

ADMINISTRATIVE PANEL DECISION

Nardobel v. David Czinczenheim

Case No. D2022-4362

1. The Parties

The Complainant is Nardobel, France, represented by In Concreto, France.

The Respondent is David Czinczenheim, France.

2. The Domain Name and Registrar

The disputed domain name <isostarshop.com> is registered with DropWalk.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 16, 2022. On November 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 25, 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 November 28, 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 December 1, 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 December 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 28, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 4, 2023.

The Center appointed Louis-Bernard Buchman as the sole panelist in this matter on January 11, 2023. 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 Nardobel, incorporated in 2006 in France, is the holding company of the Nutrition & Santé group, which manufactures and produces health foods.

In 2022, Nutrition & Santé sold its branded products in 15 countries, and has 1,500 employees. In 2021, the group's turnover was 418 million Euros.

Nutrition & Santé developed the ISOSTAR sports nutrition brand in Europe, which was created in 1977 to market a range of food products and sports accessories to sportsmen and sportswomen.

The Complainant is the registered owner of several trademark registrations containing the term "isostar", including International trademark number 394563, registered on December 18, 1972; International trademark number 504910, registered on July 9, 1986; International trademark number 606726, registered on August 11, 1993; International trademark number 688708, registered on January 13, 1998; International trademark number 725084, registered on November 25, 1999; International trademark number 1047759, registered on July 19, 2010; French trademark number 3706220, registered on June 25, 2010; European Union Trade Mark number 000677682, registered on June 7, 1999; and European Union Trade Mark number 004311131, registered on April 4, 2006 (together referred to as: the "Mark").

The Complainant also owns and operates many domain names, including <isotar-eshop.fr> and <isostar-eshop.com>, both created on January 8, 2013, and <isostar-shop.eu>, created on October 9, 2013.

The Complainant used to own the disputed domain name, but the registration lapsed on August 22, 2022.

The Complainant sells its branded products in shops notably in France, where the Respondent appears to be located, and also online.

The disputed domain name was registered on October 6, 2022 and resolved to a page offering it for sale for around EUR 7,000. At the time of this decision, the asking price for purchasing the disputed domain name is down to EUR 1,500.

5. Parties' Contentions

A. Complainant

- (i) The Complainant submits that the disputed domain name reproduces the Mark, in which the Complainant has rights, and is confusingly similar to the Mark insofar as the disputed domain name contains the Mark in its entirety. The Complainant also asserts that the addition of the descriptive term "shop" does not serve to distinguish the disputed domain name from the Mark.
- (ii) The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Furthermore, the Complainant contends that it never licensed the Respondent to use the Mark in any manner, or consented to such use. The Complainant also asserts that the Respondent never had any business connection or affiliation with the Complainant.
- (iii) The Complainant submits that the Respondent has registered and is using the disputed domain name in bad faith. The Complainant alleges that the Respondent is a serial cybersquatter whose nefarious activity has already resulted in several UDRP decisions in which the domain names he registered have been ordered to be transferred to complainants, and that he opportunistically chose to register the disputed domain name, for commercial gain, by anticipating selling it for a valuable consideration far in excess of the registrant's out-of-pocket costs directly related to the domain name.

(iv) The Complainant requests that the disputed domain name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

6.1. Procedural Aspects

As aforementioned, no Response was received from the Respondent.

Under the Rules, paragraphs 5(f) and 14(a), the effect of a default by the Respondent is that, in the absence of exceptional circumstances, the Panel shall proceed to a decision on the basis of the Complaint.

Under paragraph 4(a) of the Policy, it is the Complainant's burden to establish that all three of the required criteria for a transfer of the disputed domain name have been met, even in the event of a default.

Under paragraph 14(b) of the Rules, the Panel is empowered to draw such inferences from the Respondent's default as it considers appropriate under the circumstances.

In this case, the Panel finds that as a result of the default, the Respondent has failed to rebut any of the reasonable factual assertions that are made and supported by evidence submitted by the Complainant. In particular, by defaulting and failing to respond, the Respondent has failed to offer the Panel any of the types of evidence set forth in paragraph 4(c) of the Policy or otherwise, from which the Panel might conclude that the Respondent has any rights or legitimate interests in the disputed domain name, such as making legitimate noncommercial or fair use of the disputed domain name.

Moreover, as discussed below, the Respondent has failed to provide any exculpatory information or reasoning that might have led the Panel to question the Complainant's arguments that the Respondent has acted in bad faith.

6.2. Requirements of paragraph 4(a) of the Policy

A. Identical or Confusingly Similar

In comparing the Mark with the disputed domain name, it is evident that the latter consists solely of the Mark, followed by a hyphen and the term "shop", and by the generic Top-Level Domain ("gTLD") ".com".

The addition of terms does not prevent a finding of confusing similarity between a domain name and a trademark, where the trademark remains recognizable. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8. Here, the Mark is clearly recognizable in the disputed domain name.

It is also well established that a gTLD, including, as is the case here, the gTLD ".com", does not generally affect the assessment of a domain name for the purpose of determining identity or confusing similarity.

