

Decision for dispute CAC-UDRP-107106

Case number **CAC-UDRP-107106**

Time of filing **2024-11-29 10:11:35**

Domain names **xn--novarts-wfb.com**

Case administrator

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

Complainant

Organization **Novartis AG**

Complainant representative

Organization **Abion GmbH**

Respondent

Name **Sandeep Bittu**

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 numerous registrations for the trademark "NOVARTIS", including the international trademark No 1349878, registered on November 29, 2016, for goods and services in classes 9, 10, 41, 42, 44 and 45.

The disputed domain name was registered by the Respondent on October 26, 2024.

FACTUAL BACKGROUND

The Complainant states that it is one of the biggest global pharmaceutical and healthcare groups and provides solutions to address the evolving needs of patients worldwide by developing and delivering innovative medical treatments and drugs.

The Complainant submits that its products are manufactured and sold in many regions worldwide.

The Complainant underlines that it has a strong presence in the USA and in India, where it has been playing an active role on the local market and in the societies.

The Complainant points out that its trademark registrations predate the registration of the disputed domain name.

The Complainant notes that previous UDRP panels have stated that the NOVARTIS trademark is well-known.

The Complainant submits that it has registered several domain names containing the term "NOVARTIS", for example, <novartis.com> (registered in 1996) and <novartispharma.com> (registered in 1999).

The Complainant clarifies that it uses these domain names to connect to a website through which it informs potential customers about its "NOVARTIS" trademark and its products and services.

The Complainant adds that it enjoys a strong presence online via its official social media platforms.

The Complainant clarifies that the disputed domain name <novartis.com>, or <xn--novarts-wfb.com> in punycode, is an internationalized domain name, that is a domain name that contains non-Latin characters, such as the non-Latin letter "ı".

The Complainant considers that this is a typosquatting case, because the disputed domain name is a misspelled version of the Complainant's trademark, registered in order to capitalize on Internet users' possible typing or reading errors when looking for information, or to communicate with the Complainant online.

The Complainant submits that its trademark is clearly recognizable in the disputed domain name.

The Complainant considers that the addition of the top-level domain ".COM" does not add any distinctiveness to the disputed domain name.

The Complainant submits that the disputed domain name should be considered as confusingly similar to the trademark "NOVARTIS".

The Complainant notes that:

- it has never granted the Respondent any rights to use the NOVARTIS trademark in any form, including the disputed domain name;
- the Respondent is not commonly known by the disputed domain name;
- when searching for "novartis" and "novartis.com" in the Google search engine, the top search results all pointed to the Complainant and its business activities;
- when searching for "xn--novarts-wfb.com" and "xn--novarts-wfb" in the Google search engine, the top search results all pointed to the Complainant and its business activities;
- when searching for the disputed domain name along with the name of the Respondent, there are no returned results showing that the Respondent is known by the disputed domain name;
- when searching for any trademarks incorporating the disputed domain name terms "novartis" and "novartis.com" on online trademark search platforms, the registered trademarks found are those belonging to the Complainant;
- when searching for any trademarks incorporating the terms "xn--novarts-wfb.com" and "xn--novarts-wfb" on online trademark search platforms, no registered trademarks have been found;
- when searching for any trademarks in the name of the Respondent, no results related to the disputed domain name have been found;
- the disputed domain name resolves to a parking page;
- there is no evidence showing that the Respondent has been using, or preparing to use, the disputed domain name in connection with a bona fide offering of goods and services or has made a legitimate noncommercial or fair use of the disputed domain name;
- the use of a misspelled version of the Complainant's trademark in the disputed domain name to benefit from the Complainant's worldwide renown trademark and to confuse Internet users as to the source of the disputed domain name cannot be considered as a bona fide offering of goods or services nor as legitimate noncommercial or fair use;
- the Respondent has not responded to a cease-and-desist letter from the Complainant.

For the above reasons, the Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant observes that its trademark registrations significantly predate the registration of the disputed domain name and that the Respondent has never been authorized by the Complainant to register the disputed domain name.

The Complainant underlines that the Complainant's trademark is a widely known trademark registered in many countries, including in India and that the Complainant enjoys a strong online presence.

The Complainant argues that it is inconceivable that the Respondent was unaware of the existence of the Complainant when it registered the disputed domain name.

The Complainant considers that the use of a misspelled version of the Complainant's trademark reflects the Respondent's clear intention to create an association, and a subsequent likelihood of confusion, with the Complainant's trademark in Internet users' mind.

The Complainant observes that the disputed domain name resolves to a parking page and considers that it is being passively held.

The Complainant points out that the Respondent, who received a cease-and-desist letter, had a chance to provide evidence of actual or contemplated good-faith use of the disputed domain name but failed to do so.

