

ADMINISTRATIVE PANEL DECISION

Société des Produits Nestlé S.A. v. Harsha Vardhan Mandarapu
Case No. D2023-4340

1. The Parties

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

The Respondent is Harsha Vardhan Mandarapu, United Kingdom (“UK”).

2. The Domain Name and Registrar

The disputed domain name <nestle-jobs.com> is registered with Eranet International Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 19, 2023. On October 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 24, 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) 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 amendment to the Complaint on October 25, 2023.

The Center verified that the Complaint together with the amendment 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 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 16, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 17, 2023.

The Center appointed Taras Kyslyy as the sole panelist in this matter on November 21, 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 part of the Nestlé Group founded in 1866 by Henri Nestlé. The Complainant is wholly owned by Nestlé S.A. The Complainant is the registered owner of the majority of the trademarks of the Nestlé Group. Today Nestlé Group sells products and services all over the world in various industries, primarily in the food industry, including baby foods, breakfast cereals, chocolate & confectionery, coffee & beverages, bottled water, dairy products, ice cream, prepared foods, food services as well as pet food. Nestlé Group markets its products worldwide in over 190 countries, including in the UK, where the Complainant's affiliated company Nestlé UK Ltd is headquartered. Nestlé Group has about 275,000 employees worldwide and it is present in over 80 countries with more than 400 production centers worldwide. The Complainant is one of the world's largest food consumer products companies in terms of sales. The sales metrics of the Nestlé Group were CHF 84.3 billion worldwide in 2020 and CHF 94.4 billion in 2022. According to Fortune Magazine's annual ranking of the world's 500 largest companies, the "Fortune Global 500", the Complainant was the 106th biggest company in the world in 2022. According to Interbrand's annual Best Global Brands ranking for 2022, the Complainant's trademark was valued USD 10,921 million and was ranked as the 67th most valuable trademark in the world. The Complainant's trademark has been included in said Interbrand's list since 2002.

The Complainant is the owner of over 2,250 national and international trademark registrations worldwide for NESTLÉ (or variations thereof), including for instance international trademark registration. No. 479337 registered on August 12, 1983.

In order to further support the protection of its trademark on the Internet, the Complainant registered the domain names incorporating the term "nestle" in numerous generic Top-Level Domains ("gTLDs") and country code Top-Level Domains ("ccTLDs"), including the domain names <nestle.com>, registered on October 25, 1994, and <nestlejobs.com>, registered on June 5, 2001. Nestlé Group operates the website "www.nestle.com" as its primary web portal for global promotion.

The disputed domain name was registered on April 1, 2023 and previously redirected to a static page indicating that "CyberPanel Installed You have successfully installed CyberPanel, please remove this page and upload your website." At the time of filing of the Complaint and this decision, the disputed domain name did not resolve to any inactive website. The disputed domain name has active mail exchanger ("MX") records in its Domain Name System ("DNS") configuration.

The Complainant sent the cease and desist letter and several reminders to the Respondent through the Registrar, however no response was received.

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 Complainant's trademark. The disputed domain name incorporates the whole of the Complainant's trademark. The fact that the disputed domain name differs from the Complainant's trademark by the addition of the non-distinctive element "jobs" and a hyphen between "nestle" and "jobs" does not affect the confusing similarity.

While the combination of “nestle” with “jobs” is not a distinguishing feature, it is to the contrary an attempt to increase confusion with the Complainant’s trademark, also considering the Complainant operates a job portal at “www.nestlejobs.com”. As to the addition of a hyphen and the omission of the accent from the last letter of the trademark NESTLÉ in the disputed domain name, it is insufficient to reduce the identity or confusing similarity. The TLD “.com” is merely instrumental to the use of the Internet so the disputed domain name remains confusingly similar despite its inclusion.

