

ADMINISTRATIVE PANEL DECISION

Société des Produits Nestlé S.A. v. 郭丽 (guo li)
Case No. D2022-1992

1. The Parties

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

The Respondent is 郭丽 (guo li), China.

2. The Domain Name and Registrar

The disputed domain names <nestleranch.com> and <nestlerancha.com> (the “Domain Names”) are registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

3. Procedural History

The Complaint relating to the Domain Name <nestleranch.com> was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on June 1, 2022. On June 2, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name <nestleranch.com>. On June 7, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name <nestleranch.com> which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on June 8, 2022 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 in English on June 8, 2022.

On June 8, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On June 8, 2022, the Complainant submitted a request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint together with the amendment to 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 in English and Chinese of the Complaint, and the proceedings commenced on June 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 4, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 5, 2022.

The Center appointed Karen Fong as the sole panelist in this matter on July 20, 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.

Following the Complainant's request of July 27, 2022 to add the Domain Name <nestlerancha.com> ("Additional Domain Name") to the proceeding, on August 4, 2022, the Panel requested the Center to obtain registrar verification for the Additional Domain Name. Following the Registrar's verification response on August 5, 2022 confirming that the Respondent is listed as the registrant and providing the contact details, on August 8, 2022 a Panel Order was issued granting the Respondent seven days to submit its potential comments to the adding of the Additional Domain Name to the proceeding. The Respondent did not submit any response.

4. Factual Background

The Complainant is part of the Nestle Group of companies, originally founded in 1866 by Henri Nestle. The Nestle Group sells products and services all over the world, primarily in the food industry, including baby foods, breakfast cereals, chocolate and confectionary, coffee and beverages, bottled water, dairy products, ice cream, prepared foods, food services as well as pet food. It is the world's largest food consumer products company in terms of sales.

The Nestle Group provide its products and services under the trade mark NESTLÉ. The NESTLÉ trade mark is registered all over the world. The earliest trade mark registration submitted in evidence is Chinese Trade Mark Registration No 28845 for NESTLÉ registered on October 1, 1958 (the "Trade Mark").

The Nestle Group's primary website is found at "www.nestle.com".

The Respondent who is based in China registered the Domain Name <nestleranch.com> on April 26, 2022. The Domain Name resolved to a website which promotes a game called "Nestle Ranch", requesting users to provide their telephone numbers and a password in order to access the website and join the game (the Website). Users who log in are shown a page which promised "very rich profits" and are also requested to provide their bank account details. The app version of the game promoted on the Website purports to be released by one of the Nestle Group companies, Nestle India Ltd. Evidence of users querying if the app and Website are affiliated with the Nestle Group were submitted. A cease and desist letter was sent on May 26, 2022 to the Registrar requesting that it be forwarded to the Respondent. The Respondent did not respond. The Additional Domain Name <nestlerancha.com> was registered on June 6, 2022, a few days after the filing of the Complaint by the Complainant. The Additional Domain Name <nestlerancha.com> resolved to a website which is identical to the Website (together the "Websites").

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Names are confusingly similar to the Trade Mark, that the Respondent has no rights or legitimate interests with respect to the Domain Names, and that the Domain Names were registered and are being used in bad faith. The Complainant requests transfer of the Domain Names.

B. Respondent

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

6. Discussion and Findings

A. General

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the Domain Names, the Complainant must prove each of the following, namely that:

- (i) The Domain Names are identical or confusingly similar to trade marks or service marks in which the Complainant has rights; and
- (ii) The Respondent has no rights or legitimate interests in respect of the Domain Names; and
- (iii) The Domain Names were registered and are being used in bad faith.

B. Preliminary Issue: Addition of a Domain Name to the Proceeding

The Panel's decision to accept the addition of the Additional Domain Name <nestlerancha.com> to the proceeding is based on the consideration of the following:

- The addition of domain names after the filing of a Complaint has been allowed in the past in other UDRP proceedings. As stated in section 4.12.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"): "In those cases where panels would grant such a request, the complainant would need to hold relevant trademark rights and the proposed additional domain names would need to be *prima facie* registered by the same or related respondent. Moreover, in the event a panel would grant such a request, it may also order partial or full re-notification of the proceeding (which may impact case timelines)."
- This case is one which falls within the above as the Respondent is the same in respect of both Domain Names. The Respondent was notified of the Complainant's rights and concerns regarding <nestleranch.com> prior to the registering of the Additional Domain Name. This is a clear attempt to frustrate the proceeding. The additional and initial Complaints are closely connected as to the factual background such that it is expedient to hear and determine them together in order to avoid the potentially varying decisions resulting from separate proceedings and to incur supplemental unnecessary costs for the Complainant.

C. Language of the Proceeding

The Rules, paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement between the respondent and the registrar in relation to the disputed domain name, the language of the proceeding shall be the language of the registration agreement, subject to the authority of the panel to determine otherwise, having regard to the circumstances of the administrative proceeding. According to the information received from the Registrar, the language of the Registration Agreements for the Domain Names is Chinese.

