

## ADMINISTRATIVE PANEL DECISION

Novartis AG v. abcd abcd, and 2 2  
Case No. D2023-2512

### 1. The Parties

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

The Respondents are abcd abcd, Hong Kong, China, and 2 2, United States of America (“United States”).

### 2. The Domain Names and Registrar

The disputed domain names <novartisfx.com> and <novartisld.cc> are both registered with Gname.com Pte. Ltd. (the “Registrar”).

### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on June 12, 2023. On the following day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On June 14, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 14, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint.

On June 14, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On June 16, 2023, the Complainant requested that English be the language of the proceeding. The Respondents did not comment on the language of the proceeding.

On June 19, 2023, the Center received two informal emails in English from the Respondent (registrant of the disputed domain name <novartisld.cc>). At the request of the Complainant received on June 23, 2023, the proceeding was suspended on June 27, 2023 until July 27, 2023 to enable the Parties to explore settlement options. At the request of the Complainant, the proceeding was reinstated on July 27, 2023.

The Complainant filed an amended Complaint in English on August 3, 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”).


In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondents in English and Chinese of the Complaint, and the proceedings commenced on August 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 24, 2023. Besides the earlier informal emails, the Respondents did not submit any response. Accordingly, the Center notified the Parties on August 28, 2023 in English and Chinese that it would proceed to panel appointment.

The Center appointed Matthew Kennedy as the sole panelist in this matter on September 13, 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 the holding company of the Novartis Group, a pharmaceutical and healthcare group. It holds trademark registrations in multiple jurisdictions for NOVARTIS, including International trademark registration number 1349878, registered on November 29, 2016, designating multiple jurisdictions, including China and the United States, designating goods and services in classes 9, 10, 41, 42, 44, and 45. That trademark registration remains current. The Complainant has registered the domain name <novartis.com> (registered in 1996) that it uses in connection with a website where it provides information about itself and its products. It has registered multiple other domain names that combine “Novartis” with other words, including <novartispharma.com> (registered in 1999) that redirects to <novartis.com>.

The Respondent “abcd, abcd” is the registrant of the disputed domain name <novartisfx.com> while the Respondent “2 2” is the registrant of the disputed domain name <novartisltd.cc>. The Respondents’ respective names, contact street address and contact telephone numbers in the Registrar’s Whois database are apparently false.

The disputed domain name <novartisltd.cc> was registered on April 6, 2023. At the time when the Complaint was filed, it resolved to a login page in English that prominently displayed a two-toned blue flame logo . The page was titled “Welcome Back” and invited Internet users to input their username and password.

The disputed domain name <novartisfx.com> was registered on April 7, 2023. At the time when the Complaint was filed, it resolved to a website in English for a foreign exchange trading platform operated by a company named “Novartis”. According to the About Us tab, the company was established in 2002, is headquartered in the United Kingdom with branches in three other countries, and is regulated by local financial institutions. The website displayed awards, including 2019 “Best Forex Broker”, “Best Market Research” and “Best Forex Platform”. The website displayed the same two-toned blue flame logo as the login page associated with the disputed domain name <novartisltd.cc> and invited Internet users to input their username and password or open a trading account. Users who clicked on the “login” or “register” buttons were redirected to URLs that contained the disputed domain name <novartisltd.cc> and a sign-in subdomain.

The Complainant sent a cease-and-desist letter via the Registrar on April 17, 2023, and to the contact email address shown on the website associated with the disputed domain name <novartisfx.com> on May 12, 2023. On June 17, 2023, the Complainant received a reply email in English from the Respondent (registrant of the disputed domain name <novartisltd.cc>). “We are about to score and clean up the disputed name, and we will finish it within a week.” On July 30, 2023, the Complainant received an email in Chinese from the same Respondent, the content of which may be translated as “We have suspended the use of the domain name, you can take back the domain name directly, please don’t waste our time endlessly”.

At the time of this Decision, neither disputed domain name resolves to any active website; rather, they are both passively held.

## **5. Parties' Contentions**

### **A. Complainant**

The disputed domain names are each confusingly similar to the Complainant's NOVARTIS mark.

The Respondents have no rights or legitimate interests in respect of the disputed domain names. The Complainant and the Respondents have never had any previous relationship, nor has the Complainant ever granted the Respondents any rights to use the NOVARTIS trademark in any form, including in the disputed domain names. The Complainant has not found that the Respondents are commonly known by the disputed domain names. The Respondents have been using the disputed domain names to divert traffic to unconnected websites and to utilize the reputation of the Complainant's NOVARTIS brand to generate business and redirect to those sites.

