

ADMINISTRATIVE PANEL DECISION

TNT Holdings B.V. v. Naresh Reddy Nakkhala M/s. TNT Packers
Case No. D2022-0875

1. The Parties

The Complainant is TNT Holdings B.V., Netherlands, represented by Rahul Chaudhry & Partners, India.

The Respondent is Naresh Reddy Nakkhala M/s. TNT Packers, India.

2. The Domain Name and Registrar

The disputed domain name <tntpackers.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 14, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 15, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 5, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 25, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 26, 2022.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on April 29, 2022. 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 in the global transportation and logistics industry.

The business operations of the Complainant's predecessor commenced in the year 1946 in Australia when Ken Thomas established K.W. Transport for delivery services. In 1958, the TNT trademark was adopted as the abridged version of Thomas National Transport, the new name of K.W. Transport. In January 1962, the Complainant was listed on the Sydney stock exchange.


In 1967, the Complainant merged with Alltrans, a privately-owned group in the Australian freight transportation industry. The Complainant entered North America in 1969 and Europe in 1973. In 1999, the Complainant established its Indian operations. On May 25, 2016, the Complainant was acquired by Federal Express Corporation.

The Complainant owns the domain name <tnt.com>, registered on October 3, 1996 as well as the following, amongst other, trademarks (Annexes F and G 4 to the Complaint):

- Indian trademark registration No. 793841 for the word and device mark,  registered on April 13, 1998, successively renewed, in Class 16; and

- Indian trademark registration No. 2910594 for the word and device mark , registered on August 21, 2014, in Classes 16 and 39.

The disputed domain name <tntpackers.com> was registered on May 16, 2011, and resolves to an active webpage offering cargo packing and moving services under the phrase "TNT Packers & Movers".

Past versions of the Respondent's webpage offering the same services displayed a logo comprised of the identical initials embedded with three interlocking circles of an equal radius in orange that resembles the logo and color associated with the Complainant  **TNT PACKERS & MOVERS** (Annex N to the Complaint) having the Complainant sent a Cease and Desist notice to the Respondent on December 3, 2020 and subsequent reminders dated January 15, 2021 and June 17, 2021 (Annex O to the Complaint).

5. Parties' Contentions

A. Complainant

The Complainant asserts to be one of the world's largest express delivery companies, serving over 220 countries and territories around the world, having its TNT trademark become well-known on a global scale due to its long, continuous and extensive use in relation to courier services and logistic services with quality, as recognized by several prizes and awards (Annex I to the Complaint) and past panels in previous UDRP decisions (*TNT Holdings B.V. v. Sylvie Bona*, WIPO Case No. [D2008-1070](#) and *TNT International Express Tasimacilik Ticaret Limited Sirketi v. Unknown / Olaoluwa Babs, Kernel Multimedia*, WIPO Case No. [D2016-0312](#)).

The Complainant further claims to have started using its TNT trademark in India, where the Respondent is located, since September 1993 when TNT India Pvt. Ltd, belonging to the Complainant's group, was incorporated.

According to the Complainant, by virtue of long, continuous, extensive use, worldwide registrations, vast publicity and excellent quality of services in relation to which the TNT trademark has been used and advertisements published thereto, the Complainant's trademark has acquired tremendous reputation and goodwill amongst the purchasing public and members of the trade.

Also according to the Complainant, it came across the disputed domain name on December 2020 when it came to its attention that the disputed domain name was being used to provide identical and overlapping services of transport and logistics, also reproducing a logo comprised of the identical initials embedded with three interlocking circles of an equal radius in orange that ostensibly resembles the logo and color associated with the Complainant.

Having sent a first warning letter to the Respondent on December 3, 2020 and a subsequent reminder on January 15, 2021 which remained unanswered, the Complainant states that it sent a representative to the Respondent's address and found that the Respondent had absconded and ceased its business operations. Accordingly, on June 17, 2021, another notice was sent to the Respondent, electronically, reiterating a request for the disputed domain name to be cancelled, which again, did not elicit a response.

Under the Complainant's view, the disputed domain name reproduces the Complainant's trademark, not preventing the addition of the generic/dictionary term "packers" a finding of confusing similarity under the Policy. In addition to that, the likelihood of confusion is strengthened by the offer of identical and overlapping services at the webpage available at the disputed domain name.

