

Decision for dispute CAC-UDRP-107229

Case number	CAC-UDRP-107229
Time of filing	2025-01-09 08:53:34
Domain names	novartispharmsaceutical.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

Organization	Health
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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 is the owner of the registered well-known trademark NOVARTIS® in numerous jurisdictions all over the world. These trademark registrations predate the registration of the disputed domain name <novartispharmsaceutical.com>, which was registered on December 5, 2024, such as but not limited to:

International trademark: NOVARTIS

Reg. No. 663765

Registration Date: July 1, 1996

International Trademark: NOVARTIS

Reg. no: 1349878

Reg. date: November 29, 2016

US trademark: NOVARTIS

Reg No. 4986124

US trademark: NOVARTIS

Reg. No. 6990442

Registration Date: February 28, 2023

EU trademark: NOVARTIS

Reg. No. 304857

Registration Date: June 25, 1999

FACTUAL BACKGROUND

The Novartis Group is one of the biggest global pharmaceutical and healthcare groups. It provides solutions to address the evolving needs of patients worldwide by developing and delivering innovative medical treatments and drugs. The Complainant, with headquarters in Switzerland, created in 1996 through a merger of two other companies Ciba-Geigy and Sandoz, is the holding company of the Novartis Group.

The Complainant's products are manufactured and sold in many countries worldwide, including in the United States, where it has an active presence through associated companies and where it has been playing an active role on the local markets and societies.

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).

The Complainant is the owner of the registered, well-known trademark NOVARTIS® in numerous jurisdictions all over the world.

The domain name <novartispharmsaceutical.com> (hereinafter referred to as the "Disputed Domain Name") incorporates, in its second level-portion the Complainant's well-known trademark NOVARTIS® in its entirety, followed by the relevant term "pharmsaceutical". It is important to underline that "pharmsaceutical" is a misspelled form of the term "pharmaceutical", which directly refers to the Complainant and its business, since, as previously mentioned, the Complainant is one of the biggest global pharmaceutical companies. Moreover, as previously mentioned, the Complainant also owns the domain name <novartispharma.com> (created on 27 October 1999).

The NOVARTIS® trademark is clearly recognizable in the Disputed Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0")3.0 para. 1.8 states: "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements".

Previous panels have also held that: "The addition of a generic word like "shop" to a trademark with or without hyphen does not prevent the confusing similarity that exists between the disputed domain name and the Complainant's trademark [...] This is particularly the case here where the generic word describes an important activity of the Complainant" (see Auchan Holding SA v. WhoisGuard Protected, WhoisGuard, Inc. / Privacy service provided by Withheld for Privacy ehf / Professeur Sam Lami, WIPO Case No. D2021-0985). Similarly to this case, panels have also held that where: "the second element of each domain name represented the goods or services in respect of which each Complainant's trade mark had been registered, and those goods or services which the general public would associate with that trade mark. Rather than removing or reducing the risk of confusing similarity from the domain names when compared with the trade marks in question, in such situations confusing similarity was regarded as inevitable" (see Harrods Limited v. Peter Pierre, Case No. D2001-0456).

The presence of the generic Top-Level Domain ("gTLD") extension ".com" in the first level portion of the Disputed Domain Name is a

standard registration requirement and may be disregarded when assessing whether the Disputed Domain Name is confusingly similar to the trademark in which the Complainant has rights (see *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. D2000-0429; *Can Pro Pet Products LTD. v. Matthew Dweck*, WIPO Case No. D2020-0615; *Sanofi v. Aamir Hitawala*, WIPO Case No. D2021-1781).

The Disputed Domain Name is therefore confusingly similar to the Complainant's NOVARTIS® trademark.

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).

The Complainant has never granted the Respondent with any rights to use the NOVARTIS® trademark in any form, including in the Disputed Domain Name.

The Complainant has not found that the Respondent is known by the Disputed Domain Name. Indeed, when searching for the Disputed Domain Name terms "novartispharmaceutical" or "Novartis pharmaceutical" in the Google search engine, a majority of the results directly relate to the Novartis group, the Complainant, as well as related topics. When entering the Disputed Domain Name terms along with the name of the Respondent "David Traub" and organization name "Health", there are no returned results showing that the Respondent is known by the Disputed Domain Name.

