

ADMINISTRATIVE PANEL DECISION

Qustudio Technologies S.L.U. v. Nanci Nette, Name Management Group Case No. D2022-4851

1. The Parties

The Complainant is Qustudio Technologies S.L.U., Spain, represented by Across Legal, Spain.

The Respondent is Nanci Nette, Name Management Group, United States of America (“US”).

2. The Domain Name and Registrar

The disputed domain name <qustudio.com> is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 19, 2022. On December 19, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 20, 2022, 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, Super Privacy Service LTD c/o Dynadot, and contact information in the Complaint. The Center sent an email communication to the Complainant on December 21, 2022 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 December 23, 2022.

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 January 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 23, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 25, 2023.

The Center appointed Fabrizio Bedarida as the sole panelist in this matter on January 30, 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 in this proceeding is Qustodio Technologies S.L.U., a Spanish company. The Complainant has developed the QUSTODIO parental control service (“PCS”), based on a platform, software, and apps published on “www.qustodio.com”, enabling parental controls for monitoring children’s online device use.

The Complainant owns the QUSTODIO trademarks, which enjoy protection through several registrations worldwide.

The Complainant is, *inter alia*, the owner of:

US trademark registration number 4,114,409, for the QUSTODIO (word) trademark, registered on March 20, 2012.

European Union Trade Mark registration number 016117021, for the QUSTODIO (word) trademark registered on May 5, 2017.

Australian trademark registration number 1557549, for the QUSTODIO (word) trademark, registered on May 3, 2021.

United Kingdom trademark registration number UK00916117021, for the QUSTODIO (word) trademark, registered on May 5, 2017.

The Complainant is also the owner of domain names composed of the QUSTODIO trademark, such as <qustodio.com> (registered on September 24, 2010), <qustodio.net>, <qustodio.org>, <qustodio.es>, <qustodio.app> and <custodio.com>.

The disputed domain name was registered on September 7, 2018.

The disputed domain name resolves to a page where sponsored links (including to QUSTODIO parental control service and other parental control software) are displayed.

The Complainant’s trademark predates the registration of the disputed domain name.

5. Parties’ Contentions

A. Complainant

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

The Complainant *inter alia* specifically claims that the Respondent is using the disputed domain name at issue to mislead web users looking for QUSTODIO’s parental control services by redirecting them to services provided by competitors, or to different websites.

B. Respondent

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

6. Discussion and Findings

In order for the Complainant to obtain the transfer of the disputed domain name, paragraphs 4(a)(i)-(iii) of the Policy require that the Complainant must demonstrate to the Panel that:

- (i) the disputed 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 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

The Complainant has established rights in the QUSTODIO trademarks.

The only differences between the QUSTODIO trademark and the disputed domain name is the substitution of the middle vowel “o” for the vowel “u”.

The generic Top Level Domain (“gTLD”) suffix is generally disregarded under the test for confusing similarity for the purposes of the Policy, and the substitution of the letter “o” with the letter “u” in the Complainant’s trademark does not prevent a finding of confusing similarity under the first element of the UDRP.

In this sense, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.9: “A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element.”

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

This Panel finds that the Complainant has made a *prima facie* case that the Respondent does not have rights or legitimate interests in the disputed domain name. The Respondent has no connection or affiliation with the Complainant and the Complainant has not licensed or otherwise authorized the Respondent to use or register any domain name incorporating the Complainant’s trademark. The Respondent does not appear to engage in any legitimate noncommercial or fair use of the disputed domain name, nor any use in connection with a *bona fide* offering of goods or services. In addition, the Respondent does not appear to be commonly known by the disputed domain name or by a similar name. The Respondent has not formally replied to the Complainant’s contentions, claiming any rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel, based on the evidence presented, accepts and agrees with the Complainant’s contentions that the disputed domain name was registered and is being used in bad faith.

The Panel is of the opinion that the Respondent was probably aware of the Complainant’s trademark registrations and rights to the QUSTODIO mark when it registered the disputed domain name. In fact, the Complainant’s QUSTODIO trademark has been registered and used for several years prior to the registration of the disputed domain name and is a renowned trademark especially in the sector of parental control services. Hence, the registration of the disputed domain name and its use does not seem to be a coincidence, and thus indicates that the Respondent knew of the Complainant’s mark and intentionally

intended to create an association with the Complainant and its business at the time of the registration of the disputed domain name. The typosquatting nature of the disputed domain name further supports this inference.

In addition, it is at the least very unlikely that the Respondent, which on its website displays links to parental control services, including the QUSTODIO parental service, was not aware of the existence of the Complainant's trademarks when registering the disputed domain name, which is confusingly similar to the Complainant's trademark.

Therefore, it is more likely than not that the Respondent, when registering the disputed domain name, had knowledge of the Complainant's earlier rights to the Complainant's QUSTODIO trademarks.

Inference of bad faith can also be found in the failure to respond to the Complainant's contentions, and the Respondent's lack of any rights or legitimate interests in the disputed domain name.

Consequently, this Panel finds that the Respondent's use of the disputed domain name, to resolve to a page where links to goods/services competing with those of the Complainant's are promoted, amounts to bad faith use.

Accordingly, the Panel finds, based on the evidence presented, that the Respondent registered and is using the disputed domain name in bad faith. Therefore, the Complainant has satisfied paragraph 4(a)(iii) 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 <qustudio.com> be transferred to the Complainant.

/Fabrizio Bedarida/

Fabrizio Bedarida

Sole Panelist

Date: February 13, 2023