

## **ADMINISTRATIVE PANEL DECISION**

Kudelski S.A. v. duanbingbing  
Case No. D2023-0331

### **1. The Parties**

The Complainant is Kudelski S.A., Switzerland, represented by K&L Gates, LLP, United States of America.

The Respondent is duanbingbing, Hong Kong, China.

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

The disputed domain name <nagradish.com> is registered with Net-Chinese Co., Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 24, 2023. On January 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 30, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

On January 30, 2023, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant confirmed its request that English be the language of the proceeding on January 31, 2023. The Respondent did not comment on the language of the proceeding.

The Center verified that the 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 in English and Chinese of the Complaint, and the proceedings commenced on February 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 26, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 27, 2023.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on March 7, 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 headquartered in Switzerland and provides, through Nagravision Sàrl, the digital TV division of the Complainant, security and multiscreen user experience solutions for the monetization of digital media under the NAGRA trademarks. The Complainant states that it is known as one of the leading providers of secure, open and integrated platforms and applications over broadcast, broadband and mobile platforms.

The Complainant provides evidence that it owns an international portfolio of trademark registrations for NAGRA, including, but not limited to, United States of America trademark registration number 779882 for the word mark NAGRA, registered on November 10, 1964, and Chinese trademark registration number 270056 for the word mark NAGRA, registered on November 30, 1986. The Panel notes that the Complainant also has an extensive online presence and that it hosts its main website under the domain name <nagra.com>, registered on August 13, 1996.

The disputed domain name was registered on September 17, 2022, and is therefore of a later date than the abovementioned trademarks of the Complainant. The Panel notes that the disputed domain name is linked to an active webpage containing gambling and pornographic content and links.

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

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

The Complainant contends that the disputed domain name is confusingly similar to its trademark for NAGRA, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name was registered, and is being used in bad faith to divert Internet users to the Respondent's webpage containing pornographic material.

The Complainant essentially contends that the disputed domain name is confusingly similar to the Complainant's trademarks as it incorporates the Complainant's NAGRA trademark in its entirety, with the only differing element being the addition of the term "dish" to the disputed domain name. The Complainant also provides evidence that the disputed domain name is linked to an active webpage containing pornographic content and gambling links, which, the Complainant argues, confers no rights or legitimate interests in the disputed domain name on the Respondent, and which means that the Respondent is tarnishing the Complainant's trademarks and gaining a commercial benefit through such use of the Complainant's trademarks. The Complainant also argues that the Respondent had or can be expected to have had prior notice of the Complainant's trademarks at the time the disputed domain name was registered, since the Complainant registered its trademarks for NAGRA up to 60 years prior to the registration of the disputed domain name. The Complainant contends that the use made of the disputed domain name by the Respondent does not confer any rights or legitimate interests in respect of the disputed domain name, and that it constitutes registration and use in bad faith of the disputed domain name.

The Complainant requests the transfer of the disputed domain name.

##### **B. Respondent**

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

## 6. Discussion and Findings

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

Pursuant to paragraph 11(a) of the Rules, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

According to the Registrar's verification response, the language of the Registration Agreement for the disputed domain name is Chinese. Nevertheless, the Complainant filed its Complaint in English, and requests that English be the language of the proceeding. The Panel notes that the Respondent did not comment on the language of the proceeding and did not submit any arguments on the merits of this proceeding.

The Panel has carefully considered all elements of this case, in particular, the Complainant's request that the language of the proceeding be English; the fact that the Respondent did not comment on the language of the proceeding and did not submit arguments on the merits (the Panel notes that the Respondent had the opportunity, and was duly invited by the Center in English and Chinese, to provide a Response in either English or Chinese, but chose not to do so); the fact that the disputed domain name itself is in Latin characters and contains an English term (namely "dish"); and, finally, the fact that Chinese as the language of the proceeding could lead to unwarranted costs for the Complainant and delays for the proceeding. In view of all these elements, the Panel grants the Complainant's request and decides that the language of the proceeding shall be English.

### 6.2. Discussion and Findings on the Merits

The Policy requires the Complainant to prove three elements:

- (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.

Based on the evidence and arguments submitted, the Panel's findings are as follows:

#### A. Identical or Confusingly Similar

The Panel finds that the Complainant has shown that it has valid rights in the mark NAGRA, based on its use and registration of the same as a trademark in multiple jurisdictions.