A google search with the name of the Respondent "David Traub" and organization name "Health", shows that the Respondent is impersonating an employee of the Novartis Group, being the managing director of 'Novartis Pharma Schweiz AG'. However, despite such impersonation, the address, phone number and e-mail address provided by the Respondent in their Whois details, do not correspond to the official address, phone number and e-mail address of the Novartis Group, the Complainant or any of its subsidiaries. This is a clear attempt to impersonate an employee of the Novartis Group, which further demonstrates the fact that the Respondent knew that the NOVARTIS® trademark is owned by the Complainant and that the Complainant has been using the trademark for its business activities. However, the Respondent still chose to register the Disputed Domain Name as such.

Furthermore, when searching for any trademarks incorporating the Disputed Domain Name "novartispharmaceutical" or "novartis pharmaceutical" on online trademark search platforms, no registered trademarks are to be found. When searching for any trademarks in the name of the Respondent "David Traub" and organization name "Health", there are also no results related to the Disputed Domain Name terms to be found.

At the time the Complainant found out about the Disputed Domain Name on December 9, 2024, it resolved to an inactive page. At the time of filing of the complaint, the Disputed Domain Name resolved to an inactive page. Similarly, the Disputed Domain Name still resolves to an inactive page. The Disputed Domain Name is not being used in connection with bona fide offering of goods or services, i.e., there is "no available evidence that the Respondent engages in, or has engaged in any activity or work, i.e., legitimate or fair use of the Disputed Domain Name, that demonstrates a legitimate interest in the Disputed Domain Name" (see *Bollore v. Tywonia W Hill*, WIPO Case No. DCO2017-0012).

The Disputed Domain Name is thus being passively held. 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. In similar circumstances, it has been decided that when "the Respondent has failed to make use of the resolving website and has not demonstrated any attempt to make legitimate use of the Disputed Domain Name and website. Such conduct evinces a lack of rights or legitimate interests in the Disputed Domain Name and thus, is not making a legitimate noncommercial or fair use of the Disputed Domain Name" (see *Skandinaviska Enskilda Banken AB v. Nick Jones*, WIPO Case No. D2021-0703; see also *ArcelorMittal (Société Anonyme) v. Registration Private, Domains By Proxy, LLC / Joel Tinoco*, Pixel Design Costa Rica, WIPO Case No. D2021-0909).

Moreover, the structure of the Disputed Domain Name – incorporating in its second level portion the Complainant's well-known trademark NOVARTIS®, followed by the relevant term "pharmaceutical" (being a misspelled form of the term "pharmaceutical"), reflects the Respondent's intention to create an association, and a subsequent likelihood of confusion, in Internet users' mind. It therefore appears that the Respondent deliberately chose to use the well-known trademark NOVARTIS® 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. Such use of the Disputed Domain Name cannot therefore be considered as a bona fide offering of goods or services nor as legitimate noncommercial or fair use.

In addition, the Complainant, on December 9, 2024, sent a Cease-and-Desist Letter to the Registrant, through the contact form listed on the publicly available Whois records and sent a Cease-and-Desist letter to the Registrar, asking the latter to forward the letter to the Registrant. The Complainant further sent reminders on December 23, 2024, and December 30, 2024, but there was no response.

The Respondent has been granted an opportunity to present some compelling arguments that they have rights or legitimate

interests in the Disputed Domain Name but have failed to do so. This behavior, coupled with the absence of use of the Disputed Domain Name in connection with a bona fide offering of goods and services, further demonstrates the Respondents' absence of rights or legitimate interests in respect of the Disputed Domain Name.

For the foregoing reasons, the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, within the meaning of the Paragraphs 4(a)(ii) and (4)(c) 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).

As mentioned above, the Complainant's trademark registrations significantly predate the registration of the Disputed Domain Name and the Respondent has never been authorized by the Complainant to register the Disputed Domain Name. The Respondent registered the Disputed Domain Name many years after the registrations of the Complainant's NOVARTIS® trademarks. The NOVARTIS® trademark is a widely known trademark registered in many countries and the Complainant enjoys a strong online presence. The Complainant is also very active on social media to promote its mark, products and services (See, Laboratoires M&L v. Zhaoxingming, CAC Case No. 102277).

