

ADMINISTRATIVE PANEL DECISION

Novagold Resources Inc. v. Privacy service provided by Withheld for Privacy ehf / Nova Account
Case No. D2022-2001

1. The Parties

The Complainant is Novagold Resources Inc., Canada, represented by Cassels Brock & Blackwell, LLP, Canada.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Nova Account, United States of America (the “United States”).

2. The Domain Name and Registrar

The disputed domain name <novagold.ltd> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed 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 disputed domain name. On June 2, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on June 3, 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 amended Complaint on June 7, 2022.

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 June 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 7, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 11, 2022.

The Center appointed Marilena Comanescu as the sole panelist in this matter on July 13, 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

Founded in 1984, the Complainant is a public company listed on the New York Stock Exchange and the Toronto Stock Exchange. The Complainant explores, develops and secure investments in major mining properties.

The Complainant holds trademark registrations for NOVAGOLD, including the following:

- the Canadian trademark registration number TMA868037 for the word NOVAGOLD, filed on December 20, 2012, and registered on December 30, 2013, and covering services in classes 37, 42; and
- the United States trademark registration number 4574621 for the word NOVAGOLD, claiming priority since December 20, 2012, and registered on July 29, 2014, and covering services in classes 37 and 42.

The Complainant owns and operates the website located at the domain name <novagold.com> which was registered on April 19, 2005. The website is one of the primary mediums through which the Complainant engages with prospective and existing investors.

The disputed domain name was registered on May 1, 2022, and at the time of filing the Complaint, it was connected to a website promoting a company named “novagold.ltd Resources Inc.” and “Novagold Ltd” that, through a technique of framing, is displaying a copycat version of the Complainant’s website depicting, *inter alia*, the Complainant’s trademarks and logos, text, images, layout, tabs, color scheme, photographs of the Complainant’s management team, the Complainant’s own business address, video material from the Complainant’s website. Also, on the website under the disputed domain name there is a section where visitors are invited to create an account when they click the “Invest now” link.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to its reputable NOVAGOLD trademark, the Respondent has no rights or legitimate interests in the disputed domain name, and the Respondent registered and is using the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

In view of the Respondent’s default, the discussion and findings will be based upon the contentions in the Complaint and any reasonable position that can be attributable to the Respondent. Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

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

The Panel will further analyze the potential concurrence of the above circumstances.

A. Identical or Confusingly Similar

The Panel finds that the Complainant holds rights in the NOVAGOLD trademark.

The disputed domain name reproduces the Complainant's trademark exactly.

Further, it is well established in decisions under the UDRP that the generic Top-Level Domain ("gTLD") (e.g., ".com", ".site", ".info", ".shop") is disregarded for the purposes of consideration of confusing similarity between a trademark and a domain name. See section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Given the above, the Panel finds that the disputed domain name is identical to the Complainant's trademark NOVAGOLD, pursuant to the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Complainant asserts that the Respondent does not hold any trademark rights, license, or authorization whatsoever to use the mark NOVAGOLD, that the Respondent is not commonly known by the disputed domain name, and that the Respondent has not used the disputed domain name in connection with a legitimate noncommercial or fair use or a *bona fide* offering of goods or services.

Under the Policy, "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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element". See section 2.1 of the [WIPO Overview 3.0](#).

The Respondent has not replied to the Complainant's contentions and has not come forward with relevant evidence to rebut the Complainant's *prima facie* case.

There is no evidence before the Panel to suggest that the Respondent has made a *bona fide* use of the disputed domain name, or has been known by this disputed domain name, or is making any legitimate noncommercial or fair use of the disputed domain name.

In fact, at the time of filing the Complaint, the disputed domain name resolves to a copycat website featuring the NOVAGOLD trademark, the Complainant's copyright material and pictures from its own website, leaving no doubt that the Respondent was using the disputed domain name to impersonate the Complainant. In this regard, UDRP panels have categorically held that the use of a domain name for illegal activity (such as swindle, fraud, identity theft, phishing and impersonation) can never confer rights or legitimate interests in a respondent. See section 2.13 of the [WIPO Overview 3.0](#).

In addition, the Panel finds that the disputed domain name carries a high risk of implied affiliation with the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

For these reasons, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name, pursuant to the Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

The Complainant holds registered trademark rights for NOVAGOLD since at least 2012 and the corresponding domain name since 2005.

The disputed domain name was registered in 2022 and reproduces the Complainant's distinctive mark exactly.

For the above reasons, the Panel finds that the disputed domain name was registered in bad faith, with knowledge of the Complainant, its business and particularly targeting the Complainant's trademark.

Further, the Respondent is using without permission the Complainant's distinctive trademark in order to get traffic on its web portal and to obtain commercial gain from the false impression created for the Internet users with regard to a potential connection with the Complainant. This impression is created particularly by the incorporation of the Complainant's trademark in the disputed domain name, the content on the website provided thereunder which includes the Complainant's trademarks, text, images, layout, tabs, color scheme, copyright material, contact address and pictures of the Complainant's representative.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt "to attract, for commercial gain, Internet users to [the respondent's] website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location" is evidence of registration and use in bad faith.

Creating a copycat website of the Complainant's own website indeed, in this Panel's view, the Respondent intended to attract Internet users accessing the website corresponding to the disputed domain name who may be confused and believe that the website is held, controlled by, or somehow affiliated or related to the Complainant, for its commercial gain. At the same time, such use may tarnish the image of the Complainant and jeopardise the reputation of its trademark.

Also, the use of a domain name for illegal activity such impersonation/passing off can never confer rights or legitimate interests on a respondent and it is considered evidence of bad faith.

The Respondent chose not to participate in these proceedings, has used a privacy service to hide its identity and has provided false contact information to the relevant Registrar. Along with other circumstances in this case, such facts are further signs of bad faith. See section 3.6 of the [WIPO Overview 3.0](#).

For all the above reasons, the Panel finds that the Respondent registered and is using the disputed domain name in bad faith, pursuant to the Policy, paragraph 4(a)(iii).

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 <novagold.ltd> be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: July 27, 2022