Regarding the absence of the Respondent's rights or legitimate interests, the Complainant argues that:

- (i) the Complainant never granted the Respondent any right to use or register the TNT trademark in connection with a domain name;
- (ii) the Respondent has used a nearly identical logo to capitalize on the Complainant's well-known trademark, thus creating a likelihood of confusion and does not characterize a *bona fide* offering of goods or services under the Policy; and
- (iii) the Respondent cannot claim to have been commonly known by the disputed domain name given that the TNT trademark is exclusively associated with the Complainant especially to provide identical/overlapping services.

As to the registration and use of the disputed domain name in bad faith, the Complainant states that:

- (i) the Respondent knew of the Complainant's trademark when registering the disputed domain name given that the Respondent has used the disputed domain name to offer identical or related services to those of the Complainant unduly using a nearly identical logo; and
- (ii) by having suppressed the use of the nearly identical logo and yet maintained the initials "Tnt" in a similar orange color which is characteristic to the Complainant, the Respondent admits to have deliberately and willfully adopted a deceptively similar logo to that of the Complainant but still maintains a false suggestion of affiliation with the Complainant.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

- (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 disputed domain name has been registered and is being used in bad faith.

The Complainant must prove in this administrative proceeding that each of the aforementioned three elements is present in order to obtain the transfer of the disputed domain name.

In accordance with paragraph 14(a) of the Rules, if the Respondent does not submit a Response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint.

A. Identical or Confusingly Similar

The Complainant has established rights over the TNT trademark.

The disputed domain name consists of the entire reproduction of the Complainant's TNT trademark, with the addition of the term "packers". Furthermore, the use of the disputed domain name in connection with a webpage offering related services to those of the Complainant with the depiction in the past of a logo nearly identical to that of the Complainant affirms that the Respondent seeks to target the Complainant's TNT trademark, and confirms a finding of confusing similarity between the disputed domain name and the Complainant's trademark. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), sections 1.7 and 1.15.

For the reasons above, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a nonexclusive list of circumstances that may indicate the Respondent's rights or legitimate interests in the disputed domain name. These circumstances are:

- (i) before any notice of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the Respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, in spite of not having acquired trademark or service mark rights; or
- (iii) the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent, in not responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights to or legitimate interests in the disputed domain name. This entitles the Panel to draw any such inferences from such default as it considers appropriate pursuant to paragraph 14(b) of the Rules. Nevertheless, the burden of proof is still on the Complainant to make a *prima facie* case against the Respondent.

In that sense, and according to the evidence submitted, the Complainant has made a *prima facie* case against the Respondent showing that the Respondent has not been commonly known by the disputed domain name and neither has been authorized by the Complainant to use its trademark, nor has it been licensed or is there a partnership with the Complainant; being it uncontested that the Complainant has no connection or affiliation with the Respondent.

The fact that the website at the disputed domain name appeared to be operated by an alleged entity self-identified as "Tnt packers" does not in itself give rise to rights or legitimate interests in the disputed domain name.

Also according to the evidence submitted by the Complainant, the use made of the disputed domain name in connection with a webpage offering related services to those offered by the Complainant under the “Tnt” initials, and in the past, a logo nearly identical to that of the Complainant, and presently with the same orange color that is characteristic or usually associated to the Complainant’s, cannot be regarded as a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use of the disputed domain name in these circumstances. In fact, the Respondent intends for commercial gain to mislead consumers or to tarnish the trademark at issue.

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name.

C. Registered and Used in Bad Faith

The Policy indicates in paragraph 4(b)(iv) that bad faith registration and use can be found in respect of a disputed domain name, where a respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent’s website or other online location, by creating a likelihood of confusion with a complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

In this case, both the registration and use of the disputed domain name in bad faith can be found pursuant to Policy, paragraph 4(b)(iv) in view of the use of the “Tnt” initials, with a logo nearly identical to the Complainant’s well-known trademark at the webpage, offering related services to those of the Complainant, which creates a likelihood of confusion with the Complainant’s marks as to the source, sponsorship, affiliation, or endorsement thereof.

For the reasons above, the Respondent’s conduct has to be considered, in this Panel’s view, as bad faith registration and use of the disputed domain name.

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 <tntpackers.com> be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: May 13, 2022