

ADMINISTRATIVE PANEL DECISION

Telefónica, S.A. v. Nanci Nette, Name Management Group
Case No. D2023-2350

1. The Parties

The Complainant is Telefónica S.A., Spain, represented by Acens Technologies, S.L., Spain.

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

2. The Domain Name and Registrar

The disputed domain name <movistarplus.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 May 31, 2023. On May 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 31, 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 (REDCATED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 2, 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 June 2, 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 Respondent of the Complaint, and the proceedings commenced on June 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 26, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 27, 2023.

The Center appointed Daniel Peña as the sole panelist in this matter on June 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 is a provider of connectivity that is delivered over class fixed, mobile, broadband networks, and TV broadcast.

The Complainant is the owner of several trademark, among others:

- Spanish Trademark No. 3569960 and 3569891 – MOVISTAR PLUS registered on January 13, 2016, for telecommunication services.
- Spanish Trademark No. 3569890 M MOVISTAR + (LOGO), registered on January 13, 2016, for telecommunication services.
- European Union Trademark No. 4265088 MOVISTAR registered on September 28, 2006, for telecommunications services
- European Union Trademark No. 5069059 MOVISTAR registered on June 5, 2010, for all 45 Int. Classes
- Spanish Trademark No. 1710122(0) – MOVISTAR registered on November 2, 1993, for telecommunication services.
- Spanish Trademark No. 2634073 MOVISTAR registered on June 2, 2005, for telecommunication services
- United States Trademark No. 5911666 registered on November 19, 2019.

The disputed domain name was registered on February 23, 2020. At the time of filing the Complaint and drafting of this decision, the disputed domain name resolved to a pay-per-click site.

5. Parties' Contentions

A. Complainant

The Complainant is a company founded in 1924 and one of the largest telecommunications companies in the world by market capitalization and number of customers.

The Complainant runs operations in 12 countries and has presence in 38 countries, split into two geographic regions: Europe and Latin America.

The Complainant has 343 million customers, including 272 million mobile customers, nearly 11 million fiber and cable customers, and more than 8 million pay TV customers.

The Complainant employs 103,638 employees.

The Complainant is a 100% listed company with more than 1.2 million shareholders, traded in several of the most important stock markets around the world.

The Complainant has been using the term "movistar" as a trademark continuously for almost 30 years. Considering the trademarks here cited, we can date such use back to mid 1990's.

The disputed domain name is identical and thus evidently confusingly similar to the MOVISTAR and MOVISTAR PLUS trademarks owned by the Complainant.

The Respondent is not authorized nor endorsed by the Complainant.

The Respondent cannot prove any rights or legitimate interest over the term “movistar”.

The disputed domain name displays a parking page precisely offering Internet and TV Services.

The Respondent is not a distributor, reseller or client of the Complainant.

The domain name happens to be registered under a privacy service.

The Complainant claims that the applicant behind the controverted domain name is apparently an individual Jane Dew.

A simple search of this name reveals that it is associated with at least eight UDRP procedures regarding some well-known trademarks such as INSTAGRAM.

There is a clear pattern followed by the Respondent of fraudulent activity involving domain names and taking unfair advantage of third party's trademarks.

In its amended Complaint, the Complainant further noted that the disclosed Respondent, “Nanci Nette, Name Management Group” is similarly well-acquainted with the UDRP process, being considered a professional domainer against whom multiple decisions have found bad faith registration and use.

The Complainant argues that the disputed domain name was registered and is being used in bad faith

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel's decision be made “on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”. It has been a consensus view in previous UDRP decisions that a Respondent's default (*i.e.*, failure to submit a response) would not by itself mean that the Complainant is deemed to have prevailed; a Respondent's default is not necessarily an admission that the Complainant's claims are true (See section 4.3 of the WIPO page 3 Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). A Complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely 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

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant has provided evidence of its rights in the trademark MOVISTAR on the basis of its multiple trademark registrations in several countries. A trademark registration provides a clear indication that the rights in the trademark belong to the Complainant (see [WIPO Overview 3.0](#), section 1.2.1). It has also been established by prior UDRP panels that incorporating a trademark in its entirety into a domain name can be sufficient to establish that the domain name is confusingly similar to a trademark. Such findings were confirmed, for example, within section 1.7 of [WIPO Overview 3.0](#).

