

Decision for dispute CAC-UDRP-105806

Case number **CAC-UDRP-105806**

Time of filing **2023-09-26 09:43:49**

Domain names **hr-novartis.com**

Case administrator

Name **Olga Dvořáková (Case admin)**

Complainant

Organization **Novartis AG**

Complainant representative

Organization **BRANDIT GmbH**

Respondent

Name **Wang Lao**

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 has rights in the trademark NOVARTIS, through numerous registrations around the world, including in the United States, USPTO Reg. No. 2,336,960, registered on April 4, 2000.

FACTUAL BACKGROUND

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.

The disputed domain name was registered on August 28, 2023. It does not resolve to an active website. MX servers are configured. The Respondent did not reply to a cease-and-desist letter from the Complainant.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred

to it.

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

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that the Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- the domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- the Respondent has no rights or legitimate interests in respect of the domain name; and
- the domain name has been registered and is being used in bad faith.

In view of the Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations set forth in a complaint; however, the Panel may deny relief where a complaint contains mere conclusory or unsubstantiated arguments. See WIPO Jurisprudential Overview 3.0 at paragraph 4.3.

As to the first element, the Panel finds that the disputed domain name <hr-novartis.com> is confusingly similar to the Complainant's very well-known trademark NOVARTIS, since it incorporates the mark in its entirety. The addition of "hr-", the acronym for "human resources", followed by a hyphen, is not sufficient to distinguish the disputed domain name from the mark. The inconsequential gTLD ".com" may be ignored.

As to the second element, paragraph 4(c) of the Policy sets out three illustrative circumstances as examples which, if established by the Respondent, shall demonstrate rights to or legitimate interests in the disputed domain name for purposes of paragraph 4(a)(ii) of the Policy, *i.e.*

- before any notice to the Respondent of the dispute, the use by the Respondent of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- the Respondent (as an individual, business or other organization) has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights; or
- the Respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to

misleadingly divert customers or to tarnish the trademark or service mark at issue.

The Complainant asserts that 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, including in the disputed domain name. The Complainant has not found that the Respondent is known by the disputed domain name and no trademarks incorporating the terms “hr-novartis” and “hr-novartis.com” are to be found.

The disputed domain name was registered on August 28, 2023, many years after the Complainant has shown that its NOVARTIS mark had become very well-known: (see e.g., Novartis AG v. Amartya Sinha, Global Webs Link, Novartis RO, WIPO Case No. D2020-3203). The disputed domain name does not resolve to an active website and is therefore not being used in connection with a bona fide offering of goods or services. MX servers are configured. The Respondent did not respond to a cease-and-desist letter from the Complainant.

These circumstances, together with the Complainant’s assertions, are sufficient to constitute a *prima facie* showing of absence of rights or legitimate interests in respect of the disputed domain name on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show that it does have rights or legitimate interests in the disputed domain name. See *JUUL Labs, Inc. v. Dryx Emerson / KMF Events LTD*, FA1906001849706 (Forum July 17, 2019). The Respondent has made no attempt to do so.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

As to the third element, given the distinctiveness of the Complainant’s NOVARTIS trademark and reputation and the structure of the disputed domain name, <hr-novartis.com>, the Panel infers that the Respondent registered the disputed domain name in bad faith with full knowledge of the Complainant’s trademark, intending to create an association and a likelihood of confusion with the Complainant’s trademark in Internet users’ mind.

Although the disputed domain name does not resolve to an active website, the Panel considers it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant’s rights in its well-known NOVARTIS mark under trademark law. See for instance WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows.

Finally, the fact that MX servers are configured suggests that the disputed domain name may be actively used for email purposes. See CAC Case No. 102827, JCDECAUX SA v. Handi Hariyono (“There is no present use of the disputed domain name but there are several active MX records connected to the disputed domain name. It is concluded that it is inconceivable that the Respondent will be able to make any good faith use of the disputed domain name as part of an e-mail address.”).

Thus, the Panel concludes that the Respondent has registered the disputed domain name and is using it in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **hr-novartis.com**: Transferred

PANELLISTS

| | |
|------|--------------|
| Name | Alan Limbury |
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DATE OF PANEL DECISION 2023-10-27

Publish the Decision