

ADMINISTRATIVE PANEL DECISION

Nordic Group B.V., Nordic Drugs AB v. Victor Lustig, TGG
Case No. D2023-4260

1. The Parties

The Complainant is Nordic Group B.V., Netherlands (Kingdom of the), Nordic Drugs AB, Sweden, represented by Hogan Lovells (Paris) LLP, France.

The Respondent is Victor Lustig, TGG, Bahamas.

2. The Domain Name and Registrar

The disputed domain name <nordic-drugs.com> ('the Domain Name') is registered with Internet Domain Service BS Corp (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on October 12, 2023. On October 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On October 23, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Domain Admin, Whois Privacy Corp.) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 24, 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 27, 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 October 31, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 20, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 22, 2023.

The Center appointed Dawn Osborne as the sole panelist in this matter on December 1, 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

Nordic Group BV and Nordic Drugs AB (defined together as the Complainant above) are both owned by parent company Sever Life Sciences BV, are both part of the same international group of pharmaceutical companies and have both traded as Nordic Drugs since 1995.

Nordic Drugs AB is the owner of European Union trade mark no 7364532 and United Kingdom trade mark no 907364532 for NORDIC DRUGS (figurative mark) both registered on May 20, 2009 for, *inter alia*, pharmaceuticals. It owns the domain name <nordicdrugs.com>.

Nordic Drugs BV is the owner of a number of NORDIC marks including International registration no 785395 for the NORDIC word mark registered on June 26, 2002 for, *inter alia*, pharmaceuticals.

The Domain Name was registered on October 6, 2022, and has been used for a website which reproduced the Complainant's web site and appropriated material from the Complainant's web site including trade marks, logos, the green and white colour scheme, images, graphics, text, layouts and videos. The spoof web site also displayed addresses that correspond to the official addresses of the Complainant. The website did not explain that it had no connection with the Complainant. The Domain Name does not currently point to an active site.

False address details appear to have been given on the Whois database for the Domain Name.

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 Domain Name.

Notably, the Complainant contends that:

The Complainant's figurative NORDIC DRUGS trade mark comprises a green rectangle as well as the words NORDIC DRUGS. The words NORDIC DRUGS are a principal and dominant feature of the Complainant's NORDIC DRUGS marks notwithstanding the green rectangle.

The Domain Name incorporates the textual elements of the Complainant's NORDIC DRUGS mark in its entirety, adding a hyphen which does not prevent a finding of confusing similarity. The Domain Name also contains the Complainant's NORDIC trade mark and the addition of the hyphen and the dictionary word "drugs" in that instance also does not prevent a finding of confusing similarity.

The generic Top-Level Domain ("gTLD") ".com" is a standard registration requirement and, as such, is typically disregarded under the first element confusing similarity test.

The Respondent does not have any rights or legitimate interests in the Domain Name, is not commonly known by it and is not authorised by the Complainant.

The Domain Names have been pointed to a site purporting to offering pharmaceutical services using the Complainant's NORDIC DRUGS word mark and its logo mimicking an official site of the Complainant (although it currently does not point to an active site) causing confusion and implying affiliation with the Complainant. Illegal activity such as impersonation is not a *bona fide* offering of goods or services. It is registration and use in bad faith causing confusion amongst Internet users in actual knowledge of the Complainant's rights. The use of false address details for the Whois database also indicates bad faith.

B. Respondent

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

6. Discussion and Findings

Multiple Complainants

Following other cases where multiple complainants have been permitted to bring cases in respect of the same domain name Nordic Group BV and Nordic Drugs AB have argued that they hold a common grievance against the Respondent, and that it would be equitable and procedurally efficient in the circumstances to permit the Complaint to be brought jointly by them as multiple complainants. The Panel agrees noting that both companies own trade mark rights in the dominant element of the Domain Name NORDIC and are both part of the same corporate group. The Complaint is in respect of a single domain name that gives both of these companies cause for complaint. Further the Respondent has had an opportunity to comment regarding the request for these companies to bring the Complaint jointly and has not objected to the same. The Panel holds that Nordic Group BV and Nordic Drugs AB may bring this Complaint jointly against the Respondent in respect of the Domain Name and this Complaint may proceed with multiple complainants as the Complainant requests. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 4.11.1.

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 trade mark and the 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 trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the Complainant's marks are recognizable in the Domain Name. Accordingly, the Domain Name is confusingly similar to the Complainant's marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

In respect of the Complainant's NORDIC DRUGS figurative trade mark registration the green rectangle in the registration does not prevent the Domain Name being confusingly similar to it, because, the NORDIC DRUGS mark is a principal element of the mark and is still recognizable in the Domain Name without the green rectangle which cannot be reproduced in the Domain Name. [WIPO Overview 3.0](#), section 1.10

The addition of a hyphen in the Domain Name does not prevent the Domain Name being confusingly similar to the Complainant's marks, as punctuation is commonly disregarded under the confusing similarity comparison test. [WIPO Overview 3.0](#), section 1.9.

Although the addition of other terms "drugs" may bear on assessment of the second and third elements, the Panel finds the addition of such term which is an ordinary dictionary word does not prevent a finding of confusing similarity between the Domain Name and the Complainant's NORDIC trade mark registration for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The gTLD “.com” is a functional element of a domain name and does not prevent confusing similarity between the Complainant’s marks and the Domain Name being typically disregarded for the purposes of the confusing similarity test. [WIPO Overview 3.0](#), section 1.11.

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 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 Domain Name such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity such as the impersonation in this case can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel also notes that the Domain Name differed by only one keystroke, a hyphen, from the Complainant’s url “nordicdrugs.com” which may create a likelihood of confusion with the Complainant’s domain name, and it is also an indication of a lack of 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 notes that the Respondent has purported to offer pharmaceuticals impersonating the Complainant, using material from the Complainant’s web site without permission including images, graphics, videos, text, layouts, a green and white colour scheme and the Complainant’s marks, logos and official addresses. The Panel finds that the Respondent’s conduct falls under paragraph 4 (b)(iii) disrupting the business of a competitor; and paragraph 4 (b)(iv) intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant’s mark.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have held that the use of a domain name for illegal activity, as applicable to this case, namely impersonation, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the Domain Name constitutes bad faith under the Policy.

Further the Panel notes that the Domain Name differs from the Complainant's url "nordicdrugs.com" by only one keystroke, a hyphen, which has commonly been held by UDRP panels to be an indication of bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Finally the Respondent appears to have used false contact details for the WhoIs database details relating to the Domain Name which has also commonly been held by panels to be an indication of bad faith.

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 Domain Name <nordic-drugs.com> be transferred to the Complainant.

/Dawn Osborne

Dawn Osborne

Sole Panelist

Date: December 8, 2023