By conducting a simple online search regarding the Disputed Domain Name terms on popular search engines, the Respondent would have inevitably learnt about the Complainant, its trademark and business (see *Intesa Sanpaolo S.p.A. v. Abayomi Ajileye*, CAC Case No. 102396).

As previously mentioned, previous UDRP panels have stated that the NOVARTIS® trademark is well-known (see *Novartis AG v. Amartya Sinha*, Global Webs Link, Novartis RO, WIPO Case No. D2020-3203). It is therefore inconceivable that the Respondent was unaware of the existence of the Complainant when it registered the Disputed Domain Name.

Furthermore, the structure of the Disputed Domain Name – incorporating the Complainant's well-known trademark NOVARTIS®, followed by the relevant term "pharmsaceutical" (being a misspelled form of the term "pharmaceutical"), shows that the Respondent registered the Disputed Domain Name having the Complainant and its NOVARTIS® trademark in mind. It 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. Moreover, as previously mentioned, the Complainant also owns the domain name <novartispharma.com> (created on 27 October 1999).

In addition, as previously mentioned, the use of "David Traub" as the Respondent's alleged name, being the managing director of 'Novartis Pharma Schweiz AG' (a subsidiary of the Novartis Group) and "Health" as the Registrant's alleged organization name suggests that the Respondent is familiar with the Complainant. This may also be seen as an attempt to impersonate the same, which further demonstrates the fact that the Respondent knew the Complainant and its business at the time of registering the Disputed Domain Name. Hence, the registration of the Disputed Domain Name is in bad faith.

Overall, considering that the NOVARTIS® trademark is well known, and that the Complainant is a globally renowned pharmaceutical company, it clearly appears that the Respondent knew the Complainant and the NOVARTIS® trademark at the time it registered the Disputed Domain Name.

The domain name resolved to an inactive page. Therefore, the Disputed Domain Name is being passively held.

Previous UDRP panels have held, under the doctrine of passive holding, that "the non-use of a domain would not prevent a finding of bad faith" (see "WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition", section 3.3). More precisely, "it is possible, in certain circumstances, for inactivity by the Respondent to amount to the domain name being used in bad faith." (see *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003). The circumstances of the case may indeed be such that "it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law" (see *Telstra Corporation Limited v. Nuclear Marshmallows*, supra).

Indeed, WIPO Overview 3.0, section 3.3 points out that, from the inception of the UDRP, panellists have indeed consistently found that non-use of a domain name does not prevent a finding of bad faith under the doctrine of passive holding and that the factors that panellists take into account, whilst looking at all the circumstances, 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.”

All the above-mentioned factors are relevant to this case:

The Disputed Domain Name entirely comprises the Complainant's well-known trademark NOVARTIS®, followed by the relevant term "pharmaceutical" (being a misspelled form of the term "pharmaceutical"). In similar circumstances, the high degree of distinctiveness or reputation of the Complainant's trademark is considered as an indication of bad faith registration and use of the Disputed Domain Name by the Respondent (see *Navasard Limited v. Vadzim Yushko*, WIPO Case No. D2019-2081; *S.P.M.D. v. Dengpinghua*, WIPO Case No. D2020-2410). Moreover, as mentioned above, given that the Respondent is falsely impersonating an employee of the Novartis Group, 'David Traub', being the managing director of 'Novartis Pharma Schweiz AG', it is implausible that the Respondent did not know the Complainant when they registered the Disputed Domain Name. Furthermore, when the Complainant found out about the registration of the Disputed Domain Name, on December 9, 2024, they sent a Cease-and-Desist Letter to the Registrar, through the contact form listed on the publicly available Whois records and sent a Cease-and-Desist letter to the Registrar, asking the latter to forward the letter to the Registrar. In the Cease-and-Desist Letter, the Complainant advised the Respondent that the unauthorized use of their trademark within the Disputed Domain Name violates their trademark rights and requested a voluntary transfer of the Disputed Domain Name. The Complainant further sent reminders on December 23, 2024, and December 30, 2024, but there was no response. The Respondent had a chance to provide evidence of actual or contemplated good-faith use of the Disputed Domain Name but failed to do so, which infers bad faith (see *NetBet Enterprises Ltd v. Global Domain Privacy Services Inc. / Tilok Nokar*, WIPO Case No. D2020-0048).

