

## **ADMINISTRATIVE PANEL DECISION**

Société des Produits Nestlé S.A. v. Susan Bekker  
Case No. D2023-1328

### **1. The Parties**

Complainant is Société des Produits Nestlé S.A., Switzerland, represented by Studio Barbero, Italy.

Respondent is Susan Bekker, South Africa.

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

The disputed domain name <nestle-uk.com> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 28, 2023. On March 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 28, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on March 31, 2023 providing the registrant and contact information disclosed by the Registrar and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on April 3, 2023.

The Center verified that the Complaint together with the amendment to 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 Respondent of the Complaint, and the proceedings commenced on April 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 2, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on May 3, 2023.

The Center appointed Jeffrey D. Steinhardt as sole panelist in this matter on May 26, 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 Nestlé Group sells products and services worldwide, primarily in the food industry. The trademark NESTLÉ is well known in many countries.

Complainant owns hundreds of trademarks worldwide including, for example:

United Kingdom Trademark Registration No. 00000294777 of July 22, 1907, in classes 29 and 30; United Kingdom Trademark Registration No. 0000625183 of September 10, 1943, in class 10; United Kingdom Trademark Registration No. 00000959461 of May 12, 1970, in class 16; and European Union Trademark Registration No. 002977569 registered on May 25, 2004 in classes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45.

The disputed domain name was registered on February 15, 2023 and presently resolves to a webpage stating that the account has been suspended.

## **5. Parties' Contentions**

### **A. Complainant**

Complainant avers that it is part of the Nestlé company founded in 1866 by Henri Nestlé and that Complainant markets its products in over 190 countries. Complainant avers that Nestlé Group has about 328,000 employees in more than 80 countries, with over 400 production centers worldwide.

Complainant notes that DNS records were configured to enable the disputed domain name to be used to send and receive email communications.

Complainant avers that it is being impersonated by Respondent through use of the disputed domain name. Complainant provides exhibits showing the use of the disputed domain name in the return address in email and tender specifications to third parties seeking their proposals to supply the specified equipment. The content of the email shows that the invitation to submit proposals is being sent by the procurement department of Complainant's affiliated company, Nestlé UK Limited, allegedly as part of a fraudulent scheme. Complainant avers that the individual signer of the email is unconnected with Complainant and its group of companies.

When Complainant became aware of the registration of the disputed domain name, Complainant avers, the disputed domain name resolved to an error page, although the webpage displayed the email address "[...]@nestle-uk.com" to contact the website administrator. Complainant alleges that it filed an abuse report with the Registrar, after which the website was suspended. Complainant avers that it also sent a cease and desist letter to Respondent via the privacy registration service, and that Respondent did not reply.

Summarizing its legal contentions, Complainant alleges that (1) the disputed domain name is confusingly similar to Complainant's trademarks, (2) Respondent has no rights or legitimate interests in the disputed domain name, and (3) the disputed domain name was registered and is being used in bad faith, all in violation of the Policy. On this basis, Complainant seeks transfer of the disputed domain name.

### **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

The Rules require the Panel to decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

Rules, paragraph 15(a). Complainant must establish each element of paragraph 4(a) of the Policy, namely:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) 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.

Complainant must establish these elements even if Respondent does not submit a response. See, e.g., *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#); [WIPO Overview 3.0](#), section 4.3. In the absence of a Response, the Panel may also accept as true the reasonable factual allegations in the Complaint. See, e.g., *ThyssenKrupp USA, Inc. v. Richard Giardini*, WIPO Case No. [D2001-1425](#) (citing *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#)).

#### **A. Identical or Confusingly Similar**

The Panel agrees with Complainant's allegation that the disputed domain name is confusingly similar to Complainant's NESTLÉ marks.

UDRP panels commonly disregard Top-Level Domains ("TLDs") in determining whether a disputed domain name is identical or similar to a complainant's marks. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.11.1. Omitting the ".com" TLD from the disputed domain name, the Panel notes that Complainant's entire NESTLÉ mark is included in the disputed domain name, deleting only the accent mark and adding only a hyphen and the letters "uk," the common abbreviation for "United Kingdom".