Also, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not a licensee, authorized agent of the Complainant or in any way authorized to use the Complainant’s trademark. The Complainant is not in possession of, nor aware of, the existence of any evidence demonstrating that the Respondent might be commonly known by a name corresponding to the disputed domain name as an individual, business, or other organization. The Respondent has not provided the Complainant with any evidence of use of, or demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services before or after any notice of the present dispute. Moreover, there is no evidence that the Respondent might have used the disputed domain name in connection with a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant’s trademark. The disputed domain name, incorporating the Complainant’s trademark and the term “jobs”, carries a high risk of implied affiliation with the Complainant, also considering that the Complainant operates its job platform at the almost identical domain name <nestlejobs.com>. The Respondent did not reply to the cease and desist letter sent by the Complainant.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. Since the Complainant’s trademark is well known and has been used extensively since 1866, including in the United Kingdom where the Respondent is based, it is inconceivable that the Respondent was unaware of the existence of the Complainant’s registered trademark and its worldwide reputation at the time of registration of the disputed domain name. The misappropriation of a well-known trademark as domain name by itself constitutes bad faith registration for the purposes of the Policy. The circumstance that the disputed domain name is almost identical to the Complainant’s domain name <nestlejobs.com>, from which it only differs for a hyphen between “nestle” and “jobs”, clearly shows that the Respondent was indeed well aware of the Complainant, its trademarks and official websites – including Nestlé’s official job portal at “www.nestlejobs.com” – and deliberately registered the disputed domain name with the intention to create an association with the Complainant that does not exist. The current passive holding of the disputed domain name constitutes bad faith use. In addition, the Respondent did not reply to the cease-and-desist letter sent by the Complainant. Moreover, the Respondent has set up MX records for the disputed domain name, meaning that currently it might be being used for, or in the future may be used for email communications. In view of the confusingly similarity of the disputed domain name with the Complainant’s trademark, it is submitted that also the configuration of the disputed domain name for use in connection with email communication amounts to bad faith use.

B. Respondent

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

6. Discussion and Findings

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.

The Panel finds the entirety of the mark is virtually reproduced within the disputed domain name (save for the accent on the last letter of the mark). Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, “jobs” preceded by a hyphen, may bear on assessment of the second and third elements, the Panel finds the addition of such term and hyphen does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The applicable gTLD in a domain name (e.g., “.com”, “.club”, “.nyc”) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1. Thus, the Panel disregards the gTLD “.com” for the purposes of the confusing similarity test.

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 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 available evidence does not confirm that the Respondent is commonly known by the disputed domain name, which could demonstrate its rights or legitimate interests (see, e.g., *World Natural Bodybuilding Federation, Inc. v. Daniel Jones, TheDotCafe*, WIPO Case No. [D2008-0642](#)).

The Complainant did not license or otherwise agree for use of its prior registered trademarks by the Respondent in the disputed domain name. The disputed domain name currently resolves to an inactive website, thus it is not being used for a *bona fide* offering of goods or services or a legitimate noncommercial or fair use.

Noting the risk of implied affiliation between the disputed domain name and the Complainant, the Panel finds that there is no plausible fair use to which the disputed domain name could be put that would not have the effect of being somehow connected to the Complainant (see, e.g., *Instagram, LLC v. Super Privacy Service LTD c/o Dynadot / Zayed*, WIPO Case No. [D2019-2897](#)).

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 it is convinced that the Complainant's trademark is well established through long and widespread use and the Complainant has acquired a significant reputation and level of goodwill in its trademark both in Switzerland and internationally. The mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4. Thus, the Panel finds that the disputed domain name, which is confusingly similar to the Complainant's trademark and is also almost identical to the Complainant's domain name <nestlejobs.com>, was registered in bad faith.

The disputed domain name previously resolved to a website without any substantive content, and currently resolves to an inactive website. Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panels will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's trademark, and the composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

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 disputed domain name <nestle-jobs.com> be transferred to the Complainant.

/Taras Kyslyy/

Taras Kyslyy

Sole Panelist

Date: December 1, 2023