The disputed domain names were registered and are being used in bad faith. The Respondents have chosen to incorporate the distinctive well-known trademark NOVARTIS in its entirety in the disputed domain names. It is inconceivable that the Respondents were unaware of the existence of the Complainant when they registered the disputed domain names. The Respondents intentionally created disputed domain names that misleadingly suggest an association with the Complainant. The fact that one disputed domain name resolved to a website for an investment/trading platform called "Novartis" further indicates an intentional effort to deceive users by creating a false impression of affiliation with the Complainant.

### **B. Respondents**

The Respondents did not formally reply to the Complainant's contentions. In informal emails to the Center, the registrant of the disputed domain name <novartisltd.cc> stated: "Inadvertently violating possible rights, the target has cleaned up the website service" and asked "What do I need to do? This domain name is no longer in use. I need to reply to those emails or content to complete this dispute."

## **6. Discussion and Findings**

### **6.1 Procedural Issues**

#### **A. Consolidation: Multiple Respondents**

The amended Complaint initiates disputes in relation to two nominally different domain name registrants regarding two disputed domain names. The Complainant requests consolidation of the disputes pursuant to paragraph 10(e) of the Rules. It alleges that the domain name registrants are under common control of the same person or entity. The disputed domain name registrants did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder. However, the Panel does not consider that paragraph 3(c) was intended to enable a single person or entity to put a complainant to the unnecessary time, expense and effort of initiating multiple proceedings against technically different domain name registrants, particularly when each registration raises the same issues. In addressing the Complainant's request, the Panel will consider: (i) whether the disputed domain names or associated websites are subject to common control; and, if so, (ii) whether the consolidation would be fair and equitable to all Parties. See *Speedo Holdings B.V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons*, WIPO Case No. [D2010-0281](#) and WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2.

As regards common control, the Panel notes that the disputed domain names follow a pattern in their composition (*i.e.*, “novartis + abbreviation + Top-Level Domain (“TLD”)”) and they were registered with the same Registrar on consecutive days. Buttons on the website associated with one disputed domain name redirected to the login page associated with the other disputed domain name and both displayed the same logo. Although the registrants’ respective names and contact details are different, most of them are apparently false. In these circumstances, the Panel is persuaded that both disputed domain names and their associated website and login page are under common control.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes regarding both disputed domain names would be unfair or inequitable to any Party.

Accordingly, the Panel will decide the complaint regarding both disputed domain names registered in the names of “abcd abcd” and “2 2” (separately and collectively referred to below as the “Respondent”).

## **B. Language of the Proceeding**

Paragraph 11(a) of the Rules provides that “unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding”. The Registrar confirmed that the Registration Agreements for the disputed domain names are in Chinese.

The Complainant requests that the language of the proceeding be English. Its main arguments are that the websites formerly associated with the disputed domain names were in English; whereas the Complainant is not familiar with Chinese and translation of the Complaint would entail significant additional costs and delay in the proceeding.

Paragraphs 10(b) and (c) of the Rules require the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties. See, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#); and *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. ltd.*, WIPO Case No. [D2008-0293](#).

The Panel observes that in this proceeding the Complaint and amended Complaint were filed in English. The website and login page formerly associated with the disputed domain names were in English, and the Respondent initially communicated with the Complainant and the Center in English, indicating that it understands that language, even if its latest email was in Chinese. Moreover, despite the Center having sent the notification of the Complaint and an email regarding the language of the proceeding in both Chinese and English, the Respondent has not commented on the issue of language nor expressed any interest in participating in this proceeding beyond its informal emails. Therefore, the Panel considers that requiring the Complainant to translate the Complaint would create an undue burden and delay, whereas accepting it as filed without translation will not cause unfairness to either Party.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English. The Panel would have accepted a Response in Chinese, but none was filed.

## **6.2 Substantive Issues**

Paragraph 4(a) of the Policy provides that a complainant must prove the following elements with respect to each disputed domain name:

- (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.

#### **A. Identical or Confusingly Similar**

Based on the evidence presented, the Panel finds that the Complainant has rights in the NOVARTIS mark.

