

ADNDRC

**Asian Domain Name Dispute Resolution Centre -
Kuala Lumpur**
(Kuala Lumpur Office)

**ADMINISTRATIVE PANEL DECISION
SOLE PANELIST :: MR.D.SARAVANAN**

Case No.	KLRC/ ADNDRC – 244 – 2014
Complainant	Novartis
Respondent	Eko Prayetno
Disputed Domain Name	<novartis-venturefund.com>

1. The Parties and Contested Domain Name:

The Complainant is **NOVARTIS**, having address at Novartis Campus, CH-4002 Basel, Switzerland.

The Respondent is **Eko Prayetno**, having address at Perumnas Jabung Permai Block J No.1, Malang, East Java 65155, Indonesia.

The domain name at issue is **<novartis-venturefund.com>** ("Disputed Domain Name") registered by Respondent with GoDaddy.com, LLC.

2. Procedural History:

July 21, 2014 Pursuant to the Internet Corporation For Assigned Names and Numbers (ICANN) Uniform Domain Name Policy ("**the Policy**"), the Rules of Uniform Domain Name Dispute Resolution Policy ("**the Rules**") and the Asian Domain Name Dispute Resolution Centre Supplementary Rules to the ICANN Uniform Domain Name Dispute Resolution Policy and the Rules For the Uniform Domain Name Dispute Resolution Policy ("**the Supplemental Rules**"), the Complainant filed a Complaint in the English language with the Kuala Lumpur Office of the Asian Domain Dispute Resolution Centre

("ADNDRC-KL") and elected to have the case in question be dealt with by a single member panel.

- July 30, 2014 The ADNDRC-KL transmitted by email to the Registrar a request for Registrar verification in connection with the Disputed Domain Name.
- August 02, 2014 The Registrar transmitted by email to the ADNDRC-KL its verification.
- The ADNDRC-KL sent the Complaint Transmittal Coversheet (CTC) to the Respondent along with a copy of the complaint stating that ADNDRC-KL once checked the Complaint to determine that it satisfies the formal requirements of the Policy, ADNDRC-KL will forward an official copy to the Respondent and then the Respondent have 20 calendar days within which to submit a Response to the Complaint.
- August 05, 2014 The ADNDRC-KL sent a Written Notice of Complaint ("the Notice") to the Respondent. Providing 20 days time to the Respondent to submit a Response (i.e. on or before August 25, 2014).
- August 26, 2014 The ADNDRC-KL sent an email to D.SARAVANAN enquiring from him whether he could act as Panelist and if so, whether he could act independently and impartially in the matter in question, a copy of the email was marked to the Complainant and Respondent wherein it was mentioned that ADNDRC-KL did not receive any response or any request for extension of time to respond from the Respondent within the time provided.
- August 26, 2014 D.SARAVANAN made a declaration in writing that he was willing to act and if appointed would act independently and impartially.
- August 27, 2014 The ADNDRC-KL notified the parties that D.SARAVANAN had been appointed as a sole panelist.

3. Factual background:

A. Complainant

The Complainant claims that they are the lawful owner of the Trademark viz., NOVARTIS and that the registration of domain name in reference i.e., <novartis-venturefund.com> by the Respondent is identical/confusingly similar and in bad faith and that the Respondent has no Rights and Legitimate Interests.

B. Respondent

Eko Prayetno is the registrant/ owner of the Disputed Domain Name.

4. Parties' Contentions:

A. Complainant

The Complainant's contentions are summarized as follows:

- (i) The Disputed Domain Name is identical and/or confusingly similar to trade or service marks in which the Complainant has rights. The Complainant states that they have registered numerous trade marks comprising the word "NOVARTIS" to protect its interests viz.,

