

Decision for dispute CAC-UDRP-103646

Case number **CAC-UDRP-103646**

Time of filing **2021-03-10 09:38:02**

Domain names **novartis-traders.ltd**

Case administrator

Organization **Denisa Bilík (CAC) (Case admin)**

Complainant

Organization **Novartis AG**

Complainant representative

Organization **BRANDIT GmbH**

Respondent

Name **John Ekene**

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 proprietor of various trade marks in respect of the string NOVARTIS, in various classes including class 5 (pharmaceutical products). These marks include US mark 75131409 (applied 1996, registered 2000 and renewed) and EU trade mark 000304857 (similar). It holds an international registration under the Madrid system (663765) on the basis of its Swiss mark first registered in February 1996 (427370), designated in multiple jurisdictions. It also holds a number national trade marks under Nigerian law (e.g. 69385, first registered 2 August 1996 and duly renewed).

FACTUAL BACKGROUND

The Complainant, a company with its seat in Basel, Switzerland, was established in its present form in 1996, and operates around the world and manufactures various drugs. Its products are sold in over 150 countries, including Nigeria (where the Respondent is located). The Complainant operates various websites, including <NOVARTIS.COM> (domain name first registered 2 April 1996) and through domain names combining its mark with other terms, such as <NOVARTISPHARMA.COM> (first registered 27 October 1999); it is also active on social media.

The Respondent, an individual with an address in Nnewi, Nigeria, registered the disputed domain name on 9 December 2020.

PARTIES CONTENTIONS

No administratively compliant Response has been filed. The CAC is not aware of whether written notice was received by the Respondent or not, although a number of e-mails were successfully relayed. The Respondent never accessed the online platform.

The Complainant presents extensive evidence regarding its marks, its activities, and the use of the disputed domain name by the Respondent. It submits that all aspects of the Policy have been addressed and that the disputed domain name should be transferred to it.

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 disputed domain name consists of the Complainant's mark, the generic top-level domain '.LTD', a hyphen, and the word 'TRADERS'. The Panel finds this to be confusingly similar, on the grounds that the TLD in question (commonly understood to mean 'limited' as in 'limited company' can be disregarded for the purposes of this assessment in the same way as other gTLDs, that the hyphen is irrelevant, and that the term 'TRADERS' is generic or descriptive in nature (see WIPO Jurisprudential Overview, version 3.0, para 1.8).

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 submits that it neither has nor had any relationship with the Respondent, including but not limited to permission to use the term NOVARTIS. The Respondent has not taken part in these proceedings and so has not provided the Panel with anything that would support the presence of rights or legitimate interests.

It is clear that the Respondent has been using the disputed domain name in connection with its own business, which appears to be the trading of cryptocurrency and digital assets of various sorts. The Complainant has supplied evidence that its mark NOVARTIS appeared on the Respondent's website in December 2020. There is no evidence, whether within the Complainant's materials or in the Panel's consultation of the Respondent's website at the point in time of this decision, of any efforts to explain the relationship (or absence thereof) between the parties.

Moreover, the Respondent is an individual with the name 'John Ekene' and, within its website, claims to be providing services through a company registered in the United Kingdom under the name 'Goldencoins Investment'. Neither of these have any apparent link with the term NOVARTIS, and indeed the Complainant has pointed out that the company registration details relate to an entity that is no longer on the national register.

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).

The Complainant cites the WIPO Jurisprudential Overview, version 3.0, para 3.1.1 and 3.1.4, and also highlights how the Respondent registered the disputed domain name through a proxy/privacy service.

The submissions that quote from and rely upon para 3.1.1 are not well founded, as they relate to situations where the primary intention of a Respondent is to resell a domain name (that is, the situation contemplated in paragraph 4(b)(i) of the Policy. There is no evidence, in the Complaint or elsewhere, that this has occurred in the present situation.

However, the submissions in light of para 3.1.4, relating to the Respondent having intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark, are

considerably stronger. These points in the Overview correspond to paragraph 4(b)(iv) of the Policy. There is ample evidence in support of this contention, including the well-known nature of the Complainant's mark (including in the Respondent's jurisdiction), the artificial nature of the mark NOVARTIS (derived from the Latin words nova (or novae) artes, but in essence coined by the Complainant at its foundation), and - in particular - the activities of the Respondent in seeking to draw users to its financial services (and gather personal and financial data) through a domain name which incorporates the Complainant's mark in full and without any justification or explanation.

The Panel also notes the Complainant's contention, supported by authority, that the NOVARTIS mark is distinctive and well-known, and has been acknowledged as such in various decisions made under 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 reasons for the decision are set out above. In the absence of any Response from the Respondent, or any other information indicating the contrary, and the Complainant's prima facie case supported by evidence, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name. On the other hand, it is clear that the Complainant has rights in respect of the trade mark NOVARTIS, and that the disputed domain name is confusingly similar to this mark (differing only in substance by the addition of the text TRADERS). In light of the evidence presented by the Complainant, regarding the well-known nature of the mark and the business (cryptocurrency trading) carried out by the Respondent through its website, the Panel finds that the disputed domain name was registered and is being used in bad faith. The requirements for the acceptance of a Complaint under paragraph 4 of the Policy have therefore been met, and the disputed domain name is to be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **NOVARTIS-TRADERS.LTD:** Transferred

PANELLISTS

Name	Prof Daithi Mac Sithigh
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DATE OF PANEL DECISION 2021-04-10

Publish the Decision