

Decision for dispute CAC-UDRP-104772

Case number	CAC-UDRP-104772
Time of filing	2022-08-04 09:15:45
Domain names	novartispatientsupport.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	BRANDIT GmbH
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Respondent

Organization	Domain Sales - (Expired domain caught by auction winner) c/o Dynadot
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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

In these proceedings, the Complainant relies on the following trademarks:

- NOVARTIS (word), Swiss Trademark Registration No. 2P-427370, registered as of February 15, 1996 (and duly renewed), in the name of Novartis AG (the Complainant);
- NOVARTIS (word), International Trademark Registration No. 663765, registered as of July 1, 1996 (and duly renewed), in the name of Novartis AG (the Complainant);
- NOVARTIS (word), US Trademark Registration No. 4986124, registered as of September 12, 2013, in the name of Novartis AG (the Complainant), where Respondent is located.

It is worth noting that, the Complainant owns a plethora of "NOVARTIS" trademarks, covering the majority of the countries of the world, which have not been cited in these proceedings.

Also, the Complainant notably applied in the US (where Respondent is located) for the trademark "NOVARTIS PATIENT SUPPORT" on April 27, 2022.

FACTUAL BACKGROUND

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

The Complainant is a well-known large global healthcare / pharma company with some 125000 employees, active in as many as 155 countries around the world, including the United States of America, where Respondent is based.

The Complainant owns a large-sized portfolio of trademarks worldwide including the wording (and its company name) "NOVARTIS", among which a Swiss (home) registration dating back to February 1996. It also owns a multitude of related domain names, like <novartis.com> since April 2, 1996, <novartis.net> since April 25, 1998 and, even, <novartispharma.com> since October 27, 1999.

The disputed domain name <novartispatientsupport.com> was registered on April 30, 2022 by the Respondent.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to its NOVARTIS trademark, as it is a combination of this wholly incorporated trademark and of two descriptive terms. This last element is sufficient to support the finding that the disputed domain name is confusingly similar to the Complainant's trademark. The mere addition of generic terms to the Complainant's trademark does not change the overall impression of a most likely connection with the trademark NOVARTIS of the Complainant. The specific terms (PATIENT SUPPORT) make the confusion stronger, as they directly relate to the Complainant's activities. As to the gTLD ".com", the Complainant suggests that it should be disregarded, as per the usual practice.

The Complainant maintains that the Respondent lacks rights or legitimate interests in the disputed domain name because the Respondent is not known by the disputed domain name, the Complainant is not affiliated with the Respondent nor has it ever authorised the Respondent to register its trademark as a domain name, and the Complainant has no business with the Respondent.

According to the Complainant, given the seniority, distinctiveness and worldwide reputation of the NOVARTIS trademark, the Respondent registered the disputed domain name with full knowledge of the Complainant's trademark in an intentionally designed way, with the aim to create a likelihood of confusion with the Complainant's trademarks and domain names, and this is evidence of the fact that the disputed domain name was registered in bad faith.

With respect to use in bad faith, the Complainant points out that the Respondent has used the disputed domain name so as to redirect users to what appears to be a pay-per-click website, a fact that -in combination with the incorporation of a famous trademark in a domain name- proves use in bad faith. Further, the Complainant claims that the Respondent has opportunistically filed the disputed domain name following Complainant's identical US trademark application three days earlier, did not respond to its cease-and-desist letter and concealed its identity through a privacy company.

For all these reasons, the Complainant concludes that the Respondent registered and used the disputed domain name in bad faith.

RESPONDENT:

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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 whole trademark (NOVARTIS), in combination with two generic words (PATIENT SUPPORT). The addition of the specific generic words in the disputed domain name is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark of the Complainant. Such words (PATIENT SUPPORT) actually reinforce the confusion, as they relate directly to the activities of the Complainant.

As far as the gTLD ".com" is concerned, it is generally recognized that top level domains do not have any bearing in the assessment of identity or confusing similarity, according to paragraph 4(a)(i) of the Policy.

Hence, the Panel is satisfied that the first requirement under the Policy is met.

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).

Since proving a negative fact is almost impossible, panelists in UDRP proceedings have generally agreed that it is sufficient for the Complainant to establish a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name to shift the burden of proof to the Respondent.

In the case at issue, the Complainant argued that it had never authorised the Respondent to register the NOVARTIS trademark in a domain name, and that it had never licensed its trademarks to the Respondent.

Furthermore, the Respondent has not demonstrated any use of the disputed domain name in connection with a bona fide offering of goods and services or a legitimate non-commercial or fair use of the disputed domain name.

Finally, there is no other evidence in the case file that could demonstrate that the Respondent has been commonly known by the disputed domain name.

In view of the foregoing, the Panel is satisfied that the Complainant has established a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name. In order to rebut the Complainant's arguments, the Respondent had the possibility to make his own defense. However, the Respondent has chosen not to file a Response.

Therefore, the Panel is satisfied that also the second requirement under the Policy is met.

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 far as registration in bad faith is concerned, given the seniority and reputation of the Complainant's trademarks and the fact that the disputed domain name fully incorporates these trademarks (even in combination with generic terms), it is evident that, at the time of the registration of the disputed domain name, the Respondent was well aware of the Complainant's trademark. The registration as domain name of a third party's well-known trademark with full knowledge of the fact that the rights over this trademark belong to a third-party amounts to registration in bad faith.

The above are reinforced by the fact that, only three days before the registration of the disputed domain name, Complainant had applied for a US trademark ("NOVARTIS PATIENT SUPPORT"), the disputed domain name being identical to that. The Panel agrees with the Complainant that, this cannot be a mere coincidence and reiterates that the disputed domain name was registered in bad faith.

With respect to use in bad faith, the disputed domain name resolves to a pay-per-click website. Such use clearly aims at attracting Internet users for commercial gain by creating a likelihood of confusion with the Complainant's well-known trademark. This fact is to be combined with the full incorporation of the Complainant's reputable trademark in the disputed domain name. For this Panel, same as for many previous panels, such misleading behaviour clearly amounts to use in bad faith. Consequently, it is impossible to conceive any plausible active use of the disputed domain name that would be legitimate.

Further, from the evidence filed by the Complainant and not refuted by the Respondent, it seems that the Respondent did not respond to its cease-and-desist letter and concealed its identity through a privacy company. All these facts combined also help proving the bad faith of the Respondent.

Therefore, the Panel finds it clear that the disputed domain name was used in bad faith.

For all circumstances mentioned above, the Panel is satisfied that also the third requirement under the Policy is satisfied.

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 disputed domain name wholly incorporates the Complainant's trademarks, written in combination with two descriptive/generic words. The disputed domain name is therefore confusingly similar to the Complainant's trademark.

The Respondent was not authorised to include the Complainant's trademarks in the disputed domain name, and the Complainant never licensed its trademarks to the Respondent. The Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services, or a legitimate non-commercial or fair use.

The Respondent registered the disputed domain name with full knowledge of the Complainant's reputable trademark. Its use of the disputed domain name is in bad faith, as there is no conceivable use of the disputed domain name that could amount to a legitimate use.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **NOVARTISPATIENTSUPPORT.COM**: Transferred

PANELLISTS

Name	Sozos-Christos Theodoulou
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DATE OF PANEL DECISION 2022-09-12

Publish the Decision