

ADMINISTRATIVE PANEL DECISION

Nevada Gold Mines LLC v. Julien Moreau
Case No. D2023-4109

1. The Parties

Complainant is Nevada Gold Mines LLC, United States of America (“United States”), represented by Dorsey & Whitney, LLP, United States.

Respondent is Julien Moreau, United States.

2. The Domain Name and Registrar

The disputed domain name <nevedagoldmines.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 October 2, 2023. On October 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 3, 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 and contact information in the Complaint. The Center sent an email communication to Complainant on October 4, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on October 4, 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 Respondent of the Complaint, and the proceedings commenced on October 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 25, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on October 26, 2023.

The Center appointed Scott R. Austin as the sole panelist in this matter on October 31, 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 following facts appear from the Complaint (as amended) and its annexes, which have not been contested by Respondent.

Formed in 2019 as a joint venture between private mining company and majority owner Barrick Gold Corporation and public mining company Newmont Corporation, Complainant's business is to combine and develop the venture partners' significant gold mining assets across northern Nevada to create what it asserts is "the single largest gold producing complex in the world". Complainant's assets include ten underground mines and 12 surface mines. Barrick Gold Corporation, one of the largest gold mining operations in the world also serves as the exclusive operator of Complainant's assets providing its gold mining operations services under the service mark NEVADA GOLD MINES (the "NEVADA GOLD MINES Mark").

In support of claims of widespread recognition of Complainant's NEVADA GOLD MINES Mark in its industry and the United States, Complainant has submitted evidence of recognition and awards in its industry and other recognition on the Internet and social media. Complainant's LinkedIn page promotes Complainant's services with a variety of content involving the NEVADA GOLD MINES Mark, including promotional videos, photos, mining-related news, and investment information and has over 31,000 followers. Complainant's Facebook page, with similar promotional content, has over 26,000 followers.

Complainant also shows it uses its NEVADA GOLD MINES Mark as its trade name and incorporates the NEVADA GOLD MINES Mark into its official domain name <nevadagoldmines.com>, used to access Complainant's official NEVADA GOLD MINES website ("Official Website") to promote and offer its mining operations and render its services to its customers under the NEVADA GOLD MINES Mark.

Complainant holds a number of trademark registrations incorporating the NEVADA GOLD MINES Mark for its gold mining services, including the following:

United States Registration No. 6,036,251, NEVADA GOLD MINES words plus design, registered on April 21, 2020, for a range of mining extraction and construction related services in International Class 37, claiming a first use date of July 1, 2019, and for a range of design, engineering, prospecting, and advisory services in International Class 42, claiming a first use date of July 1, 2019;

United States Registration No. 6,036,252, NEVADA GOLD MINES words plus design (claiming color as a feature), registered on April 21, 2020, for a range of mining extraction and construction related services in International Class 37, claiming a first use date of July 1, 2019, and for a range of design, engineering, prospecting, and advisory services in International Class 42, claiming a first use date of July 1, 2019; and

United States Registration No. 5,986,571, NEVADA GOLD MINES, registered on the Supplemental Register on February 11, 2020, for a range of mining extraction and construction related services in International Class 37, claiming a first use date of July 1, 2019, and for a range of design, engineering, prospecting, and advisory services in International Class 42, claiming a first use date of July 1, 2019.

The Whois record shows the disputed domain name was registered on July 5, 2023. Complainant shows that as of September 13, 2023, the disputed domain name resolved to "a blank landing page without any goods or services offered and includes the language '2023 Copyright. All Rights Reserved.'" The record submitted also shows reference to a parking page service provided by the Registrar. Complainant also shows that Respondent used the disputed domain name for email correspondence to impersonate one of Complainant's employees as part of a fraudulent phishing scheme to attempt to induce improper payments from a vendor.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name: that the disputed domain name is confusingly similar to Complainant's trademark; that 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.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

The onus is on Complainant to make out its case and it is apparent from the terms of the Policy that Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are administrative, the standard of proof under the Policy is often expressed as the "balance of the probabilities" or "preponderance of the evidence" standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.2.

