

## **ADMINISTRATIVE PANEL DECISION**

Novartis AG v. Catalin Bors

Case No. D2023-4214

### **1. The Parties**

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

The Respondent is Catalin Bors, Republic of Moldova.

### **2. The Domain Name and Registrar**

The disputed domain name <stellar-novartis.com> (the “Disputed Domain Name”) is registered with Registrar of Domain Names REG.RU LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on October 10, 2023. On October 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On October 12, 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 (Protection of Private Person) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 19, 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 October 24, 2023.

On October 19, 2023, the Center informed the parties in Russian and English, that the language of the registration agreement for the Disputed Domain Name is Russian. On October 23, 2023, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

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 Respondent of the Complaint, and the proceedings commenced on October 30, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 19, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 23, 2023.

The Center appointed Mariia Koval as the sole panelist in this matter on December 19, 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's group, created in 1996 through a merger of two other companies Ciba-Geigy and Sandoz, 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. In 2022, the Complainant's group 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 Complainant's products are manufactured and sold in many countries worldwide including in numerous CIS countries, where it enjoys an active presence through its subsidiaries and associated companies, and where it has been playing an active role on the local market and society, including performing significant investments.

The Complainant is the owner of numerous NOVARTIS trademark registrations (the "NOVARTIS Trademark") around the world, among which are:

- International Registration No. 663765, registered on July 1, 1996, in respect of goods and services in classes 1, 2, 3, 4, 5, 7, 8, 9, 10, 14, 16, 17, 20, 22, 28, 29, 30, 31, 32, 40, and 42;
- International Registration No. 666218, registered on October 31, 1996, in respect of services in classes 41, and 42;
- International Registration No. 1349878, registered on November 29, 2016, in respect of goods and services in classes 9, 10, 41, 42, 44, and 45.

The Complainant has built up a considerable online presence and is operating numerous domain names composed of its NOVARTIS Trademark alone, such as <novartis.com> (registered in 1996) or in combination with other terms, such as <novartispharma.com> (registered in 1999). The Complainant also operates pages on various social media platforms, in particular Facebook, Instagram, X, YouTube, and LinkedIn.

The Disputed Domain Name was registered on July 21, 2023. As at the date of this Decision, the Disputed Domain Name resolves to an inactive website. However, according to the evidence presented by the Complainant (Annex 8), the Disputed Domain Name previously redirected to the Complainant's official website at the domain name <novartis.com>.

The Complainant sent a cease and desist letter to the Respondent on August 2, 2023, but no response was received from the Respondent.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name.

Notably, the Complainant asserts that previous UDRP panels have stated that the NOVARTIS Trademark is well known (see e.g., *Novartis AG v. Amartya Sinha, Global Webs Link, Novartis RO*, WIPO Case No. [D2020-3203](#)).

The Complainant claims that the Disputed Domain Name is confusingly similar to the Complainant's NOVARTIS Trademark. The Disputed Domain Name incorporates the Complainant's NOVARTIS Trademark in its entirety preceded by the term "stellar" and a hyphen. The NOVARTIS Trademark is clearly recognizable within the Disputed Domain Name.

The Complainant further contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name in view of the following:

- the Disputed Domain Name was registered many years after the registrations of the Complainant's NOVARTIS Trademark;
- the Complainant and the Respondent have never had any previous relationship, nor has the Complainant ever granted the Respondent with any rights to use the NOVARTIS Trademark in any form, including in the Disputed Domain Name;
- the Complainant has not found that the Respondent is commonly known by the Disputed Domain Name;
- when searching for the Disputed Domain Name terms "stellar-novartis" or "stellar novartis" in the Google search engine, most of the search results pointed to the Complainant and its business activities;
- at the time the Complainant became aware of the Disputed Domain Name, the latter redirected to the official domain name of the Complainant, that cannot be considered as a *bone fide* offering of goods and services;
- at the time of filing the Amended Complaint, the Disputed Domain Name did not resolve to any active page;
- the Respondent deliberately chose to use the well-known NOVARTIS Trademark in the Disputed Domain Name with the intention to benefit from the Complainant's worldwide renown and to confuse Internet users as to the source or sponsorship.

The Complainant further contends that the Respondent registered and is using the Disputed Domain Name in bad faith based on the following. Shortly after the registration of the Disputed Domain Name, the latter started redirecting to the official website of the Complainant that demonstrates that the Respondent was aware of the Complainant at the time the Respondent registered the Disputed Domain Name and was most likely intentionally trying to confuse consumers/Internet users by creating a similarity between the Disputed Domain Name and the Complainant. Moreover, it is evident that the Respondent registered the Disputed Domain Name incorporating the well-known distinctive NOVARTIS Trademark intentionally, in order to take advantage of reputation of the NOVARTIS Trademark and the Complainant's goodwill.

At the time of filing the Amended Complaint, the Disputed Domain Name resolved to an inactive website that means the Disputed Domain Name is passively held. There is no evidence of any actual or contemplated good-faith use of the Disputed Domain Name.

Moreover, the Complainant tried to contact the Respondent through a cease and desist letter on August 2, 2023, with a reminder being sent on September 28, 2023 (Annex 9 of the Complaint), advising the Respondent that the unauthorized use of the Complainant's NOVARTIS Trademark within the Disputed Domain Name violates the Complainant's trademark rights and requested a voluntary transfer of the Disputed Domain Name. The Respondents chose not to reply to the cease and desist letter sent by the Complainant, which infers bad faith.

