

ADMINISTRATIVE PANEL DECISION

Groupe Nocibe v. Sergio da rocha moraes
Case No. D2024-0525

1. The Parties

The Complainant is Groupe Nocibe, France, represented by Selarl Deprez Guignot et Associés, France.

The Respondent is Sergio da rocha moraes, Brazil.

2. The Domain Name and Registrar

The disputed domain name <parfumsnocibe.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 5, 2024. On February 5, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 5, 2024, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 7, 2024, 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 February 7, 2024.

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 February 8, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 28, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 29, 2024.

The Center appointed Benoit Van Asbroeck as the sole panelist in this matter on March 6, 2024. 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 French perfume and cosmetics retailer founded in 1984. The Complainant owns trademarks in the mark NOCIBE, amongst which:

French Trademark No. 96643502 for NOCIBE, registered on March 14, 1997 in International Classes 3, 5, 8, 14, 18, 21, 25, and 44; and

International Trademark No. 682885 for NOCIBE, registered on October 24, 1997 in International Classes 3 and 42.

The Complainant also owns a domain name incorporating the mark NOCIBE, <nocibe.fr>. This domain name is used for its official website through which it sells all major brands distributed by the Complainant.

The disputed domain name was registered on January 16, 2024, well after the Complainant secured rights in the mark NOCIBE. According to evidence submitted by the Complainant, the disputed domain name resolves to a website that is a look-a-like of the Complainant's official website, using the Complainant's logo and a similar website design, and which offers similar cosmetics and perfumery products but for much lower prices.

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 claims that it has rights in the mark NOCIBE and that the disputed domain name is confusingly similar to this mark. They point out that the disputed domain name incorporates the NOCIBE mark in its entirety and argue that the disputed domain name differs from the Complainant's trademark by the mere addition of the addition of the descriptive term "parfums", French for "perfumes", which does not affect the confusing similarity.

Furthermore, the Complainant claims that the Respondent lacks a right or legitimate interest in the disputed domain name. The Complainant contends that the Respondent does not have any rights, including trademark rights, to the terms "nocibe" and/or "parfumsnocibe" anywhere in the world. Furthermore, the Complainant asserts that there is no bona fide offering of goods or service nor legitimate noncommercial or fair use of the domain name within the meaning of the Policy. In that regard, the Complainant points to the use of the disputed domain name for a website imitating the Complainant's official website and offering similar cosmetics and perfumery products as the Complainant for significantly lower prices, which gives the impression that this website belongs to or is linked to the Complainant. Moreover, the Complainant asserts, the disputed domain name comprises the entirety of the NOCIBE trademark and therefore carries a risk of implied affiliation.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. The Complainant points to the look-a-like website that the disputed domain name resolves to and claims that it is clear that the Respondent intended to capitalize on that confusion between the disputed domain name and the NOCIBE trademarks and aimed to mislead Internet users into believing there is a form of association between the Respondent and the Complainant when there is none. Furthermore, the

Complainant asserts that the look-a-like website constitutes an act of fraud or attempted fraud since the products sold by the Complainant use selective distribution channels and the Respondent would therefore be unable to source and sell these products. The Complainant therefore believes that it is likely that customers ordering from the Respondent's look-a-like website will never receive the product they have ordered. Moreover, the Respondent notes that the Respondent's use of a privacy services is additional evidence of bad faith.

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.

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 entirety of the mark is reproduced 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.

Although the addition of other terms, here "parfums", may bear on assessment of the second and third elements, the Panel finds the addition of such term 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.

Finally, as for the applicable generic Top-Level Domain ("gTLD"), i.e., the suffix ".com", the Panel holds that this can be disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1.

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 Panel finds that the Respondent does not use the disputed domain name in connection with a bona fide offering of services and has not made a legitimate noncommercial or fair use of the disputed domain name. The Complainant has shown that the disputed domain name resolves to a look-a-like website using, without the Complainant's permission, the Complainant's website's design, branding as well as the Complainant's logo. The images of the disputed domain name provided by the Complainant do not contain a disclaimer on the website to clarify the lack of relationship with the Complainant. The submitted evidence also demonstrates that the look-a-like website offers similar cosmetics and perfumery products as those sold by the Complainant on its official website but for much lower prices. Moreover, the Panel believes that it is likely that the cosmetics and perfume products on offer by the Complainant are indeed only sold through selective distribution channels; this is commonly the case for products of this nature. Accordingly, since the Respondent will unlikely be able to source and therefore sell the products they offer on the look-a-like website, and in the absence of any evidence to the contrary, the Panel agrees with the Complainant that their likely intention is indeed to defraud the Complainant's customers. This kind of use of the disputed domain name does not represent a bona fide offering and does not support rights or legitimate interests in the disputed domain name. Moreover, Panels have held that the use of a domain name for illegal activity, here attempts to impersonate the Complainant, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

In addition, the Complainant confirmed that they have not licensed, authorized, or permitted the Respondent to register domain names incorporating the Complainant's trademarks. The Panel has taken note of the Complainant's confirmation in this regard and has not seen any evidence that would suggest the contrary. In the absence of any license or permission from the Complainant to use its trademarks, the composition of the disputed domain name, and the fact that the disputed domain name resolves to a look-a-like version of the Complainant's website, no actual or contemplated bona fide or legitimate use of the disputed domain name could reasonably be claimed (see, e.g., *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#); and *LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master*, WIPO Case No. [D2010-0138](#)).

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 intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's marks (Paragraph 4(b)(iv) of the Policy). As discussed in detail under the second element above, the Respondent attempted to impersonate the Complainant by its registration and use of a disputed domain name that resolves to a look-a-like website of the Complainant's official website offering similar products. These circumstances, in combination with the Respondent's clear absence of rights or legitimate interests in the disputed domain name, are strong indicators of 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.

Panels have held that the use of a domain name for illegal activity, here the impersonation of the Complainant and the attempt to defraud its customers through a look-a-like website (as detailed under the second element) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Furthermore, the Panel believes that the Respondent knew or, at least, should have known at the time of registration that the disputed domain name included the Complainant's NOCIBE trademarks. As demonstrated by the Complainant, such trademarks were registered many years before the registration of the disputed domain name in several countries. In addition, the disputed domain name incorporates the NOCIBE mark in its entirety and includes the descriptive term "parfums", which refers to one of the main product categories consumers can buy at the Complainant's shops. Moreover, the disputed domain name resolves to a look-a-like website using, without the Complainant's permission, the Complainant's website's design, branding as well as the Complainant's logo. This indicates that the Respondent had the Complainant and its trademarks in mind when registering the disputed domain name. The Respondent's knowledge of the Complainant and its trademarks and therefore its registration in bad faith of the disputed domain name may accordingly also be inferred from these circumstances. [WIPO Overview 3.0](#), section 3.2.2.

Finally, the fact that the Respondent used a privacy service can be used as an indication of bad faith. [WIPO Overview 3.0](#), section 3.6.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy. 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 <parfumsnocibe.com> be transferred to the Complainant.

/Benoit Van Asbroeck/

Benoit Van Asbroeck

Sole Panelist

Date: March 14, 2024