The Complainant submits that the language of the proceeding should be English for the following reasons:

- The Domain Names are registered in Latin characters and includes the English term "ranch" for one of the Domain Names;
- The Domain Names are in the Top-Level Domain ("TLD") ".com" which reveals an intention to target an English speaking audience;
- The Websites are drafted in English even though it also provides translations into other languages and the game application promoted and downloadable via the Websites appear to be drafted in English;

- There is no evidence to show that the Respondent is unable to understand the English language;
- In order to proceed in Chinese, the Complainant would have had to retain translation services which will delay the proceedings and increase the overall cost of these proceedings. The use of Chinese in this case would therefore impose a burden on the Complainant.

In exercising its discretion to use a language other than that of the Registration Agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both Parties, taking into account all relevant circumstances of the case, including matters such as the Parties' ability to understand and use the proposed language, time and costs.

The Panel notes the Complainant's submissions regarding the language of the proceeding, the composition of the Domain Names, and other circumstances of this case. Although the Respondent has been notified in English and Chinese of the language of the proceeding and the Complaint, the Respondent has not challenged the Complainant's language request and in fact has failed to file a Response or comment about the Additional Domain Name. The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner. In this case, the Complainant may be unduly disadvantaged by having to conduct the proceeding in Chinese. In all the circumstances, the Panel determines that English be the language of the proceeding.

D. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has established that it has rights to the Trade Mark.

The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the trade mark and the domain name to determine whether the domain name is confusingly similar to the trade mark. The test involves a side-by-side comparison of the domain name and the textual components of the relevant trade mark to assess whether the mark is recognizable within the domain name.

In this case, the Domain Names consist of the Complainant's Trade Mark in its entirety combined with the word "ranch" for one and as a misspelling of the word to form "ranca" for the other. The Trade Mark is clearly recognizable in both Domain Names. For the purposes of assessing identity and confusing similarity under paragraph 4(a)(i) of the Policy, it is permissible for the Panel to ignore the generic Top-Level Domain ("gTLD") which in this case is ".com". It is viewed as a standard registration requirement (section 1.11 of [WIPO Overview 3.0](#)).

The Panel finds that the Domain Names are confusingly similar to the Trade Mark in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy therefore are fulfilled.

E. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights or legitimate interests in the disputed domain name by demonstrating any of the following:

- (i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name, even if it has acquired no trade mark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers, or to tarnish the trade mark or service mark at issue.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in

a disputed domain name, it is well established that, as it is put in section 2.1 of the [WIPO Overview 3.0](#) that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests. Once such a *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent does come forward with evidence of relevant rights or legitimate interests, the panel weighs all the evidence, with the burden of proof always remaining on the complainant.

The Complainant contends that the Respondent is not commonly known by the Domain Names. It has not authorised, licensed or otherwise permitted the Respondent to use the Trade Marks in the Domain Names or for any other purpose. Further, the Websites which promoted the online game “Nestle Ranch” requesting users to provide their personal information as well as bank account details do not constitute a *bona fide* offering of goods or services or legitimate noncommercial or fair use of the Domain Names.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for a reply from the Respondent. The Respondent has not responded and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the Domain Names.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Names.

F. Registered and Used in Bad Faith

To succeed under the Policy, the Complainant must show that the Domain Names have been both registered and used in bad faith. It is a double requirement.

The Panel is satisfied that the Respondent must have been aware of the Trade Marks when it registered the Domain Names given that the global reputation of the Trade Mark, the fact that it was registered prior to the Domain Names and the fact that both Domain Names consist of the Trade Mark and a word.

In the [WIPO Overview 3.0](#), section 3.2.2 states as follows:

“Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant’s mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant’s mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent’s claim not to have been aware of the complainant’s mark.”

The fact that there is a clear absence of rights or legitimate interests nor any explanation for the Respondent’s choice of the Domain Names are also significant factors to consider (as stated in section 3.2.1 of the [WIPO Overview 3.0](#)). In light of the above, the Panel finds that the Respondent deliberately registered the Domain Names in bad faith.

The Panel also finds that the actual use of the Domain Names is in bad faith. The Websites have been set up such that personal information and bank details of users are obtained in order to play an online game which bears the Trade Mark. This was clearly done for the commercial benefit of the Respondent. It is highly likely that there is an intention to defraud users given that the Websites purport to be part of or somehow connected to the Nestle Group of companies when it is clearly not. There has also been evidence submitted to show that web users are indeed confused as to whether such a connection exists.

The Respondent employs the fame of the Trade Mark to mislead users into visiting the Websites. From the above, the Panel concludes that the Respondent intentionally attempted to attract for commercial gain, by misleading Internet users into believing that the Respondent’s Websites are those of or authorised or

endorsed by the Complainant. The Panel therefore also concludes that the Domain Names were registered and are being used in bad faith under paragraph 4(b)(iv) of the Policy.

The Panel therefore concludes that the Domain Names were registered and are being used in bad faith.

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 Domain Names <nestleranch.com> and <nestlerancha.com> be transferred to the Complainant.

/Karen Fong/

Karen Fong

Sole Panelist

Date: August 26, 2022