

Decision for dispute CAC-UDRP-104413

Case number	CAC-UDRP-104413
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Time of filing	2022-03-15 10:05:01
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Domain names	Novartis2022.com
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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	jXun Lee
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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 holder of numerous trademarks and domains bearing the name NOVARTIS, which is also the Complainant's company name.

In Malaysia, the Complainant bases the claim on Registration No. 96007911, dated 30 March 2004 and registered broadly in Class 05 of the Nice Classification.

FACTUAL BACKGROUND

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

The Complainant contends that 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. Novartis AG, 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 an active presence in Malaysia where the Respondent is located. Being on the local market for over 40 years, the Complainant has established a strong, positive reputation, e.g. the Complainant was winner of TalentCorp's LIFE AT WORK 2019 AWARD for Outstanding Practice: Learning Platform and was awarded Top Employer in Malaysia for the year 2022.

The Complainant is the owner of the well-known trademark NOVARTIS registered as both a word and device mark in several classes worldwide, including Malaysia. The vast majority of the Complainant's trademark registrations significantly predates the registration of the disputed domain name.

The Complainant also contends that previous UDRP Panels have stated that the NOVARTIS trademark is well-known (inter alia Novartis AG v. Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org, / Sergei Lir, WIPO Case No. D2016-1688).

The Complainant owns numerous domain names composed of either its trademark NOVARTIS alone, including <novartis.us> (created on 19 April 2002) and <novartis.com> (created on 2 April 1996) or in combination with other terms, e.g. <novartispharma.com> (created on 27 October 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 social media platforms and official websites dedicated to Malaysia: <https://www.novartis.com/>.

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.

PRINCIPAL REASONS FOR THE DECISION

According to Paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to obtain an order that the disputed domain name should be transferred or cancelled:

- (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.

The Panel has examined the evidence available to it and has come to the following conclusion concerning the satisfaction of the three elements of paragraph 4(a) of the Policy in these proceedings:

RIGHTS

The Complaint has established rights in the name NOVARTIS. The disputed domain name <NOVARTIS2022.COM> is found to be confusingly similar to the Complainant's Trademark, company name and domain. This finding is based on the settled practice in evaluating the existence of a likelihood of confusion of

- a) disregarding the top-level suffix in the domain name (i.e. ".com"), and
- b) finding that the addition of a generic element to the protected trademark (in this case the numbers 2022 for the current year) would not be considered sufficient to distinguish a domain name from a trademark.

The disputed domain name is therefore confusingly similar to the earlier right NOVARTIS.

Therefore, the Panel comes to the conclusion that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the UDRP.

NO RIGHTS OR LEGITIMATE INTERESTS

The onus to make out a prima facie case that the Respondent lacks rights or legitimate interests is placed on the Complainant. However, once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP (see e.g. WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

The Complainant has put forward that the Respondent is not commonly known by the disputed domain name. Neither is the Respondent in any way related to the Complainant. Nor has the Respondent been granted an authorization or license to use the disputed domain name by the Complainant. This has not been contested by the Respondent. Instead, the Respondent failed to provide any information and evidence whatsoever that could have shown that it has relevant rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a) (ii) of the Policy). The disputed domain name does not resolve to any active web site so there is no indication of any bona fide offering of goods or services.

In summary, the Panel concludes that the Respondent did not establish any right or legitimate interest to the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy). The Complainant has therefore also satisfied the requirement under paragraph 4(a)(ii) of the Policy.

BAD FAITH

The Panel finds that the Complainant has established that the disputed domain name was registered by the Respondent and is being used by the Respondent in bad faith. For this purpose, the Complainant has successfully put forward prima facie evidence that the Respondent has not made use, or demonstrable preparations to use, of either the disputed domain name in connection with a bona fide offering of goods or services, or of making a legitimate non-commercial or fair use of the disputed domain name. The Respondent is also in no way commonly known under the disputed domain name. This prima facie evidence was not challenged by the Respondent. In fact, the Respondent did not respond at all to the cease and desist letter of the Complainant dated 25 January 2022.

The failure of the Respondent to reply to this cease and desist letter may be seen as further evidence of bad faith (see e.g. Coutts & Co. v. Sande Skalnik, Patrick Harding, WIPO Case No. D2015-1590; Citrix Systems, Inc. v. Domains by Proxy, LLC /

Sirishareddy Idamakanti - Sirisha Idamaknti, WIPO Case No. D2015-0017; E. & J. Gallo Winery v. Oak Investment Group, WIPO Case No. D2000-1213; Encyclopaedia Britannica, Inc. v. John Zuccarini and The Cupcake Patrol a/ka Country Walk a/k/a Cupcake Party, WIPO Case No. D2000-0330 or Arla Foods Amba v. Mlanie Guerin, CAC case No. 101640; Medela AG v. Donna Lucius, CAC case No. 101808). The Panel finds that this also applies in this case.

Lastly, the Respondent has been using a privacy shield to conceal its identity and has very likely provided false WHOIS information as in the part of "Registrant/Admin/Tech/Billing Street" it shows "123,jln 123, tmn 123" and in the part of "Registrant/Admin/Tech/Billing City" it shows "bilibala". Such conduct has added up to the finding of bad faith.

In the absence of a Response and given the reputation of the Complainant and its trademarks, company name and domain as supported by the Complainant's evidence, the Panel must conclude that the Respondent was fully aware of the Complainant's trademarks, domain and company name "NOVARTIS" at the time of registering the disputed domain name <NOVARTIS2022.COM>. Therefore, it has been established to the satisfaction of the Panel that the disputed domain name was registered and is being used (at least passively) in bad faith, in order to prevent the Complainant from making proper use of the mark in the disputed domain name.

Therefore, the Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy). The Complainant has therefore also satisfied the requirement under paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **NOVARTIS2022.COM**: Transferred

PANELLISTS

Name	Udo Pfleggar, B.A.
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DATE OF PANEL DECISION	2022-04-28
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Publish the Decision
