

Decision for dispute CAC-UDRP-103588

Case number	CAC-UDRP-103588
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Time of filing	2021-08-16 10:27:12
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Domain names	Verify-novartis.info
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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	BRANDIT GmbH
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Respondent

Name	Victor Ilyushkin
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OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending or decided legal proceedings which relate to the disputed domain name. The Panel is aware, however, of the CAC Case No. 103580, seemingly between the same parties as in the present case regarding the similar domain name <verify-novartis.com>.

IDENTIFICATION OF RIGHTS

The Complainant owns numerous “NOVARTIS” trademark registrations worldwide, including the following:

- Russian trademark registration no. 534451 with priority of 21 January 2012 for “NOVARTIS да здравствует жизнь” (with design; the Russian words are in smaller font size below the word “NOVARTIS” and can be translated as “long live life”); and
- Russian trademark registration no. 526567 with priority of 6 August 2013 for “NOVARTIS лекарства. открытия. надежда.” (with design; the Russian words are in smaller font size below the word “NOVARTIS” and can be translated as “medicines. discovery. hope.”).

The disputed domain name was registered on 18 July 2021, i.e. the Complainant’s trademark registrations cited above predate the registration of the disputed domain name.

FACTUAL BACKGROUND

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

The Novartis Group is one of the biggest global pharmaceutical and healthcare groups. The Complainant Novartis AG, created in 1996 through a merger of two other companies (Ciba-Geigy and Sandoz), is the holding company of Novartis Group.

The Complainant's products are manufactured and sold in many regions worldwide. The Complainant has a strong presence in Russia where the Respondent is located. The Complainant has numerous subsidiaries and associated companies based in Russia.

The Complainant owns numerous domain names composed of its trademark NOVARTIS, including <novartis.ru> (created on 1 June 2000) and <novartis.com> (created on 2 April 1996). The Complainant uses these domain names to promote the NOVARTIS mark with related products and services.

The Complainant and the Respondent have never had any business relationships, nor has the Complainant ever granted the Respondent with any rights to use the NOVARTIS trademark in any forms.

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

The disputed domain name resolves to an active website displaying information which was copied from another official online presence of the Complainant's Sandoz brand (<https://www.sandoz.com/>). In the upper part of the website there is a section named 'product validation'; once the website users click on the sentence "Check the product for authenticity", they are asked to enter an e-mail address.

PARTIES CONTENTIONS

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.

According to Article 11(a) of the Rules, "unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding".

The language of the Registration Agreement is Russian. The Complainant, however, has requested that the language of the proceeding be English instead of Russian.

The Panel uses its discretionary authority to decide that the language of the proceedings shall be English for the following reasons:

- (a) The disputed domain name resolves to an active website entirely in English. This demonstrates that the Respondent has a good understanding and knowledge of English and the intention of the Respondent is to address its visitors in English language, i.e. English speaking visitors;
- (b) the Respondent chose to register the disputed domain name with the generic top level TLD .info. This proves that by registering the disputed domain name the Respondent tried to target a broad audience, not limited to Russian speaking visitors;
- (c) the disputed domain name is composed by the English term “verify” and the Complainant’s name “Novartis”, both are correctly spelt. This further demonstrates that the Respondent understands English;
- (d) the Complainant is a Swiss-based company, the Respondent is located in Russia. The English language, being commonly used internationally, would be considered as neutral for both parties in the present case;
- (e) a translation of the Complaint to Russian would entail significant additional costs for the Complainant and delay in the proceedings; and
- (d) the Respondent has neither submitted any objection to the use of English language, nor reacted in any other way which would indicate that the Respondent is unable to communicate in English.

PRINCIPAL REASONS FOR THE DECISION

The Panel finds the disputed domain name to be confusingly similar to the Complainant’s Russian trademarks cited above. The dominant and distinctive element of both marks is the Complainant’s well-known name “NOVARTIS”. The disputed domain name incorporates this element in its entirety, so that an internet user would think that the disputed domain name is in some way related to the Complainant. The disputed domain name further includes the generic word “verify” which implies that the purpose of the domain name and the corresponding website deal in an official way with the verification of products sold under the NOVARTIS mark to ascertain if they are genuine NOVARTIS goods.

The Panel further finds that Complainant successfully submitted prima facie evidence that Respondent has neither made any use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services, nor is making a legitimate non-commercial or fair use of the disputed domain name, nor is commonly known under the disputed domain name. This prima facie evidence was not challenged by Respondent.

The Panel also finds that the Complainant successfully submitted prima facie evidence that the Respondent, by using the disputed domain name for the website described above, has intentionally attempted to attract, for commercial gain, Internet users to its web site by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the web site. This is evidence of registration and use of the disputed domain name in bad faith pursuant to paragraph 4(b)(iv) of the Policy. This evidence was not challenged by Respondent.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **VERIFY-NOVARTIS.INFO**: Transferred

PANELLISTS

Name	Dr. Thomas Schafft
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DATE OF PANEL DECISION 2021-09-27

Publish the Decision