Thus, for Complainant to succeed it must prove within the meaning of paragraph 4(a) of the Policy and on the balance of probabilities that:

1. The disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
2. Respondent has no rights or legitimate interests in respect of the disputed domain name; and
3. The disputed domain name has been registered and is being used in bad faith.

The Panel finds that Complainant has met its burden in all three elements of the Policy and will deal with each of these elements in more detail below.

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 Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel ultimately finds 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. Complainant claims trademark rights in the NEVADA GOLD MINES Mark for its mining extraction and construction services in its registrations for the NEVADA GOLD MINES Mark dating back to 2019, as listed above. The panel notes, however, that of the trademark registrations submitted above in support of Complainant's trademark rights on the principal register, both are words plus design marks in which the textual component of each mark, "nevada gold mines" is disclaimed in its entirety. Additionally, while Complainant also furnished evidence of its United States Registration No. 6,603,943, NEVADA GOLD MINES HERITAGE

FUND words, registered on December 28, 2021, the trademark is also subject to a disclaimer, albeit limited to disclaiming the terms “Nevada” and “Fund”.

A consensus of prior UDRP panel decisions provides that while trademark registrations with design elements or disclaimed terms typically would not affect panel assessment of standing or identity/confusing similarity under the UDRP (but may be relevant to panel assessment of the second and third elements), where the similar elements of a disputed domain name to a Complainant’s mark are made up exclusively of disclaimed terms, trademark rights under the Policy may not be found unless the complainant can show sufficient secondary meaning in the disclaimed terms. See [WIPO Overview 3.0](#), section 1.2.3. Section 1.2.3 is to be read subject to section 1.10 of the Overview.

[WIPO Overview 3.0](#), section 1.10 provides:

Panel assessment of identity or confusing similarity involves comparing the (alpha-numeric) domain name and the textual components of the relevant mark. To the extent that design (or figurative/stylized) elements would be incapable of representation in domain names, these elements are largely disregarded for purposes of assessing identity or confusing similarity under the first element. However, where the trademark registration entirely disclaims the textual elements (i.e., the scope of protection afforded to the mark is effectively limited to its stylized elements), panels may find that the complainant’s trademark registration is insufficient by itself to support standing under the UDRP.

To establish unregistered or common law rights as a trademark in the NEVADA GOLD MINES Mark, Complainant must show it acquired secondary meaning, i.e., that the public associates the asserted Mark with Complainant’s goods and services. See *CPP, Inc. v. Nokta Internet Technologies*, WIPO Case No. [D2008-0591](#).

After careful review of the record, the evidence submitted shows extensive advertising and media recognition, and widespread use around the world by Complainant, its majority owner and operator Berick Gold and its affiliates of the NEVADA GOLD MINES Mark, online through its trade name, social media and its Official Website accessed through its official domain name <nevadagoldmines.com>. The Panel finds this evidence sufficient support for the mark to have acquired secondary meaning and to accept Complainant’s contention that Complainant has developed sufficient goodwill and name recognition amongst a large base of commercial and consumer industries across the United States to establish common law trademark rights in the NEVADA GOLD MINES Mark for the purposes of the Policy.

In addition, although more appropriate for consideration under the second or third element of the Policy, the fact that a respondent is shown to have targeted Complainant’s mark for its fraudulent email phishing scheme supports Complainant’s assertion that its mark has achieved significance as a source identifier. Based on the available record, the Panel finds Complainant has established unregistered trademark or service mark rights for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3. See *Barrick Gold North America v. Sulei*, WIPO Case No. [D2020-2758](#); see also *Roper Industries, Inc. v. VistaPrint Technologies Ltd.*, WIPO Case No. [D2014-1828](#).

With Complainant’s rights in the NEVADA GOLD MINES Mark established, the remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant’s NEVADA GOLD MINES Mark. A side-by-side comparison between the disputed domain name and Complainant’s Mark shows the disputed domain name differs from Complainant’s NEVADA GOLD MINES Mark by only one character. The substitution of the letter “e” for the second letter “a” (immediately after the “v”) in Complainant’s trademark does not prevent confusing similarity. Moreover, Complainant contends this substitution is an intentional misspelling of Complainant’s Mark.

