

ADMINISTRATIVE PANEL DECISION

Novartis AG v. Alex MORAUX

Case No. D2023-1355

1. The Parties

The Complainant is Novartis AG, Switzerland, represented by BrandIT GmbH, Switzerland.

The Respondent is Alex MORAUX, France.

2. The Domain Name and Registrar

The disputed domain name <novartispharmaceutiques.com> is registered with Ligne Web Services SARL (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 29, 2023. On March 29, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 30, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent ("unknown") and contact information in the Complaint. The Center sent an email communication to the Complainant on April 5, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on April 10, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

On April 5, 2023, the Center transmitted an email communication to the Parties in French and English regarding the language of the proceeding. On April 5, 2023, the Complainant requested that the language of the proceeding be English. The Respondent did not comment on the language of the proceeding.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceeding commenced on April 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 11, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 15, 2023.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on May 22, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a global pharmaceutical company incorporated in Switzerland and the owner of the well-known trade mark NOVARTIS (the “Trade Mark”).

The Complainant is the owner of registrations in jurisdictions worldwide for the Trade Mark, including International registration No. 663765, registered since July 1, 1996 (designation including France).

A. Respondent

The Respondent is apparently an individual resident in France.

B. The Disputed Domain Name

The disputed domain name was registered on February 13, 2023.

C. Use of the Disputed Domain Name

The disputed domain name has not been used or resolved to an active website. At the time of filing of the Complaint, it was resolved to a French and English language parking page hosted by the Registrar (“the Parking Page”). As at the date of this Decision, it is not resolved to any website.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to the Trade Mark, the Respondent has no rights or legitimate interests in respect of the disputed domain name, and the disputed domain name was registered and is being used in bad faith.

B. Respondent

The Respondent did not reply to the Complainant’s contentions.

6. Discussion and Findings

6.1 Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is French. Pursuant to the Rules, paragraph 11, in the absence of an agreement between the Parties, or unless specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement.

Paragraph 11(a) of the Rules allows the panel to determine the language of the proceeding having regard to all the circumstances. In particular, it is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding, in order to ensure fairness to the Parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name

disputes. Language requirements should not lead to undue burdens being placed on the Parties and undue delay to the proceeding.

The Complainant has requested that the language of the proceeding be English, for reasons including the following:

- (i) the content of the Parking Page appears in French and English;
- (ii) the Complainant is a global company, originally founded in Switzerland, having its website at “novartis.com” displayed in the English language, and it appears that the Respondent is located in France. If the Complainant has to provide a translated version of the Complaint and subsequent communications in French in the present proceeding, such translation would entail significant additional costs for the Complainant and delay in the proceeding; and
- (iii) the English language being commonly used internationally, it would therefore be fair to the Parties that the language of the present proceeding be English.

The Panel would have accepted a response in French, but the Respondent did not file a response and did not file any submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the Registration Agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both Parties, taking into account all relevant circumstances of the case, including matters such as the Parties’ ability to understand and use the proposed language, time and costs.

Although there does not appear to be sufficient evidence before the Panel to support a conclusion that the Respondent is conversant in English, the Panel notes equally that there is no evidence to support the conclusion that the Respondent is not conversant in English, that the Respondent has chosen not to contest this proceeding, and that all of the Center’s communications with the Parties have been sent in English and French.

The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner.

In all the circumstances, the Panel therefore finds it is not foreseeable that the Respondent would be prejudiced, should English be adopted as the language of the proceeding.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2 Substantive Elements of the Policy

The Complainant must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has rights in the Trade Mark acquired through use and registration.

The disputed domain name incorporates the entirety of the Trade Mark (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7) followed by the word “pharmaceutiques” (“pharmaceutical” in French).

Where a relevant trade mark is recognisable within a disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element (see [WIPO Overview 3.0](#), section 1.8).

The Panel therefore finds that the disputed domain name is confusingly similar to the Trade Mark.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to the respondent of the dispute, the respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name even if the respondent has acquired no trade mark or service mark rights; or
- (iii) the respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

The Complainant has not authorised, licensed, or permitted the Respondent to register or use the disputed domain name or to use the Trade Mark. The Panel finds on the record that there is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and the burden is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that the Respondent has acquired any trade mark rights in respect of the disputed domain name or that the disputed domain name has been used in connection with a *bona fide* offering of goods or services. To the contrary, the Respondent's passive holding of the disputed domain name underscores his lack of rights or legitimate interests.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain name.

There has been no evidence adduced to show that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name.

In addition, the Panel notes the nature of the disputed domain name, which carries a risk of implied association (see [WIPO Overview 3.0](#), section 2.5.1).

In all the circumstances, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

In light of the above, and given the notoriety of the Trade Mark in the global pharmaceutical industry, the distinctiveness of the Trade Mark, the confusing similarity between the Trade Mark and the disputed domain name, and the Respondent's failure to respond to the cease and desist letter from the Complainant's representatives or to take any part in this proceeding, the Panel finds that the requisite element of bad faith has been made out for the purposes of the Policy.

Furthermore, in all the circumstances, the Respondent's non-use or passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy (see [WIPO Overview 3.0](#), section 3.3).

The Panel considers the Respondent was aware of the Complainant's Trade Mark at the time he registered the disputed domain name; and that in light of the inherently misleading nature of the disputed domain name, there cannot be any actual or contemplated good faith use of the disputed domain name by the Respondent.

For all the foregoing reasons, the Panel concludes that the disputed domain name has been registered and is being used in bad faith.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <novartispharmaceutiques.com> be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Dated: June 5, 2023