Sl.No.	Trademark	Country	Registration No.	Class	Coverage
1.	NOVARTIS	Indonesia	IDM000079033	05	Pharmaceutical and veterinary preparations and substances, including preparations for health maintenance, preparations and chemicals for medical and pharmaceutical purposes and for medicines; dietetic substances adapted for medical use, food and drink for babies, children and the disabled; vitamins, preparations for destroying vermin; fungicides, herbicides, pesticides and insecticides.
2.	NOVARTIS	Indonesia	IDM000079029	01	Preparations and chemicals for industry, science, photography, agriculture, horticulture, forestry or to preserve food, resin, especially unprocessed artificial

					resin, unprocessed plastics; fertilizers and adhesives for industry.
3.	NOVARTIS	Indonesia	IDM000079030	09	Optical instruments and equipments, including optical lenses, parts and accessories thereof.
4.	NOVARTIS	Indonesia	IDM000079031	29	Meat, fish, poultry and game; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, edible oils and fats; compotes, fruit sauce, preserved foods and drinks, fruit-based snacks, healthy food, namely food made from natural ingredients or a mixture of products, dairy products, milk and milk products.
5.	NOVARTIS	Indonesia	IDM000079034	30	Flour and preparations made from cereals, bread, pastry and spices, coffee, tea, cocoa, sugar, rice, tapioca, sago, crackers, dry biscuits, cereal based snacks, desserts such as cakes, puddings and creams, healthy foods, namely foods from natural ingredients or a mixture of products, food additives such as aroma enhancer.
6.	NOVARTIS	Indonesia	IDM000079032	31	Animal foods, seeds, malts, agricultural products, horticultural and forestry; whole grains, fruits and fresh vegetables, live plants and natural flowers.
7.	NOVARTIS	Indonesia	IDM000079028	32	Non-alcoholic beverages, fruit juice, preparation for making beverages, beer, soft drinks and mineral water, syrup.

(ii) The Complainant states *inter-alia* that NOVARTIS is the lawful owner of the trademark registrations as mentioned above and that NOVARTIS had also registered the domain name <novartis-venturefund.com>; however, due to internal oversight, the aforesaid domain name was not renewed last year and then the domain has been acquired

by the respondent; according to the records of the Complainant, the respondent does not have any trademark registration or application for <novartis-venturefund.com> or any basically similar trademark in Indonesia; on considering the fact that the respondent does not have any trade mark registration/ application or any interest for the domain name <novartis-venturefund.com>, then it is obvious that the acquirement of domain name has been based on bad faith of the respondent as stipulated in para 4(a)(iii) of the Uniform Domain Name Dispute Resolution Policy; the Complainant further states that it can be assumed that the acquirement of the domain name in reference by the respondent is for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the actual legal owner of the trademarks or to a competitor of Complainant for valuable consideration in excess of the documented out-of-pocket cost directly related to the domain name, as stipulated in para 4(b)(i) of the Domain Name Dispute Resolution Policy.

(iii) The Complainant states that the Disputed Domain Name has been registered and is being used by the Respondent in Bad Faith upon which the Respondent has no Legal and Legitimate Rights.

B. Respondent

The Respondent has not submitted any formal response within the stipulated time frame. Therefore, the Respondent is in default.

5. Discussion and Findings:

A) CONSTITUTION OF ADMINISTRATIVE PANEL:

It has to be asserted as to Whether the Constitution of Administrative Panel was proper? and Whether the Respondent has received the notice of this Administrative proceedings?

Having gone through the procedural history, this Administrative Panel comes to the irresistible conclusion that the Administrative Panel was properly constituted and Respondent has been notified of the complaint of the Complainant. However, the Respondent did not choose to submit any response and that non-submission of the Response by the Respondent had also been notified by ADNDRC - KL to the Respondent on August 26, 2014.

B) Under paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements of its case:

- (i) The Respondent's domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) The Respondent has no rights or legitimate interest in respect of the domain name; and
- (iii) The Respondent's domain name has been registered or is being used in bad faith.

C) Identical/Confusing Similarity:

(i) Paragraph 4(a)(i) of the Policy requires the Complainant to prove that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights. The Complainant has proved by documentary evidences under Annexure `D' that they are the registered owner of trademark i.e., NOVARTIS. That apart, the Complainant themselves had registered the very same domain name "novartis-venturefund.com" during the period between September 21, 2007 and September 21, 2012 registered through the Register DOTSTER as exhibited under Annexure `C'. However, according to the Complainant, they had due to internal oversight failed to renew the same subsequently. At this juncture, the Respondent seem to have registered the disputed domain name in reference on December 10, 2012.

(ii) As noted, the Disputed domain Name "novartis-venturefund.com", composes of "novartis-venturefund" and ".com". "Novartis" is identical to the registered trademark of the Complainant while the "novartis-venturefund" is identical to the Complainant's previously registered domain name. ".com" is a generic code top-level domain name (gTLD) suffix. It is non-distinctive and is incapable of differentiating the Disputed Domain Name from the Complainant's registered trademark.

