

## **ADMINISTRATIVE PANEL DECISION**

### **National Real Estate Investors Association v. Oleg Donets Case No. D2023-4079**

#### **1. The Parties**

The Complainant is National Real Estate Investors Association, United States of America (“United States”), represented by Wood, Herron & Evans, LLP, United States.

The Respondent is Oleg Donets, United States.

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

The disputed domain name <nreia.org> is registered with NameSilo, LLC (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 28, 2023. On September 29, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 29, 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 (REDACTED FOR PRIVACY / See PrivacyGuardian.org) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 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 amended Complaints on October 3, 2023, and October 4, 2023.

The Center verified that the Complaint together with the amended Complaints 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 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 30, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Parties of the Respondent’s default on November 13, 2023.

The Center appointed Ingrīda Kariņa-Bērziņa as the sole panelist in this matter on November 15, 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 corporation organized under the laws of Texas. It is the proprietor of numerous trademark registrations, including the following:

- United States Trademark Registration No. 6058380 for REIA (word mark), registered on May 19, 2020 for services in classes 35 and 41, claiming a date of first use of November 30, 2005;
- United States Trademark Registration No. 4428679 for NATIONAL REIA (device mark), registered on November 5, 2013 for services in classes 35 and 41, claiming of date of first use of November 30, 2005;
- United States Trademark Registration No. 4,789,774 for NATIONAL REIA U (word mark), registered on August 11, 2015 for services in classes 41 and 42, claiming a date of first use of July 5, 2010.

The Complainant operates its primary website at the domain name <nationalreia.org>, on which a heading identifies it as the National Real Estate Investors Association “Promoting, Protecting, and Educating Investors since 1985.”<sup>1</sup>

The disputed domain name was registered on July 12, 2019. At the time of this Complaint, it resolved to a website featuring a NREIA logo and stating it is operated by the National Real Estate Investors Association. The website offers some information for such investors and displays logos of various business publications that apparently endorse it. The main text on the “About” page states: “Welcome to National Real Estate Investors Association (NREIA). Learn how NREIA can help you grow your real estate investing business!” Internet users are invited to sign up to receive a newsletter by entering their e-mail addresses. There is no contact information on the website and the “Disclaimers” button does not open any page. A number of the sub-pages on the site are inactive.

There is no further information available about the Respondent.

#### **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 disputed domain name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to the registered trademarks in which the Complainant has rights, and identical to NREIA, a mark in which the Complainant holds common-law rights. The website to which the disputed domain name resolves states that it is operated by the “National Real Estate Investors Association”, but the Respondent has no connection to the Complainant.

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<sup>1</sup> Noting in particular the general powers of a panel articulated inter alia in paragraphs 10 and 12 of the UDRP Rules, it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.8

## B. Respondent

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

## 6. Discussion and Findings

Paragraph 4(a) of the UDRP requires the Complainant to make out all three of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the Respondent has registered and is using the disputed domain name in bad faith.

Under paragraph 15(a) of the Rules, “[a] Panel shall decide a complaint 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”.

### 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 trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“WIPO Overview 3.0”](#)), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Namely, the Complainant has registered rights in the REIA and NATIONAL REIA marks. As the record does not reflect relevant evidence in support of the Complainant's assertion of common-law rights in the NREIA mark, the Panel makes no decision in respect of such rights. See [WIPO Overview 3.0](#), section 1.3.

The Panel finds the REIA mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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.

While 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 often impossible 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. 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 record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed 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 disputed domain name such as those enumerated in the Policy or otherwise.

The Panel notes that the evidence indicates that the disputed domain name resolves to a website operated by an entity calling itself the National Real Estate Investors Association, which is identical to the name of the Complainant's organization. The website appears to offer similar services to those offered by the Complainant and the Panel finds that it appears more likely than not that the Respondent was thereby attempting to confuse Internet users. Panels have held that the use of a domain name for illegal activity, including impersonation, can never confer rights or legitimate interests on a respondent.

[WIPO Overview 3.0](#), section 2.13.1.

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 registered a domain name that is nearly identical to the Complainant's registered REIA mark and confusingly similar to the Complainant's NATIONAL REIA mark. The Complainant's use of its REIA and NATIONAL REIA marks predate the registration of the disputed domain name, which resolves to a website stating that it is operated by an entity with the same name as the Complainant. Therefore, the Panel finds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) 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 disputed domain name constitutes bad faith under the Policy.

While the Panel notes that the disputed domain name consists of five letters, of which only four are identical to the Complainant's registered REIA mark, it is evident that the Respondent meant to target the Complainant, despite the additional "n" that could be seen as reference to the NATIONAL element of the Complainant's trademark, considering both the content at the disputed domain name that reflected the Complainant's organization name and the registration of the disputed domain name in the ".org" TLD that mirrors that of the Complainant's genuine domain name <nationalreia.org>. Moreover, the Respondent has failed to provide any information that would support a finding of independent rights in the disputed domain name, and the circumstances prevent the inference that such rights exist. The evidence in the record indicates that the Respondent registered the disputed domain name for the purpose of targeting the Complainant by establishing a website that purports to be operated by an organization with the same name. The solicitation of e-mail addresses on the Respondent's website further supports a finding of bad faith.

Based on the available record, the Panel finds the third element of the Policy has been established.

## 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, <nreia.org>, be transferred to the Complainant.

*/Ingrīda Kariņa-Bērziņa/*

**Ingrīda Kariņa-Bērziņa**

Sole Panelist

Date: November 29, 2023