The Panel finds that the disputed domain name is confusingly similar to the Complainant's MOVISTAR mark. The Respondent's incorporation of the Complainant's mark in full in the disputed domain name is sufficient to establish that the disputed domain name is confusingly similar to the Complainant's marks. The addition of the term "plus" to the Complainant's trademark MOVISTAR does not prevent a finding of confusing similarity with the Complainant's mark. Furthermore, the addition of the Top-Level Domain ("TLD") "shop" does not prevent a finding of confusing similarity either.

The Panel is satisfied that the disputed domain name is confusingly similar to the Complainant's mark and the Complainant has satisfied the requirement of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant bears the burden of proof in establishing this requirement. In view of the difficulties inherent in proving a negative and because the relevant information is mainly in the possession of the Respondent, it is enough for the Complainant to establish a *prima facie* case which, if not rebutted by sufficient evidence from the Respondent, will lead to this ground being set forth.

Refraining from submitting any Response, the Respondent has brought to the Panel's attention no circumstances from which the Panel could infer that the Respondent has rights to or legitimate interests in the disputed domain name.

The Panel will now examine the Complainant's arguments regarding the absence of rights or legitimate interests of the Respondent in connection with the disputed domain name. The Complainant claims that the Respondent has no connection or affiliation with the Complainant and has not received any license or consent, express or implied, to use the Complainant's trademarks in a domain name or in any other manner. Furthermore, the disputed domain name directs to a parking website with pay-per-click links advertising services similar to those rendered by the Complainant.

The Panel also finds that the nature of the disputed domain name carries a risk of implied affiliation with the Complainant's trademarks (see [WIPO Overview 3.0](#), section 2.5.1).

The Respondent did not submit a Response or attempt to demonstrate any rights or legitimate interests in the disputed domain name, and the Panel draws adverse inferences from this failure, where appropriate, in accordance with the Rules, paragraph 14(b).

The Panel finds the Respondent has no rights or legitimate interests in respect of the disputed domain name and that paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy stipulates that any of the following circumstances, *inter alia*, shall be considered as evidence of the registration and use of a domain name in bad faith: (i) circumstances indicating that the respondent registered or 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 the respondent's documented out-of-pocket costs directly related to the domain name; or (ii) circumstances indicating that the respondent 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 the respondent has engaged in a pattern of such conduct; or (iii) circumstances indicating that the respondent registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to

the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

With regard to the bad faith at the time of registration, the Panel notes that "movistar" is a renowned trademark in and to which the Complainant has demonstrated has rights. The disputed domain name reproduces, without any authorization or approval, the Complainant's registered trademarks, and this is the only distinctive component of the disputed domain name. Moreover, the disputed domain name is inherently misleading as it reproduces the Complainant's MOVISTAR trademark together with the expression "plus", which corresponds to a condition or quality of a service. In addition, owing to the substantial presence established worldwide, it is at the least very unlikely that the Respondent was not aware of the existence of the Complainant's trademarks when registering a domain name that entirely reproduces the Complainant's trademark together with a descriptive expression related to the provision of services. Lastly, given that the website to which the disputed domain name resolves features pay-per-click relating to, and redirecting to, services identical to and in competition with the Complainant, the Respondent intentionally registered and use the disputed domain name with the intent to target the goodwill and reputation association with 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 MOVISTAR trademark. The Panel believes its finding is reinforced given that the Respondent has registered in the past several domain names that reproduce or imitate other third party trademarks and has been found to have acted in bad faith. See, for example, *Andrey Ternovskiy dba Chatroulette v. Registration Private, Domains By Proxy, LLC / Nanci Nette, Name Management Group*, WIPO Case No. [D2018-2508](#); *LinkedIn Corporation v. Nanci Nette*, WIPO Case No. [D2023-2290](#).

The bad faith registration and use of the disputed domain name is also affirmed by the fact that the Respondent has not denied, or even responded to, the assertions of bad faith made by the Complainant in this proceeding.

The Panel also finds that the Respondent's registration through a privacy shield and its deliberate attempt to conceal its true identity is evidence of its bad faith use and registration. *Groupe Auchan v. Parapharmacie Marche, Xavier Marche*, WIPO Case No. [D2014-0925](#); see also *Trednet, Direct Distribution International Ltd ("DDI") v. WhoisGuard name cheap / BODYPOWER*, WIPO Case No. [D2012-2001](#) (use of a privacy shield... once connected with additional elements... clearly points towards a registration and use in bad faith).

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, <movistarplus.com>, be transferred to the Complainant.

/Daniel Peña/

Daniel Peña

Sole Panelist

Date: July 14, 2023