

ADMINISTRATIVE PANEL DECISION

Netflix, Inc. v. John Paul Tano
Case No. D2024-1149

1. The Parties

The Complainant is Netflix, Inc., United States of America, represented by Coates IP, United States of America.

The Respondent is John Paul Tano, Philippines.

2. The Domain Name and Registrar

The disputed domain name <netflixproductions.com> is registered with Amazon Registrar, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 15, 2024. On March 18, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 21, 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 (UNKNOWN RESPONDENT) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 21, 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 April 1, 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 April 2, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 22, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 23, 2024.

The Center appointed Alan L. Limbury as the sole panelist in this matter on April 25, 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, Netflix, Inc., delivers online streaming entertainment, launching its streaming service in 2007 under the NETFLIX mark. In 2017, the Complainant's membership reached 100 million members globally. It operates a website at "www.netflix.com".

The Complainant has rights in the NETFLIX mark, which is famous, through numerous registrations, including with the United States Patent and Trademark Office ("USPTO") (e.g., Reg. No. 6,295,480, registered on March 16, 2021).

The disputed domain name <netflixproductions.com> was registered on October 25, 2023. It does not resolve to an active website. It has been used to send an email from "[...]@netflixproductions.com".

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 Respondent's <netflixproductions.com> domain name is confusingly similar to the Complainant's NETFLIX mark and its official domain name <netflix.com>, and the Respondent has no rights or legitimate interests in respect of the disputed domain name, which was registered and is being used in bad faith.

As to legitimacy, the Complainant contends that the NETFLIX mark is a coined (i.e., fanciful) term with no meaning other than to identify the Complainant's company and brand. It is not a dictionary term and is only used and known for the Complainant's goods and services. The only reason why the Complainant [*scil* Respondent] would incorporate that term in the disputed domain name is to capitalize on the goodwill of the Complainant's NETFLIX mark. The Respondent has no rights in the Complainant's trademark and provides no bona fide goods or services under the NETFLIX mark in commerce. The Respondent is not making any legitimate noncommercial or fair use of the disputed domain name since it resolves to a website with no content. The Respondent is not commonly known by the disputed domain name.

As to bad faith, the Complainant contends that the disputed domain name has been used to perpetuate fraud in a phishing scheme by using the email address "[...]@netflixproductions.com" by duping unsuspecting individuals into believing they are communicating with the Complainant and that they are entering into contracts with the Complainant. The Respondent falsely claims to be an employee of the Complainant who has the authority to enter into film and book publishing contracts on its behalf. The Respondent offers lucrative contracts to individuals if they commit to covering preproduction costs.

Even if the disputed domain name were found not to be used for fraudulent purposes, it was still registered in bad faith to exploit the fame of the mark in a bid to attract Internet users to the Respondent's website. The Respondent cannot obtain or derive any rights or legitimate interests through its passive holding of the disputed domain name. NETFLIX is a fanciful coined term and famous trademark that is associated only with the Complainant, and it is inconceivable that the Respondent's choice in registering the disputed domain name was anything other than in bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to “decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.”

Paragraph 4(a) of the Policy requires that a complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (i) the domain name registered by the respondent 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 domain name; and
- (iii) the domain name has been registered and is being used in bad faith.

In view of the Respondent's failure to submit a Response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences as it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations set forth in a complaint. However, the Panel may deny relief where a complaint contains mere conclusory or unsubstantiated arguments. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), at section 4.3.

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 3.0](#), section 1.7.

The Complainant has shown that it has rights in respect of the NETFLIX trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the Respondent's <netflixproductions.com> domain name to be confusingly similar to the Complainant's mark, only differing by the addition of the word “productions” (a descriptive term for entertainment studios such as those of the Complainant). That addition does nothing to prevent confusing similarity between the disputed domain name and the mark. The inconsequential “.com” generic top-level domain (“gTLD”) may be ignored. See, for example, *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. [D2000-0429](#).

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.

There is no evidence that the Respondent, John Paul Tano, is or has been commonly known by the disputed domain name, which was registered on October 25, 2023. By email dated November 24, 2023 from "NETFLIX [...]@netflixproductions.com", the Respondent, in the name of an employee of the Complainant's "Team Acquisitions Department", offered to enter into a contract with an author for the adaptation of a book into a film series if the author agreed to cover preproduction costs. The only use of the disputed domain name has been to masquerade as an employee of the Complainant in an attempt to induce the recipient of the email into believing he was entering into a contract with the Complainant. This is not a bona fide offering of goods or services nor a legitimate noncommercial or fair use.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that the four illustrative circumstances set out in paragraph 4(b) of the Policy as evidence of the registration and use of a domain name in bad faith for purposes of paragraph 4(a)(iii) are not exclusive.

The circumstances set out above in relation to the second element satisfy the Panel that the Respondent was fully aware of the Complainant's famous NETFLIX mark when the Respondent registered the <netflixproductions.com> domain name and that the Respondent registered and is using the disputed domain name in bad faith by seeking to mislead an Internet user into believing that the Respondent is an employee of the Complainant.

Further, although the disputed domain name does not resolve to an active website, as in the leading case of *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), there is no conceivable active use that could be made of the disputed domain name that would not amount to an infringement of the Complainant's rights in its NETFLIX mark. Accordingly, the Panel finds that the Respondent's passive use of the disputed domain name also demonstrates registration and use in bad faith.

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 <netflixproductions.com> be transferred to the Complainant.

/Alan L. Limbury/

Alan L. Limbury

Sole Panelist

Date: May 3, 2024