

ADMINISTRATIVE PANEL DECISION

Nokia Corporation v. Ze Cheng Ang
Case No. D2023-0969

1. The Parties

The Complainant is Nokia Corporation, Finland, represented by SafeBrands, France.

The Respondent is Ze Cheng Ang, Malaysia.

2. The Domain Name and Registrar

The disputed domain name <nokiatheatrenc.com> (“Domain Name”) is registered with DropCatch.com LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 2, 2023. On March 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On March 3, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, which differed from the named Respondent (NameBrightPrivacy.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 9, 2023, 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 March 10, 2023.

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 March 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 4, 2023. The Respondent sent an informal email communication to the Center on March 24, 2023. The Respondent did not submit a formal response. Accordingly, the Center informed the Parties of its commencement of Panel appointment process on April 5, 2023.

The Center appointed Olga Zalomiy as the sole panelist in this matter on April 20, 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 is a Finnish multinational telecommunications, information technology and consumer electronics company. The Complainant owns several trademark registrations for the NOKIA mark, such as:

- the European Union registration No. 340836 for the word mark NOKIA, registered on September 9, 1998;
- the European Union registration No. 871194 for the word mark NOKIA, registered on March 24, 2000; and
- the International registration No. 771539 for the word mark Nokia registered on February 15, 2001.

Until May 17, 2020, the Complainant was the owner of the Domain Name. On February 6, 2022, the Complainant sent a cease-and-desist letter that remained unanswered.

The Respondent registered the Domain Name on July 8, 2020. At the time of the Complainant's submission, the Domain Name directed to a gambling website. The website under the Domain Name prominently featured the Complainant's NOKIA trademark in combination with the words "Theatre NYC". Currently, the Domain Name does not direct to any active website.

5. Parties' Contentions

A. Complainant

The Complainant's contentions can be summarized as follows:

The Complainant is a Finnish multinational telecommunications, information technology and consumer electronics company, which used to sponsor the "NOKIA" theatre in New York city. The Domain Name is confusingly similar to the Complainant's NOKIA trademarks because it reproduces the well-known mark in its entirety. Addition of the generic terms "THEATRE" and "NYC" does not diminish the confusing similarity. Instead, the addition of the generic terms exacerbates the confusion because the Complainant used to own the Domain Name. The addition of the generic Top-Level Domain ("gTLD") ".com" should be disregarded from the confusing similarity assessment.

The Respondent has no rights or legitimate interests in the Domain Name because the Respondent is not commonly known by the Domain Name, has no trademarks or corporate names corresponding to the Domain Name and has not been authorized to use the Complainant's NOKIA trademark. The website under the Domain Name used to reference various other gambling companies. Section "contact us" of the website refers to "fake name generated details." The Respondent is not using the Domain Name with a *bona fide* offering of goods or services because the Respondent used the Domain Name for a gambling website. The Respondent is not making a legitimate noncommercial or fair use of the Domain Name.

The Respondent registered the Domain Name in bad faith because the Respondent knowingly registered the Domain Name that incorporates the Complainant's well-known mark. The Respondent is using the Domain Name in bad faith because the Domain Name directs to a gambling website in English and Thai languages, which demonstrates its intent to attract Internet users for commercial gain by intentionally infringing Complainant's exclusive rights.

B. Respondent

The Respondent did not reply to the Complainant's contentions. On March 24, 2023, the Respondent sent an email stating:

"Hi [sic] to whoever who [sic] concern,
My deepest apology, I didn't [sic] check this email often, I have immediately remove [sic] the content on the hosting, schedule to stop renew [sic] the domain.
Please let me know if anything else I can do [sic]"

6. Discussion and Findings

Pursuant to paragraph 4(a) of the UDRP, to succeed in this proceeding, the Complainant must prove each of the following elements with respect to the Domain Name:

- (i) the 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 Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the UDRP, the Complainant must prove that the Domain Name is identical or confusingly similar to the trademark or service mark in which the Complainant has rights.

Evidence shows that the Complainant owns several trademark registrations for the NOKIA mark. Pursuant to section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), this satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case.

"Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element."¹ It is well-established that the applicable gTLD should be disregarded under the confusingly similarity test as a standard registration requirement.²

The Domain Name consists of the Complainant's NOKIA mark, the word "theatre," the abbreviation "NYC" and the gTLD ".com". Because the Complainant's NOKIA mark is recognizable within the Domain Name, the addition of the word "theatre" and the abbreviation "NYC" does not prevent a finding of confusing similarity. The gTLD ".com" is disregarded as a standard registration requirement. Therefore, the Domain Name is confusingly similar to the Complainant's NOKIA mark.