It is likely that the Respondent is trying to conceal its identity regarding the ownership of the Disputed Domain Name – as their name and contact details are covered by a privacy shield in the corresponding publicly available Whois records – which is further evidence of bad faith (*Instagram, LLC v. Registration Private, Domains By Proxy, LLC / Murat Sander*, WIPO Case No. D2021-0526).

The Disputed Domain Name is currently passively held. At the time the Complainant found out about Disputed Domain Name on December 9, 2024, it resolved to an inactive page. At the time of filing of the complaint, the Disputed Domain Name resolved to an inactive page. Similarly, at the time of filing this Amended Complaint, the Disputed Domain Name still resolves to an inactive page. There is therefore no evidence of any actual or contemplated good-faith use of the Disputed Domain Name, as previous UDRP panels held (see *British Airways Plc. v. David Moor*, WIPO Case No. D2006-1224).

In addition, active MX records are associated to the Disputed Domain Name. There is therefore a risk that corresponding fraudulent e-mail addresses be used. Internet users receiving e-mails from e-mail addresses associated with the disputed domain name (such as "[...]@novartispharmaceutical.com") may be led to believe that they are personally contacted by our client. Being deceived, Internet users may start to interact with the sender and be victims of fraud attempts. There is therefore a risk of the disputed domain name being used for fraudulent purposes, by impersonating the Complainant.

Lastly, it is likely that the Respondent has provided false Whois details. The Respondent is impersonating an employee of the Novartis Group, 'David Traub', being the managing director of 'Novartis Pharma Schweiz AG'. Indeed, when searching for the Respondent's name in the Google search engine, the top-returned results point to this individual. However, despite such impersonation, the address, phone number and e-mail address provided by the Respondent in their Whois details, do not correspond to the official address, phone number and e-mail address of the Novartis Group, the Complainant or any of its subsidiaries. It is therefore likely that the details provided by the Respondent are false. As held by previous panels: "Providing false contact information violates paragraph 2 of the Policy, which requires a registrant to represent that the statements it "made in [its] Registration Agreement are complete and accurate." Maintaining that false contact information in the Whois after registration constitutes bad faith use of the domain name because it prevents a putative complainant from identifying the registrant and investigating the legitimacy of the registration" (see *Action Instruments, Inc. v. Technology Associates*, WIPO Case No. D2003-0024, *Aulbach Lizenz AG v. Victorio Naturano*, Case No. D2010-1394).

The aforementioned facts demonstrate that the Respondent has been using the Disputed Domain Name in bad faith.

The overall described circumstances demonstrate that the Respondent has registered and has been using the Disputed Domain Name in bad faith. In view of the above, the Complainant's conduct falls 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 addition, the Complainant, on December 9, 2024, sent a Cease-and-Desist Letter to the Respondent, through the contact form listed on the publicly available Whois records and sent a Cease-and-Desist letter to the Registrar, asking the latter to forward the letter to the Respondent. The Complainant further sent reminders on December 23, 2024, and December 30, 2024, but there was no response. The domain name resolved to an inactive page. Therefore, the Disputed Domain Name is being passively held. Furthermore, the Respondent has provided false Whois details. The Respondent is impersonating an employee of the Novartis Group, 'David Traub', being the managing director of 'Novartis Pharma Schweiz AG'. Indeed, when searching for the Respondent's

name in the Google search engine, the top-returned results point to this individual. However, despite such impersonation, the address, phone number and e-mail address provided by the Respondent in their Whois details, do not correspond to the official address, phone number and e-mail address of the Complainant or any of its subsidiaries.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **novartispharmsaceutical.com**: Transferred

PANELLISTS

Name	Thomas Hoeren
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DATE OF PANEL DECISION **2025-02-03**

Publish the Decision