Complainant contends that the disputed domain name must be considered confusingly similar to Complainant’s Mark because the substituted “e” for the second “a” in NEVADA reconfiguration noted above is a purposeful misspelling of Complainant’s NEVADA GOLD MINES Mark, yet Complainant’s Mark remains recognizable within the disputed domain name. Prior panels have held that a deliberate misspelling of a

trademark registered as a domain name, which is intended to confuse Internet users, must be confusingly similar by design. See [WIPO Overview 3.0](#), section 1.9; see also In *Bureau Veritas v. Wolfgang Robert* WIPO Case No. D2021-23; *Allstate Insurance Company v. Rakshita Mercantile Private Limited*, WIPO Case No. [D2011-0280](#).

Based on the above, this Panel finds that the substitution of the letter “e” after the “v” in Complainant’s registered NEVADA GOLD MINES Mark does not prevent a finding of confusing similarity between the disputed domain name and Complainant’s NEVADA GOLD MINES Mark which remains recognizable within the disputed domain name. Accordingly, the disputed domain name is identical or 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 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 Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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.

First, Complainant asserts that Respondent is not sponsored by or affiliated with Complainant in any way, nor is Respondent licensed, or otherwise authorized, be it directly or indirectly, to register or use, the NEVADA GOLD MINES Marks in any manner whatsoever, including in, or as part of, a domain name.

Most importantly, Complainant contends, and its evidence shows that although the disputed domain name does not resolve to an active website, Respondent’s fraudulent activities undermine any claim of rights and legitimate interests. Respondent configured the disputed domain name as part of a fraudulent scheme to create the false impression that emails sent under the disputed domain name were sent by Complainant and thereby unlawfully extract money from unsuspecting third parties believing Respondent to be Complainant. Prior UDRP panels have held that impersonating a complainant by using a disputed domain name as part of an email address in furtherance of a fraudulent scheme constitutes *prima facie* evidence of a lack of rights or legitimate interests. See [WIPO Overview 3.0](#), section 2.13.

Essentially it is a well-established principal according to a consensus of UDRP Panels 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) such as the fraudulent email scheme found here, 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

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.

In the present case, Complainant contends Respondent has registered and used the disputed domain name in bad faith in the manner prohibited under the Policy because Respondent "takes unfair advantage of or otherwise abuses a complainant's mark." Specifically, Complainant supports its contention with evidence of an email address currently being used by Respondent as part of a phishing scheme to deceive Complainant's vendors.

Prior UDRP panels have found a domain name was registered in bad faith where the respondent registered the domain name for the purpose of intentionally attempting to impersonate or mislead in order to commit fraud. See *Marlink SA v. Sam Hen, Elegant Team*, WIPO Case No. [D2019-1215](#); *A-dec, Inc. v. Walton Sales*, WIPO Case No. [D2020-3533](#).

Moreover, the typosquatting nature of the disputed domain name is inherently misleading and reflects Respondent's intent to confuse unsuspecting Internet users into believing that any email sent from the disputed domain name is from Complainant. Thus, there is no possible justification for Respondent's selection of the disputed domain name other than bad faith.

Complainant shows in evidence in the Annexes to its Complaint that Respondent used the disputed domain name as a platform for email addresses configured to impersonate one of Complainant's employees and attempt to fraudulently induce improper payments from one of Complainant's vendors; an illegal scheme which under the well-established principles in the cases cited above constitutes evidence of bad faith. See *Tetra Laval Holdings & Finance S.A. v. Redacted*, WIPO Case No. [D2021-0753](#); see also *Beam Suntory Inc. v. Name Redacted*, WIPO Case No. [D2018-2861](#); *Ropes & Gray LLP v. Domain Administrator, c/o DomainsByProxy.com / Account Receivable*, WIPO Case No. [D2020-0294](#).

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 Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

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 <nevedagoldmines.com> be transferred to Complainant.

/Scott R. Austin/

Scott R. Austin

Sole Panelist

Date: December 10, 2023