The Complainant notes that the Respondent is trying to conceal its identity regarding the ownership of the disputed domain name because his name and contact details are covered by a privacy shield in the corresponding publicly available Whois records.

The Complainant adds that active MX records are associated to the disputed domain name and that this may entail a risk that corresponding fraudulent e-mail addresses are used.

The Complainant points out that the e-mail address used for the registration of the disputed domain name contains a name different from the Respondent's name and considers that it is possible that the Respondent has provided false Whois details.

The Complainant considers that the described circumstances demonstrate that the Respondent has registered and has been using the disputed domain name in bad faith.

PARTIES CONTENTIONS

The Complainant, relying on the arguments summarised above, 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

In accordance with paragraph 4(a) of the Policy, in order to obtain the transfer of a domain name, the complainant has to demonstrate 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.

IDENTICAL OR CONFUSINGLY SIMILAR

The first requirement that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to,

the Complainant's trademark.

There are two elements of this test: for each domain name, the Complainant must demonstrate that it has rights in a trademark or service mark and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark or service mark.

The Complainant has proven ownership of the registered trademark "NOVARTIS", identified in section "Identification of rights" above.

The Panel observes that the registration of the Complainant's trademark predates the registration of the disputed domain name.

The Complainant has provided evidence that the disputed domain name is the Punycode equivalent of <novartis.com>.

On the question of identity or confusing similarity, what is required is simply a comparison and assessment of the disputed domain name to the Complainant's trademark.

It is well established that a domain name which contains a common or obvious misspelling of a trademark normally will be found to be confusingly similar to such trademark, where the misspelled trademark remains the dominant or principal component of the domain name (see, for example, WIPO Case No D2016-2545).

Other Panels have considered that using a character closely resembling the original Latin character in the trademark presents a visual image of the trademark that is likely to cause confusion, therefore the use of such similar character does not prevent the finding of confusing similarity (see, for example, WIPO Case No. D2019-1005). Furthermore, other Panels have considered that the use of Punycode to create a disputed domain name is irrelevant in the confusing similarity test (see, for example, WIPO Case No. D2020-2302). The Panel shares these views.

In the present case, the Panel considers that the disputed domain name is confusingly similar to the Complainant's "NOVARTIS" trademark for the following reasons: (a) "NOVARTIS" is a distinctive trademark; (b) the only difference between the "NOVARTIS" trademark and the disputed domain name is that in the latter the letter "i" has been replaced by the similar character "l"; (c) the fact of replacing the "i" by the similar character "l" in the disputed domain name does not create any new word, or give the disputed domain name any distinctive meaning; (d) the disputed domain name is a deliberate misspelling of the Complainant's "NOVARTIS" trademark; and (e) visually the disputed domain name is so close to the Complainant's well-known "NOVARTIS" trademark that confusion is inevitable between them.

It is also well established that the top-level domain may generally be disregarded in the confusing similarity test (see, for example, WIPO case No. D2016-2547).

Therefore, the Panel considers that the disputed domain name is confusingly similar to the Complainant's trademark.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

RIGHTS OR LEGITIMATE INTERESTS

The second requirement that the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the respondent has rights or legitimate interests in a domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a bona fide offering of goods or services; or
- (ii) [the Respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the Respondent] [has] acquired no trademark or service mark rights; or
- (iii) [the Respondent] [is] making a legitimate non-commercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

This is a non-exhaustive list of circumstances in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement falls on the Complainant. UDRP panels have recognized that proving that a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative".

Accordingly, it is usually sufficient for a complainant to raise a prima facie case against the respondent and the burden of proof on this requirement shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in a domain name.

The Panel finds that the Complainant has made out a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain name.

In particular, the Complainant states that:

- it has never granted the Respondent any rights to use the NOVARTIS trademark in any form, including in the disputed domain name;
- the Respondent is not commonly known by the disputed domain name;
- when searching for "novartis" and "novartis.com" in the Google search engine, the top search results all pointed to the Complainant and its business activities;
- when searching for "xn--novarts-wfb.com" and "xn--novarts-wfb" in the Google search engine, the top search results all pointed to the Complainant and its business activities;
- when searching for the disputed domain name along with the name of the Respondent, there are no returned results showing that the Respondent is known by the disputed domain name;
- when searching for any trademarks incorporating the disputed domain name terms "novartis" and "novartis.com" on online trademark search platforms, the registered trademarks found are those belonging to the Complainant;
- when searching for any trademarks incorporating the terms "xn--novarts-wfb.com" and "xn--novarts-wfb" on online trademark search platforms, no registered trademarks have been found;
- when searching for any trademarks in the name of the Respondent, no results related to the disputed domain name have been found;
- the disputed domain name resolves to a parking page;
- there is no evidence showing that the Respondent has been using, or preparing to use, the disputed domain name in connection with a bona fide offering of goods and services or has made a legitimate noncommercial or fair use of the disputed domain name;
- the use of a misspelled version of the Complainant's trademark in the disputed domain name to benefit from the Complainant's worldwide renown trademark and to confuse Internet users as to the source of the disputed domain name cannot be considered as a bona fide offering of goods or services nor as legitimate noncommercial or fair use;
- the Respondent has not responded to a cease-and-desist letter from the Complainant.

