

Decision for dispute CAC-UDRP-103732

Case number	CAC-UDRP-103732
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Time of filing	2021-04-09 00:00:00
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Domain names	Novartiswebinar.org
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Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	Novartis AG
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Complainant representative

Organization	BRANDIT GmbH
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Respondent

Name	John Elsawaf
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OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending or decided legal proceedings relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the well-known trademark NOVARTIS registered as a word and device mark in several classes worldwide, including Egypt. The vast majority of the Complainant's trademark registrations predates the registration of the disputed domain name. Namely, the Complainant's trademark registrations in Egypt applying to the present proceedings include the following earlier rights:

Trademark: NOVARTIS

Reg. no: 663765

Reg. date: July 1, 1996

Trademark: NOVARTIS

Reg. no: 666218

Reg. date: October 31, 1996

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

I. LANGUAGE OF PROCEEDINGS REQUEST:

To the best of Complainant's knowledge, the language of the Registration Agreement of the disputed domain name <Novartiswebinar.org> is English according to the Registrar Verification. Therefore, the language of the proceedings should be English.

II. ABOUT COMPLAINANT AND THE BRAND NOVARTIS

The Novartis Group is one of the most prominent 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. Novartis AG (the "Complainant"), 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 regions worldwide. The Complainant has a strong presence in Egypt, where the Respondent is located. Having its presence for more than 50 years in Egypt, the Complainant has numerous subsidiaries and associated companies. Novartis Egypt is also the largest pharmaceuticals producer in the country, active in organizing events and campaigns to address health issues and social issues.

Moreover, previous UDRP Panels have stated that the NOVARTIS trademark is well-known.

The Complainant owns numerous domain names composed of either its trademark NOVARTIS alone, including <novartis.us> (created on April 19, 2002) and <novartis.com> (created on April 2, 1996) or in combination with other terms, e.g., <novartispharma.com> (created on October 27, 1999). The Complainant uses these domain names to promote the NOVARTIS mark with related products and services.

The Complainant enjoys a strong presence online, also via its official website <Novartis.com.eg> and via its official social media platforms. Moreover, on both its general official website <Novartis.com> and the local official website <Novartis.com.eg> for Egypt, the Complainant had already organized many webinars, the information of which is publicly available.

The disputed domain name was registered on March 7, 2021.

PARTIES CONTENTIONS

COMPLAINANT

A. THE DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR

The disputed domain name, which was registered on March 7, 2021, according to the WHOIS. It incorporates the Complainant's well-known, distinctive trademark NOVARTIS in its entirety and the generic term "webinar", which is closely related to the Complainant and its business activities. Therefore, could lead consumers to assume that the disputed domain name is an official website of the Complainant. The addition of the gTLD ".org" does not add any distinctiveness to the disputed domain name.

The same reasoning should apply in the current case, and the disputed domain name should be considered confusingly similar to the trademark NOVARTIS.

B. RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTEREST IN RESPECT OF THE DOMAIN NAME

The Complainant and the Respondent have never had any previous relationships, nor has the Complainant ever granted the Respondent any rights to use the NOVARTIS trademark in any form, including the disputed domain name.

The Complainant has not found that the Respondent is commonly known by the disputed domain name or has legitimate interest

over the disputed domain name. When searched for "Novartiswebinar" in the Google search engine, the returned results all pointed to the Complainant and its business activities.

The Respondent could have easily performed a similar search before registering the disputed domain name and quickly learned that the Complainant owns the trademarks. The Complainant has been using its trademarks in Egypt Respondent resides and many other countries worldwide. However, the Respondent still chose to register the disputed domain name as such.

Furthermore, according to the Registrar Verification, the Respondent is an individual named "John Elsawaf", which is not related to the term "Novartis" or the Complainant in any form.

By the time the Complainant prepared this amended Complaint on April 15, 2021, the disputed domain name did not resolve to any active website.

From the Complainant's perspective, the Respondent deliberately chose to use the well-known, distinctive trademark NOVARTIS as the body of the disputed domain name, very likely with the intention to benefit from the Complainant's worldwide renown and to confuse Internet users as to the source or sponsorship and therefore cannot be considered as a bona fide offering of goods or services.

For the preceding reasons, it shall be concluded that the Respondent has no right nor legitimate interest in respect of the disputed domain name.

C. THE DOMAIN NAME WAS REGISTERED AND IS BEING USED IN BAD FAITH

i. THE DOMAIN NAME WAS REGISTERED IN BAD FAITH

It should be highlighted that most of the Complainant's trademark registrations predate the registration of the disputed domain name, and the Complainant has never authorized the Respondent to register the disputed domain name.

Considering the renown of the Complainant and its trademark NOVARTIS, and the overall composition of the disputed domain name, i.e., using the term "Novartis" in connection with the word "webinar", it follows that incorporating the well-known trademark NOVARTIS in the disputed domain name is a deliberate and calculated attempt to improperly benefit from the Complainant's rights and reputation.

Additionally, because:

- The Respondent very likely knew about the Complainant and its trademark;
- The Complainant's trademark NOVARTIS is a distinctive, well-known trademark worldwide and in Egypt where the Respondent resides;
- The Respondent has failed in presenting a credible evidence-backed rationale for registering the disputed domain name the disputed domain name shall be deemed as registered in bad faith.

ii. THE DOMAIN NAME IS BEING USED IN BAD FAITH

Firstly, as noted in the previous paragraphs, the disputed domain name did not resolve any active website.