The Panel finds that the disputed domain name is confusingly similar to the Mark, which it incorporates entirely.

Thus, the Complainant has satisfied the requirement of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Although a complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, UDRP panels have recognized that with regard to paragraph 4(a)(ii) of the Policy this could result in the often impossible task of proving a negative proposition, requiring information that is primarily if not exclusively within the knowledge of a respondent.

Thus, the consensus view of UDRP panels is that paragraph 4(c) of the Policy shifts the burden of production of evidence to the respondent to come forward with evidence of rights or legitimate interests in a domain name, once the complainant has made a *prima facie* showing, as the Panel believes the Complainant has made in this case. See *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#).

As previously noted, the Respondent offered no reason for selecting the disputed domain name. There is no evidence that the Respondent is commonly known by the disputed domain name or makes a legitimate noncommercial or fair use of the disputed domain name.

No information is provided on what rights or legitimate interests the Respondent may have in the disputed domain name, which is offered for sale.

To counter any notion that the Respondent has such rights or legitimate interests, the Complainant has argued that the Respondent (i) has no business connection or affiliation with the Complainant, and (ii) received no license or consent from the Complainant to register or use the disputed domain name.

Moreover, the Panel finds the composition of the disputed domain name, incorporating the Complainant's distinctive trademark with the descriptive term "shop", which is strongly related to the Complainant's activity, carries a risk of implied affiliation as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See [WIPO Overview 3.0](#), section 2.5.1. The Complainant's prior ownership and operation of the disputed domain name further supports such a risk.

In the circumstances, the Panel concludes that the Complainant has established the requirement of paragraph 4(a)(ii) of the Policy with respect to the disputed domain name.

C. Registered and Used in Bad Faith

As noted above, the Respondent has failed to provide any exculpatory information or persuasive reasoning that might have led the Panel to question the Complainant's arguments that the Respondent acted in bad faith by creating confusion to the detriment of the Complainant by registering the disputed domain name confusingly similar to the Mark and to some of its registered domain names.

It is established in prior UDRP decisions that where the respondent knew or should have known of a trademark prior to registering the disputed domain name, such conduct may, in certain circumstances, support a finding of bad faith. See [WIPO Overview 3.0](#), section 3.2.2.

In this case, given the Respondent's published offer to sell the disputed domain name for an unreasonably high price, shortly after the lapse of the Complainant's ownership and operation of the disputed domain name, the Panel finds that it is close to impossible that the Respondent chose to register the disputed domain name randomly with no knowledge of the Mark. See [WIPO Overview 3.0](#), section 3.1.1.

The Respondent also registered other domain names similar to famous trademarks which were transferred to complainants further to the UDRP proceedings they initiated, which shows a pattern of conduct by the Respondent and reinforces the implausibility of a registration of the disputed domain name without the prior knowledge of the Mark by the Complainant.

In addition, the Panel notes that many UDRP panels have held that bad faith use of a domain name by a respondent may also result from the fact its good faith use is in no way plausible (see *Audi AG v. Hans Wolf*, WIPO Case No. [D2001-0148](#)), considering the specificity of the activity.

In this case, the Panel cannot find any actual or contemplated good faith use of the disputed domain name, as its use invariably results in taking unfair advantage of the Complainant's rights. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

Moreover, the disputed domain name is offered for sale for a consideration far exceeding the registrant's out-of-pocket costs directly related to the domain name. This circumstance clearly indicates that the Respondent registered the disputed domain name primarily for the purpose of selling it to the Complainant and constitutes evidence of opportunistic registration and use of the disputed domain name in bad faith, within the meaning of paragraph 4(b)(i) of the Policy.

Finally, some UDRP panels have held that in certain circumstances, registrants of domain names have a duty to abstain from registering and using a domain name which is either identical or confusingly similar to a prior trademark held by others and which would infringe upon or otherwise violate the rights of a third party. See Policy, paragraph 2(b); *Nike, Inc. v. B. B. de Boer*, WIPO Case No. [D2000-1397](#); *Nuplex Industries Limited v. Nuplex*, WIPO Case No. [D2007-0078](#); *Mobile Communication Service Inc. v. WebReg, RN*, WIPO Case No. [D2005-1304](#); *BOUYGUES v. Chengzhang, Lu Ciagao*, WIPO Case No. [D2007-1325](#); *Media General Communications, Inc. v. Rarenames, WebReg*, WIPO Case No. [D2006-0964](#); and *mVisible Technologies, Inc. v. Navigation Catalyst Systems, Inc.*, WIPO Case No. [D2007-1141](#).

The Panel concludes in the light of all these circumstances that the Respondent's registration and use of the disputed domain name constitutes bad faith, and that the requirement of paragraph 4(a)(iii) of the Policy is also satisfied in this case.

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, <isostarshop.com>, be transferred to the Complainant.

/Louis-Bernard Buchman/

Louis-Bernard Buchman

Sole Panelist

Date: January 23, 2023