad faith within the generally accepted meaning of that expression.

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

The Complainant has therefore established all of the elements that it must show under the Policy and it is entitled to the relief it seeks.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **novartismeetingsolutions.com**: Transferred

PANELLISTS

Name	Neil Brown
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DATE OF PANEL DECISION	2025-01-06
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Publish the Decision