Secondly, the Complainant has tried to reach the Respondent by a cease-and-desist notice sent on March 15, 2021, through the emails provided in the WHOIS, as the registrant was under privacy shield. However, until the Complainant prepared this amended Complaint, it has not received any response from the Respondent.

The Respondent's non-response to the cease-and-desist letter infers bad faith use of the disputed domain name.

Thirdly, the Respondent has been using a privacy shield to conceal its identity.

Consequently, the Respondent should be considered to have registered the disputed domain name confusingly similar to the

Complainant's well-known, distinctive trademark NOVARTIS. The Complainant has not found that the Respondent is of any legitimate right or interest in using the disputed domain name, but instead registered and has been using the disputed domain name in bad faith.

RESPONDENT

No administratively compliant Response has been filed.

RIGHTS

To the satisfaction of the Panel, the Complainant has shown that the disputed domain name is identical or confusingly similar to the trademark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

To the satisfaction of the Panel, the Complainant has 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

To the satisfaction of the Panel, the Complainant has 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

Before moving on to the dispute's substance, the Panel must weigh in on a procedural matter. The Complainant has requested the language of proceedings to be English. It has been confirmed that the language of the registration agreement of the disputed domain name is English. It is worth noting that paragraph 10 of the UDRP Rules vests Panels with authority to conduct the proceedings in a manner it considers appropriate while simultaneously ensuring both parties are treated equally. Following the registration agreement, the Panels confirms English as the language of proceedings.

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

As per paragraph 4(a) of the Policy, for this Complaint to succeed concerning the disputed domain name, the Complainant must prove the following:

- (i) The disputed 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 disputed domain name; and
- (iii) The disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has shown it owns rights in the "NOVARTIS" trademark, with the earliest registration dating back to 1996.

The Panel must now analyze if there is a confusing similarity between the disputed domain name and the trademark. As contained in the record and evidence at hand, the disputed domain name reproduces the trademark in its totality, namely, "NOVARTIS" with the word "webinar". The use of the word "webinar" is a small addition that is not substantive enough to dispel the confusing similarity between the disputed domain name and the Complainant's trademarks. The term "webinar" could lead to an inference that the Respondent was trying to confuse Internet users as to the source of sponsorship of the disputed domain name since "webinar" is a generic term that during the COVID-19 pandemic has come into prominent use due to the limitations

on gatherings of individuals. Nevertheless, this will be analyzed below under the corresponding elements.

For what it concerns to the first element, the Panel determines that the Complainant has satisfied the first element set under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Based on the record and evidence at hand, the uncontested facts indicate that a) the Respondent is not commonly known as the disputed domain name; b) the Respondent is not affiliated with the Complainant; b) the Respondent is not authorized to carry out any activity for the Complainant and c) the Respondent has no license or authorization to use the trademark. In addition to this, the Respondent's use of the trademark plus the generic term "webinar", seems to indicate that the Respondent not only was aware of the Complainant but deliberately targeted the Complainant to benefit from the association to the Complainant and confuse Internet users as to the source of sponsorship. This can never be considered a bona fide offering under the Policy.

The actions of the Respondent reinforce this. After the notification of the proceedings, and instead of providing an explanation or defense, the Respondent redirected the website to a default HTML index.

In the Panel view, these assertions are enough to establish a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name (see 2.1 of WIPO 3.0 Overview).

Based on the above and the probability balance, it is difficult to conceive the Respondent having rights or legitimate interest in the disputed domain name. This is closely linked to the potential of having fair or non-commercial uses of the disputed domain name; however, the analysis of this is better suited under the third element.

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name. Therefore, the Complainant has fulfilled the second requirement set under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

As per the record and evidence at hand, the Panel finds that the Respondent was likely aware of the Complainant and targeted the Complainant's trademark when registering the disputed domain name. This conclusion is reinforced by the fact that the Respondent seems to evoke a connection to the Complainant's trademark by including the trademark in its entirety, with the only addition of a generic word (webinar). This generic word has been used widely during the COVID-19 pandemic and has also been used by the Complainant on the Internet during its ordinary course of business.

In addition to this, it is worth noting that the website resolving from the disputed domain name was changed after the initiation of the proceedings and the lack of response to a cease-and-desist letter notification by the Complainant. Without having any other explanation from the Respondent, in conjunction with the other facts and evidence, in this case, it strengthens the allegations and the points raised by the Complainant on the bad faith registration and use of the disputed domain name.

All the preceding analysis leaves the Panel no other option than to conclude that that the most likely intention of the Respondent was to intentionally attempt to attract, for commercial gain, Internet users to its website/ disputed domain name, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and/or disputed domain name (see 3.1 of WIPO 3.0 Overview).

In light of the case's circumstances, based on the available records, the Panel finds that the Complainant has proven that the disputed domain name was registered and is used in bad faith according to paragraph 4(a)(iii) of the Policy.

D. Decision

For the preceding reasons and concurrence with the provisions specified under Paragraph 4(i) of the Policy and Paragraph 15

of the Rules, the Panel orders the transfer of the disputed domain name to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **NOVARTISWEBINAR.ORG**: Transferred

PANELLISTS

Name	Rodolfo Carlos Rivas Rea
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DATE OF PANEL DECISION 2021-05-10

Publish the Decision