In the absence of a Response, there is no indication in the present case that the Respondent is commonly known by the disputed domain name.

Furthermore, the Respondent has failed to demonstrate any of the other non-exclusive circumstances evidencing rights or legitimate interests under paragraph 4(c) of the Policy or other evidence of rights or legitimate interests in the disputed domain name.

The Respondent does not appear to make any legitimate non-commercial or fair use of the disputed domain name, nor any use in connection with a bona fide offering of goods or services. Indeed, the disputed domain name resolves to a parking page.

The Panel considers that, on the balance of probability, the Respondent knew the Complainant's trademark and registered the disputed domain name with knowledge of the Complainant's rights. Indeed, it is not conceivable that the Respondent did not have the Complainant's trademark in mind, when registering and using the disputed domain name. Under these circumstances, it cannot be concluded that the Respondent is making a "fair" use of the disputed domain name.

Taking into account that the Complainant has never granted the Respondent any rights to use the NOVARTIS trademark in any form, that the Respondent is not commonly known by the disputed domain name, that the disputed domain name resolves to a parking page, that results of searches on Google and trademark search platforms concerning the disputed domain name all pointed to the Complainant and to the Complainant's trademarks, that no trademarks related to the disputed domain name have been found in the name of the Respondent in trademark search platforms, that the disputed domain name is a misspelled version of the Complainant's trademark and that the Respondent has not responded to a cease-and-desist letter from the Complainant, the Panel cannot imagine any possible legitimate justification for this use, and the Respondent has not come forward with any explanation that demonstrates any rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

BAD FAITH

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, including:

- (i) circumstances indicating that [the Respondent] [has] registered or [has] acquired the [disputed] domain name primarily for the purpose of selling, renting, or otherwise transferring the [disputed] 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 [disputed] domain name; or
- (ii) [the Respondent] [has] registered the [disputed] 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 [disputed] domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the [disputed] domain name, [the Respondent] [has] intentionally attempted to attract, for commercial gain, Internet users to [the Respondent's] web site 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] web site or location or of a product or service on [the Respondent's] web site or location.

The Panel, on the basis of the evidence presented, agrees with the Complainant's contentions that the disputed domain name was registered in bad faith and that it has been used in bad faith.

Taking into account the fact that the trademark "NOVARTIS" is distinctive and well-known, as also recognized by other panels (see CAC Case No. 102685), the Panel agrees that it is inconceivable that the Respondent was not aware of the Complainant's rights in the Complainant's trademark when registering the disputed domain name.

Other panels considered that knowledge of a corresponding mark at the time of the domain name's registration can suggest bad faith (see WIPO Case No. D2017-0100). The Panel shares this view.

Furthermore, other panels considered typosquatting as evidence of bad faith (see, for example, WIPO Case No. D2004-1039). The Panel shares this view.

The use of a privacy shield for concealing the Respondent's identity has been considered as indication of bad faith (see CAC Case No. 106994). The Panel shares this view.

In addition, as regards the use of apparently false Whois information, the Panel, in line with the view of other panels (see, for example, WIPO Case No. D2022-0938), considers that it is an indication of bad faith.

Moreover, other panels considered that the risk that a domain name is used for the sending and receiving of phishing emails may exist where a domain name that is confusingly similar to the Complainant's well-known trademark has been created by the Respondent, and in the absence of the Respondent's explanation as regards the creation of the MX record (see CAC Case No. 104862). The Panel agrees with this view and considers that, in the present circumstances, the existence of a MX record for the disputed domain name supports a finding of bad faith.

The Panel observes that if the Respondent had legitimate purposes in registering and using the disputed domain name it would have filed a response in this proceeding and to the cease-and-desist letter.

The Panel, having taken into account the Respondent's knowledge of the Complainant's trademarks at the time of the disputed domain name's registration, the fact that the disputed domain name is a typosquatted version of the Complainant's trademark, the fact that the disputed domain name resolves to a parking page, the use of a privacy shield and of apparently false Whois information, the existence of a MX record for the disputed domain name and the lack of reply to the complaint and to the cease-and-desist letter, considers that the disputed domain name was registered and is being used in bad faith.

Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **xn--novarts-wfb.com**: Transferred

PANELLISTS

Name	Michele Antonini
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DATE OF PANEL DECISION 2025-01-12

Publish the Decision
