

Decision for dispute CAC-UDRP-105556

Case number	CAC-UDRP-105556
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Time of filing	2023-06-22 09:53:37
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Domain names	novartisltd.com
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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	Francios Laurence
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OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that are pending or decided and that relate to the Disputed Domain Name.

IDENTIFICATION OF RIGHTS

Complainant states, and provides relevant evidence, that it is the owner of “the registered well-known trademark NOVARTIS in numerous jurisdictions all over the world,” including Swiss No. 672477 (registered on April 28, 2015), Swiss No. 2P-427370 (registered on July 01, 1996), International Reg. No. 1349878 (registered on November 29, 2016), and International Reg. No. 1544148 (registered on June 29, 2020) (the “NOVARTIS Trademark”).

FACTUAL BACKGROUND

Complainant states that it is “the holding company of the Novartis Group,” which is “one of the biggest global pharmaceutical and healthcare groups,” which “provides solutions to address the evolving needs of patients worldwide by developing and delivering innovative medical treatments and drugs.” Complainant further states that it “achieved net sales from continuing operations of USD 50.5 billion, and total net income amounted to USD 7.0 billion and employed approximately 102 000 full-time equivalent employees as of December 31, 2022.”

The Disputed Domain Name was created on March 28, 2023, and is not being used in connection with an active website.

PARTIES CONTENTIONS

Complainant contends, in relevant part, as follows:

Paragraph 4(a)(i): Complainant states that the Disputed Domain Name is confusingly similar to the NOVARTIS Trademark because the Disputed Domain Name “in its second level portion, incorporates the trademark NOVARTIS in its entirety with the addition of the abbreviation ‘LTD’ (a commonly used abbreviation for ‘Limited’ referring to Limited Liability Company),” “[t]he NOVARTIS trademark is clearly recognizable within the Disputed Domain Name,” and “[t]he presence of the generic Top-Level Domain (‘gTLD’) extension ‘.com’ in the first level portion of the Disputed Domain Name is a standard registration requirement and may be disregarded when assessing whether the Disputed Domain Name is confusingly similar to the trademark in which the Complainant has rights.”

Paragraph 4(a)(ii): Complainant states that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because, *inter alia*, “[t]he 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 in the Disputed Domain Name,” “[t]he Complainant has not found that the Respondent is commonly known by the Disputed Domain Name or that it has a legitimate interest over the Disputed Domain Name,” “the Disputed Domain Name does not resolve to any active content,” and “[t]here is no evidence showing that the Respondent has been using, or preparing to use, the Disputed Domain Name in connection with a bona fide offering of goods and services or has made a legitimate non-commercial or fair use of the Disputed Domain Name.”

Paragraph 4(a)(iii): Complainant states that the Disputed Domain Name was registered and is being used in bad faith because, *inter alia*, “the registration of the Complainant’s trademarks pre-dates the registration of the Disputed Domain Name and the Respondent has never been authorized by the Complainant to use the NOVARTIS trademark nor to register the Disputed Domain Name,” “Complainant enjoys a strong online presence,” “it is... inconceivable that the Respondent was unaware of the existence of the Complainant when they registered the Disputed Domain Name,” Respondent did not respond to a cease and desist letter sent by Complainant, “non-use of a domain name does not prevent a finding of bad faith under the doctrine of passive holding,” and “MX records are associated with the Disputed Domain Name[, so] [i]t is very likely that a corresponding fraudulent email address is used.”

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 UDRP).

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 UDRP).

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 UDRP).

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

Identical or Confusingly Similar: Paragraph 4(a)(i):

Based upon the trademark registrations cited by Complainant, it is apparent that Complainant has rights in and to the NOVARTIS Trademark.

As to whether the Disputed Domain Name is identical or confusingly similar to the NOVARTIS Trademark, the relevant comparison to be made is with the second-level portion of the Disputed Domain Name only (i.e., “novartisLtd”) because “[t]he applicable Top Level Domain (‘TLD’) in a domain name (e.g., ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.” WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”), section 1.11.1.

Here, the Disputed Domain Name contains the NOVARTIS Trademark in its entirety, plus the letters “Ltd,” an abbreviation of the word “limited.” As set forth in section 1.8 of WIPO Overview 3.0: “Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.”

Accordingly, the Panel finds that Complainant has proven the first element of the Policy.

Rights or Legitimate Interests: Paragraph 4(a)(ii)

Complainant states that Respondent has no rights or legitimate interests in respect of the Disputed Domain Names because, *inter alia*, “[t]he 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 in the Disputed Domain Name,” “[t]he Complainant has not found that the Respondent is commonly known by the Disputed Domain Name or that it has a legitimate interest over the Disputed Domain Name,” “the Disputed Domain Name does not resolve to any active content,” and “[t]here is no evidence showing that the Respondent has been using, or preparing to use, the Disputed Domain Name in connection with a bona fide offering of goods and services or has made a legitimate non-commercial or fair use of the Disputed Domain Name.”

WIPO Overview 3.0, section 2.1, states: “While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of ‘proving a negative’, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.”

The Panel finds that Complainant has established its prima facie case and without any evidence from Respondent to the contrary, the Panel is satisfied that Complainant has satisfied the second element of the UDRP.

Registered and Used in Bad Faith: Paragraph 4(a)(iii)

Whether a domain name is registered and used in bad faith for purposes of the UDRP may be determined by evaluating four (non-exhaustive) factors set forth in paragraph 4(b) of the UDRP: (i) circumstances indicating that the registrant has registered or the registrant has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the registrant’s documented out-of-pocket costs directly related to the domain name; or (ii) the registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the registrant has engaged in a pattern of such conduct; or (iii) the registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the registrant has intentionally attempted to attract, for commercial gain, Internet users to the registrant’s website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the registrant’s website or location or of a product or service on the registrant’s website or location.

WIPO Overview 3.0, section 3.3, states, “From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or ‘coming soon’ page) would not prevent a finding of bad faith under the doctrine of passive holding.

“While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.”

Here, the NOVARTIS Trademark appears to be distinctive and appears to have a high degree of reputation given that it is protected by numerous registrations worldwide and that it is used by a company with net sales from continuing operations of USD 50.5 billion and 102,000 employees. Further, Respondent did not submit a response or provide any evidence of actual or contemplated good-faith use.

Accordingly, the Panel finds that Complainant has proven the third element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. novartisltd.com : Transferred

PANELLISTS

Name	Douglas Isenberg
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DATE OF PANEL DECISION 2023-07-25

Publish the Decision