The disputed domain names wholly incorporate the NOVARTIS mark as their respective initial elements. One adds the letters “fx” (an abbreviation for “foreign exchange”) while the other adds the letters “ltd” (an abbreviation for “limited”). However, neither of these additions prevents a finding of confusing similarity because the NOVARTIS mark remains clearly recognizable within each disputed domain name. See [WIPO Overview 3.0](#), section 1.8; and, more specifically, *Travellers Exchange Corporation Limited v. sdfa, gas fas*, WIPO Case No. [D2023-0919](#); and *KPMG International Cooperative v WhoisGuard Protected, WhoisGuard, Inc. / Vanshita Sharma, Ms*, WIPO Case No. [D2020-2932](#).

The only other element in the disputed domain names is a TLD extension (either “.com” or “.cc”). As a standard requirement of domain name registration, a TLD extension may be disregarded in the comparison between the disputed domain names and the Complainant’s mark. See [WIPO Overview 3.0](#), section 1.11.

Therefore, the Panel finds that the disputed domain names are confusingly similar to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

#### **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the panel, shall demonstrate that the respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (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 trademark or service mark rights; or
- (iii) [the respondent is] making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

As regards the second circumstance set out above, the Respondent is identified in the Registrar’s Whois database as “abcd abcd” and “2 2”, not either of the disputed domain names. Although the website associated with the disputed domain name <novartisfx.com> describes the operator as a foreign exchange trading company named “Novartis”, Google searches provided by the Complainant did not yield any relevant results showing the existence of such a company. There is no evidence that the Respondent has been commonly known by either of the disputed domain names.

As regards the first and third circumstances set out above, the disputed domain names both wholly incorporate the NOVARTIS mark, adding only “fx” or “Ltd” (abbreviations for “foreign exchange” and “Limited”, respectively), thereby creating a risk of implied affiliation with the Complainant. The website associated with the disputed domain name <novartisfx.com> presented a company that does not appear to exist, and displayed login and register buttons that redirected to the login page associated with the disputed domain name <novartisLtd.cc>, which displayed the same logo. Based on this evidence, the Panel is unable to find that the Respondent is using the disputed domain names in connection with a *bona fide* offering of goods or services, nor is it making a legitimate noncommercial or fair use of the disputed domain names.

In summary, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain names. The Respondent failed to rebut that *prima facie* case because it did not formally respond to the Complaint.

Therefore, based on the record of this proceeding, the Panel finds that the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

### **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy provides that certain circumstances, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The fourth circumstance is as follows:

(iv) by using the [disputed] domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent’s] web site or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of [the respondent’s] web site or location or of a product or service on [the respondent’s] web site or location.

The disputed domain names were both registered in 2023, years after the Complainant registered its NOVARTIS trademark. NOVARTIS is a coined term with no other meaning than as a reference to the Complainant and its products. The disputed domain names both wholly incorporate the mark as their respective initial elements. NOVARTIS enjoys a considerable reputation in the pharmaceutical and healthcare sectors due to the Complainant group’s widespread use of that mark. The ostensible reason for the inclusion of that mark in the disputed domain names is that it is the name of the Respondent’s foreign exchange trading company that operates the associated websites but there is no other evidence that such a company exists. The Respondent provides no other explanation for its choice to incorporate the mark in the disputed domain names. Accordingly, the Panel finds it more likely than not that the Respondent was aware of the Complainant and its NOVARTIS mark at the time that it registered the disputed domain names.

The Respondent formerly used the disputed domain names to resolve to a website for an alleged foreign exchange trading company and a related login page that displayed the same logo. The disputed domain names operated by attracting Internet users who recognized the Complainant’s NOVARTIS mark and diverted them to the Respondent’s websites. This use was intentional and for the commercial gain of the Respondent. Accordingly, the Panel finds that by using the disputed domain names the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website and login page, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website and login page or of a product or service on that website or login page, within the terms of paragraph 4(b)(iv) of the Policy.

The Panel notes that the use of both disputed domain names has now changed and that neither resolves any longer to an active website. This recent change in use of the disputed domain names does not alter the Panel’s conclusion; if anything, it may be a further indication of bad faith.

Therefore, the Panel finds that the disputed domain names have been registered and are being used in bad faith. The Complainant has satisfied the third element in paragraph 4(a) of the Policy.

## **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 names <novartisfx.com> and <novartisLtd.cc> be transferred to the Complainant.

*/Matthew Kennedy/*

**Matthew Kennedy**

Sole Panelist

Date: September 27, 2023