## **B. Respondent**

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

## 6. Discussion and Findings

Under paragraph 4(a) of the Policy, a complainant to succeed must satisfy the panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights;
- (ii) the respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

### 6.1. Preliminary Issue: Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Russian. Pursuant to the Rules, paragraph 11(a), 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.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the following:

- the Disputed Domain Name incorporates the English term/adjective “stellar”, commonly used as synonym to “high in quality” or “excellent”, “outstanding”. The use of such a term shows that the Respondent intended to target an English-speaking audience, as well that the Respondent possesses good knowledge of the English language and therefore understands and can communicate in the English language;
- the Disputed Domain Name previously redirected to the official domain name of the Complainant, and its website displayed in the English language;
- the Complainant is a Swiss based company having its website displayed in English language. The Complainant is not familiar with the Russian language as to handle the administrative proceedings;
- if the Complainant has to provide a translated version of the Complaint and subsequent communications in Russian in the present proceedings, such translation would entail significant additional costs for the Complainant and delay in the proceedings;
- the English language is commonly used internationally; it would therefore be fair to the Parties that the language of the present proceeding be English.

The Respondent did not make 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 (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 4.5.1).

The Complainant and its representative are Swiss companies. Accordingly, neither the Complainant nor its representative are able to understand and to communicate in Russian. Forcing the Complainant to translate the Complaint and annexes thereto, would result in unfair additional expenses for the Complainant and would delay this UDRP proceeding. The Panel further notes that the Center notified the Parties in Russian and English of the language of the proceeding as well as notified the Respondent in Russian and English of the Complaint. Moreover, the Respondent did not file any suggestions or objections regarding the language of this 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 Issues

### A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the Complainant's NOVARTIS Trademark is reproduced within the Disputed Domain Name with addition of the term "stellar", a hyphen and and the generic Top-Level Domain ".com". Accordingly, the Disputed Domain Name is confusingly similar to the Complainant's NOVARTIS Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other term, here "stellar", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. Furthermore, the use of the hyphen in the Disputed Domain Name is irrelevant in a finding of confusing similarity. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

### B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

There is no evidence that the Complainant has licensed or otherwise permitted the Respondent to use its NOVARTIS Trademark or to register the Disputed Domain Name which is confusingly similar to the NOVARTIS Trademark.

The Panel is of the opinion that the Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name. On the contrary, before filing of the Complaint, the Disputed Domain Name redirected to the Complainant's official website. Such use of the inherently misleading Disputed Domain

Name would not support a claim to rights or legitimate interests. [WIPO Overview 3.0](#), section 2.5.3. Therefore, the Panel cannot consider such use of the Disputed Domain Name as *bona fide* offering of goods or services, or a legitimate noncommercial or fair use.

With respect to the circumstances of this case, the Panel considers that it is obvious that the Respondent registered the Disputed Domain Name with good awareness of the Complainant and with the sole intention of commercial gain by creating a likelihood of confusion with the Complainant's NOVARTIS Trademark.

The fact that the Disputed Domain Name currently resolves to inactive sites is further evidence that the Respondent lacks rights or legitimate interests.

Based on the available record, the Panel finds the second element of the Policy has been established.

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

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel finds that the Respondent has registered and is using the Disputed Domain Name in bad faith in view of the following.

The Disputed Domain Name was registered long after the Complainant registered its NOVARTIS Trademark. The Disputed Domain Name incorporates the Complainant's NOVARTIS Trademark in whole and previously redirected to the Complainant's official website and it is plausible that the Respondent was using or intended to use the Disputed Domain Name to create a phishing campaign aimed at the Complainant's customers or impersonating the Complainant in email communications. Use of the Disputed Domain Name incorporating the NOVARTIS Trademark by an unauthorized third party to redirect Internet users to either the Complainant's or a competitor's website is evidence of bad faith under paragraph 4(b)(iv) of the Policy. According to section 3.1.4 of the [WIPO Overview 3.0](#), prior UDRP panels have moreover found the following types of evidence to support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark: [...] redirecting the domain name to the complainant's (or a competitor's) website [...]. The Respondent's redirecting the Disputed Domain Name to the Complainant's website can establish bad faith insofar as the Respondent retains control over the redirection thus creating a real or implied ongoing threat to the Complainant. See e.g., *Ann Summers Limited v. Domains By Proxy, LLC / Mingchun Chen*, WIPO Case No. [D2018-0625](#).

Moreover, such use of the Disputed Domain Name indicates that the Respondent was well aware of the Complainant's business and NOVARTIS Trademark when it registered the Disputed Domain Name. The Respondent obviously chose to register the Disputed Domain Name, which is confusingly similar to the Complainant's NOVARTIS Trademark, for the purpose of attracting, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's NOVARTIS Trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

At the date of this Decision the Disputed Domain Name resolves to an inactive website.

Panels 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. Although 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, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's NOVARTIS Trademark, and

the composition of the Disputed Domain Name, and finds that in the circumstances of this case the passive holding of the Disputed Domain Name does not prevent a finding of bad faith under the Policy.

Finally, the Respondent neither responded to the Complainant's cease and desist letter nor the Complainant's contentions and did not participate in this proceeding at all. Previous UDRP panels have considered that a respondent's failure to respond to a complaint supports an inference of bad faith, see e.g., *Champagne Louis Roederer (CLR) v. Global Web Development, LLC*, WIPO Case No. [D2004-1073](#).

Based on the available record, the Panel finds that the Complainant has established the third element 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 Name <stellar-novartis.com> be transferred to the Complainant.

*/Mariia Koval/*

**Mariia Koval**

Sole Panelist

Date: January 2, 2024