The Complainant has satisfied the first element of the UDRP.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on the evidence, shall demonstrate a respondent's rights or legitimate interests to a domain name for the purposes of paragraph 4(a)(ii) of the Policy:

¹ Section 1.8, [WIPO Overview 3.0](#).

² Section 1.11.1, [WIPO Overview 3.0](#).

- (i) before any notice 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 (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark 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 trademark or service mark at issue.

To succeed under the second UDRP element, the Complainant must make out a *prima facie* case in respect of the lack of rights or legitimate interests of the Respondent.

The Panel finds that the Complainant satisfied its burden of production for the following reasons. First, it does not appear that the Respondent owns any trademarks corresponding to the Domain Name. The Respondent did not dispute it. Second, the Complainant did not authorize or license the Respondent's use of the Complainant's trademark in the Domain Name. Third, the Respondent's March 24, 2023 email in which the Respondent apologized and a promised to disable the website under the Domain Name together with the fact that the Respondent in fact disabled the website under the Domain Name, indicates that the Respondent has no rights or legitimate interests in the Domain Name. Fourth, the Respondent has not been commonly known by the Domain Name. Instead, the Contact use section of the Respondent's website referred to "fake name generated details", where the Respondent's name was supposed to be. Fifth, the Respondent's use of the Domain Name does not satisfy requirements of *bona fide* offering of goods and services because by registering the Complainant's former Domain Name, the Respondent created a website under the "NOKIA THEATRE NYC" title making it look like it belonged to an affiliate or a subsidiary of the Complainant. The website also offered gambling services and mentioned various third party gambling platforms.

Based on the foregoing, the Panel finds that the Complainant has made out the *prima facie* case and the burden of producing evidence demonstrating it has rights or legitimate interests in the Domain Name has shifted³ to the Respondent. Because the Respondent failed to present any rebutting evidence, the Complainant is deemed to have satisfied the second element of the UDRP.

C. Registered and Used in Bad Faith

Pursuant to paragraph 4(a)(iii) of the Policy, the Complainant must prove that the Domain Name was registered and is being used in bad faith.

The UDRP establishes that, for purposes of paragraph 4(a)(iii), "bad faith" registration and use of a domain name can be established by a showing of circumstances indicating that the respondent is using the 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 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. See Policy, paragraph 4(b)(iv). Prior UDRP panels have found "the following types of evidence to support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark: ... (ii) seeking to cause confusion (including by technical means beyond the domain name itself) for the respondent's commercial benefit, even if unsuccessful, (iii) the lack of a respondent's own rights to or legitimate interests in a domain name, ... (vi) absence of any conceivable good faith use."⁴

³ Section 2.1, [WIPO Overview 3.0](#).

⁴ Section 3.1.4, [WPO Overview 3.0](#).

Given that the Respondent used the Complainant's well-known NOKIA mark to register the Domain Name that used to belong to the Complainant, the Respondent could not plausibly deny that it was not aware of the Complainant's rights in the NOKIA mark. Further, "Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith."⁵

Instead, it is likely that the Respondent registered the Domain Name to trade on the goodwill of the Complainant's trademark. Initially, the website at the Domain Name offered online gambling services purportedly belonging to NOKIA Theatre NYC. The website also promoted various third-party gambling companies. Therefore, the Panel concludes that the Respondent registered and is using the 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 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.

The Panel finds that the Respondent's current non-use or passive holding of the Domain Name constitutes further evidence of the Respondent's bad faith. First, it is well-established that non-use of a domain name would not prevent finding of bad faith.⁶ Second, while the Complainant informed the Respondent about the Respondent's violation of the Complainant's trademark rights in February of 2023, the Respondent disabled the website at the Domain Name only a month and a half later, after it was notified about this proceeding. The Respondent's prior bad-faith use of the Domain Name that makes any good faith use of the Domain Name implausible support finding of bad faith registration and use.

The Complainant has satisfied the third element of the UDRP.

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 Name <nokiatheatrenyc.com> be transferred to the Complainant.

/Olga Zalomiy/

Olga Zalomiy

Sole Panelist

Date: May 2, 2023

⁵ *Id.*

⁶ Section 3.3, [WIPO Overview 3.0](#).