The Panel concurs with Complainant that Respondent's deletion from the disputed domain name of the accent over the letter "E" in NESTLE is immaterial for purposes of evaluating confusing similarity. E.g., *Société des Produits Nestlé S.A. v. Sonia de Ferrero*, WIPO Case No. [D2016-1300](#) (<nestlenegocios.com>).

The Panel finds that these deletions and additions to Complainant's mark do not prevent a finding of confusing similarity. See, e.g., [WIPO Overview 3.0](#), section 1.7 (where a domain name incorporates the entirety of a trademark, the domain name will normally be considered by UDRP panels to be confusingly similar); [WIPO Overview 3.0](#), section 1.8 ("Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.").

The Panel therefore concludes that the first element of paragraph 4(a) of the Policy is satisfied.

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

The Panel also concludes that Respondent has no rights or legitimate interests in the disputed domain name.

The Policy contains a non-exhaustive list of circumstances that may demonstrate when a respondent has rights or legitimate interests in a domain name. The list includes: (1) using the domain name in connection with a *bona fide* offering of goods and services; (2) being commonly known by the domain name; or (3) making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers. Policy, paragraphs 4(c)(i) – (iii).

A complainant must show a *prima facie* case that a respondent lacks rights or legitimate interests in a disputed domain name, after which the burden of production passes to the respondent. See, e.g., [WIPO Overview 3.0](#), section 2.1. The absence of rights or legitimate interests is established if a complainant makes out a *prima facie* case and the respondent enters no Response. See *id.*

The Panel accepts the Complainant's undisputed allegations that Respondent has no relevant trademark rights and has no authorization or license to use Complainant's trademarks in the disputed domain name. The Panel also accepts the Complainant's averment that Respondent is not commonly known by the disputed domain name.

The Complainant presents credible evidence that the disputed domain name has been used for phishing, fraud and impersonation. Respondent has refrained from opposing Complainant's evidence and the Panel finds that the disputed domain name has been used for such illegal activities.

UDRP Panels have categorically held that the use of a domain name for illegal activity can never confer rights or legitimate interests in a respondent. [WIPO Overview 3.0](#), section 2.13. In light of the evidence and allegations of the Complaint, the Panel holds that Respondent is not making a legitimate or fair use of the disputed domain name and that the Complainant establishes a *prima facie* case. Respondent has not opposed or rebutted that *prima facie* case.

The Panel holds, therefore, that Respondent has no rights or legitimate interests in the disputed domain name and that the second element of Policy paragraph 4(a) is established.

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

The Panel finds that the third element of paragraph 4(a) of the Policy, bad faith registration and bad faith use, is also established, as elaborated below.

Respondent's choice of a domain name, completely incorporating Complainant's widely known and long-established NESTLÉ mark, makes clear that Respondent knew of Complainant and targeted Complainant's trademarks and business.

This renders beyond dispute that Respondent sought to exploit Complainant's mark through registration of the confusingly similar disputed domain name, and the Panel so finds. The Panel holds therefore that Respondent registered the disputed domain name in bad faith. *E.g.*, [WIPO Overview 3.0](#), section 3.2.1.

The Panel further finds that the following circumstances evidence Respondent's use in bad faith: (1) Respondent's DNS configuration of the disputed domain name for use with email; (2) Respondent's impersonation of Complainant's affiliated company and the use of an email address incorporating the disputed domain name to actually send misleading and deceptive emails to third parties falsely seeking equipment supply proposals; (3) Respondent's failure to reply both to Complainant's cease and desist letter and to the Complaint in this proceeding; and (4) Respondent's provision of false or incomplete contact details in violation of Respondent's agreement with the Registrar. [WIPO Overview 3.0](#), sections 3.4 & 3.2.1.

Accordingly, the Panel holds that paragraph 4(a)(iii) of the Policy is satisfied.

### **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 <nestle-uk.com> be transferred to Complainant.

/Jeffrey D. Steinhardt/

**Jeffrey D. Steinhardt**

Sole Panelist

Date: June 9, 2023