Moreover, as to whether the disputed domain name is identical or confusingly similar to the Complainant's trademark, in the Panel's view, the disputed domain name consists of two parts, namely the Complainant's registered trademark for NAGRA, followed by the dictionary term "dish" (which, the Panel notes, is a term which could be related to the Complainant's services (*i.e.*, the provision of media via satellite dishes). The Panel refers to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7, which states: "where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing." The Panel concludes that, in this case, the disputed domain name incorporates the Complainant's trademark NAGRA in its entirety, which remains clearly recognizable in the disputed domain name. The Panel also considers that the generic Top-Level Domain ("gTLD"), which is ".com" in this case, is viewed as a standard registration requirement, and may as such be disregarded by the Panel (see, [WIPO Overview 3.0](#), section 1.11.1).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's registered trademark for NAGRA, and concludes that the Complainant has satisfied the requirements of the first element under the Policy.

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

On the basis of the evidence and arguments submitted, the Panel finds that the Complainant makes out a *prima facie* case that the Respondent is not, and has never been, an authorized reseller, service provider, licensee or distributor of the Complainant, is not a *bona fide* provider of goods or services under the disputed domain name and is not making legitimate noncommercial or fair use of the disputed domain name. The Panel also notes that the Respondent is not commonly known by the disputed domain name. As such, the Panel finds that the burden of production regarding this element shifts to the Respondent (see [WIPO Overview 3.0](#), section 2.1). However, no evidence or arguments have been submitted by the Respondent in reply.

Moreover, upon review of the facts and evidence, the Panel notes that the disputed domain name directs to an active webpage containing gambling and pornographic content and links. In the Panel's view, no rights or legitimate interests derive from using a third party trademark to divert Internet users for commercial gain to a pornographic and gambling website, see in this regard also several prior UDRP decisions such as *Barnes Europe Consulting Kft., and Heidi Barnes-Watson v. jianhua Wang*, WIPO Case No. [D2022-3059](#); *Seintec Norte, S.L. v. yu Liu, wangluochuanmei*, WIPO Case No. [D2021-1815](#); *Andrey Ternovskiy dba Chatroulette v. Protection of Private Person / Aleksandr Katkov*, WIPO Case No. [D2017-0381](#); and *Averitt Express, Inc. v. Protection of Private Person / Roman Emec*, WIPO Case No. [D2018-0249](#).

On the basis of the foregoing, the Panel considers that none of the circumstances of rights or legitimate interests envisaged by paragraph 4(c) of the Policy apply, and that the Complainant has satisfied the requirements of the second element under the Policy.

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

Given the distinctiveness of the Complainant's trademarks for NAGRA and their intensive and longstanding prior use and registration, which predate the registration date of the disputed domain name by several decades, the Panel considers that the Respondent has intentionally and opportunistically targeted the Complainant's trademark for NAGRA. The Panel deducts from these efforts to consciously target the Complainant's prior registered trademarks that the Respondent knew, or at least should have known, of the existence of the Complainant's trademarks at the time of registering the disputed domain name. The Panel also notes that even a cursory Internet search at the time of registration of the disputed domain name would have made it clear to the Respondent that the Complainant owned prior rights in its trademarks for NAGRA. In the Panel's view, these elements clearly indicate bad faith on the part of the Respondent, and the Panel therefore finds that it has been demonstrated that the Respondent registered the disputed domain name in bad faith.

As to use of the disputed domain name in bad faith, the website linked to the disputed domain name currently displays gambling and pornographic content and links, which shows that the Respondent is abusing the Complainant's trademark to mislead and divert Internet users for commercial gain to such website, and thereby also tarnishes the Complainant's marks (see in this regard also previous UDRP decisions such as *Barnes Europe Consulting Kft., and Heidi Barnes-Watson v. jianhua Wang*, WIPO Case No. [D2022-3059](#), *Seintec Norte, S.L. v. yu Liu, wangluochuanmei*, WIPO Case No. [D2021-1815](#), and *Averitt Express, Inc. v. Protection of Private Person / Roman Emec*, WIPO Case No. [D2018-0249](#)). On the basis of the foregoing elements, the Panel finds that the Respondent is using the disputed domain name in bad faith.

Finally, the Respondent has failed to provide any response or evidence to establish his good faith or absence of bad faith. The Panel therefore rules that the Complainant has satisfied the requirements of the third element under 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 <nagradish.com> be transferred to the Complainant.

*/Deanna Wong Wai Man/*

**Deanna Wong Wai Man**

Sole Panelist

Date: March 10, 2023