(iii) Based on the "NOVARTIS" being a registered trademark of the Complainant, the Panel finds that the Disputed Domain Name is identical or confusingly similar to the Complainant's registered trademark.

(iv) Accordingly, the Panel is satisfied that the Complainant has complied with Paragraph 4(a)(i) of the Policy.

D) Respondent's Rights or Legitimate Interests:

(i) The fact that the Complainant's adoption and first use of the registered trademark predates (i.e., since 2006) the Respondent's Disputed Domain Name has the practical effect of shifting the burden of proof to the Respondent in establishing that the Respondent has legitimate rights and/or interests in the Disputed Domain Name.

(ii) As the Respondent is in default and has not filed any Response, in particular, the Respondent has not discharged the burden of proof under Paragraph 4(c) of the Policy. Although, the Complainant is not entitled to relief simply by default of the Respondent to submit a Response, the Arbitral Tribunal can however and does draw evidentiary inferences from the failure of the Respondent to respond. The Complainant has established a *prima facie* case of lack of rights and legitimate interest and the Respondent has failed to rebut the presumption of absence of rights or legitimate interests. Based on the record, the Respondent does not have rights or legitimate interests in the disputed domain name as the Respondent's current use is neither an example of a bona fide offering of goods or services nor is there any legitimate non-commercial or fair use of the disputed domain name and as such there is no evidence that paragraphs 4(c)(i) or 4(c)(iii) of the Policy apply.

(iii) Accordingly, the Panel is satisfied that the Complainant has complied with Paragraph 4(a)(ii) of the Policy.

E) Registration and use in Bad Faith:

I (i) Paragraph 4(b) of the Policy provides that:

"For the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that you have registered or you have 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 your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of a such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competition; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Interest users to you 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 your web site or location or of a product or service on you web site or location".

(ii) On the information before the Panel, the Panel finds that the Respondent registered and used the Disputed Domain Name in bad faith.

II. In reaching this conclusion, the Panel takes into account of a number of facts into consideration:

1. The Respondent has no rights or legitimate interests in the Disputed domain Name, which is in itself evidence of bad faith.
2. The disputed Domain Name does not reflect or correspond to the Respondent's own name.
3. In light of the worldwide fame of the "NOVARTIS" trademark, and the fact that the word "NOVARTIS" has no common meaning in any language independent of the Complainant's "NOVARTIS" trademark, makes it inconceivable that the Respondent was not aware of the Complainant's "NOVARTIS" trademark when it acquired the Disputed Domain Name.
4. It is well established that the Respondent's registration and use of the Disputed Domain Name must involve malafides where the registration and use of it was and continues to be made in the full knowledge of the Complainant's prior rights in the "NOVARTIS" trademark, and in circumstances where the Respondent did not seek

permission from the Complainant, as the owner of the trademark, for such registration and use.

5. The Panel agrees that due to the fact that (i) the Disputed domain Name is identical to the Complainant's "NOVARTIS" trademark; (ii) the Respondent's name does not correspond to the Disputed Domain Name; and (iii) the Respondent must have been aware of the Complainant and its "NOVARTIS" trademark when it registered the Disputed Domain Name, it is lawful to infer that the Disputed Domain Name was registered and is being used to mislead and confuse users into believing that the Disputed Domain Name is associated with the Complainant and its "NOVARTIS" trademark, in order to increase the number of users that access the Disputed Domain Name, for commercial gain (i.e. to incur pay-per-click or related advertising revenue).

6. The Respondent also registered the Disputed Domain Name for the purposes of selling the Disputed Domain Name for profit.

7. Accordingly, the Panel is satisfied that the Complainant has complied with Paragraph 4(a)(iii) of the Policy.

6. Decision

For the foregoing reasons, the Panel is satisfied that the Complainant has sufficiently proved the existence of all three elements pursuant to paragraph 4(a) of the Policy. In accordance with Paragraph 4(a) of the Policy and Paragraph 15 of the Rules, the Panel orders that the Disputed Domain Name <novartis-venturefund.com> be transferred to Complainant.



D.SARAVANAN

Sole Panelist

September 01, 2014