

ADMINISTRATIVE PANEL DECISION

Nokia Corporation v. AM, admin admin
Case No. D2023-1665

1. The Parties

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

The Respondent is AM, admin admin, Viet Nam.

2. The Domain Name and Registrar

The disputed domain name <nokiagift.com> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 17, 2023. On April 17, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 17, 2023, 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 (See PrivacyGuardian.org) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 17, 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 April 21, 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 April 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 15, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 16, 2023.

The Center appointed Antony Gold as the sole panelist in this matter on June 1, 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 technology company, established in 1865, with its head office in Usimaa, Finland. The Complainant now supplies goods and services in the fields of telecommunications, information technology and consumer electronics to more than 130 countries. In 2021, its global annual revenues were EUR 22.2 billion.

The Complainant's principal brand is NOKIA and it has registered many trade marks worldwide to protect this trading style. These include, by way of example only International trade mark, registration number 771539, registered on February 15, 2001 in multiple classes. The Complainant also owns and operates many domain names, which comprise or include its NOKIA mark, including <nokia.com> and <nokia.net>.

The disputed domain name was registered on February 6, 2022. As at the time of filing the Complaint, it resolved to a website headed "Nokiagift" beneath which, in large bold font, was the word "Affiliates" and, beneath that, the claim "Make money with NokiaGift OfferWalls". Website visitors were invited to "Become an Affiliate" with the offer of "High Payouts and Fast Payments". Attempts to access any website to which the disputed domain name presently resolves generate a warning notice in the web browser; "This Connection Is Not Private. This website may be impersonating "www.nokiagift.com" to steal your personal or financial information. You should go back to the previous page."

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer to it of the disputed domain name. Notably, the Complainant contends that;

- the disputed domain name is confusingly similar to a trade mark or service mark in which it has rights, in that it reproduces the Complainant's NOKIA mark exactly and adds the generic word "gift", which does not serve to prevent a likelihood of confusion arising between the Complainant's mark and the disputed domain name;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name. In particular, the purported operators of the disputed domain name do not appear to exist, nor is there any evidence that they have any registered trade mark rights in NOKIA or NOKIA GIFT. Furthermore, the Respondent is not authorized by the Complainant to use its NOKIA mark. Additionally, the vague nature of the Respondent's website suggests that it is not promoting any genuine affiliate-related services but that it was more likely established in order to collect personal data from Internet users for fraudulent purposes. Such use comprises neither a *bona fide* offering of goods and services nor a legitimate noncommercial or fair use of the disputed domain name;
- the disputed domain name was registered and is being used in bad faith. Having regard to the longstanding and widespread use made by the Complainant of its NOKIA mark, the Respondent cannot have been unaware of it as at the date of its registration of the disputed domain name and it accordingly acted with opportunistic bad faith when registering it. Moreover, the supposed name of the underlying registrant, as disclosed by the Registrar, is plainly fictitious and does not correspond to the name of any real natural person. The Respondent's failure to reply to the Complainant's claim letter provides further support for a determination by the Panel of bad faith registration and use

B. Respondent

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

6. Discussion and Findings

Dealing, first, with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under, these Rules, the Panel shall be entitled to draw such inferences from this omission as it considers appropriate.

Paragraph 4(a) of the Policy requires that the Complainant proves each of the following three elements in order to succeed in its Complaint: (i) the disputed domain name is identical or confusingly similar to a trade mark 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.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name; see the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy; see the [WIPO Overview 3.0](#), section 1.2.1. The Panel finds also that the entirety of the Complainant's mark is reproduced within the disputed domain name and that the mark is recognizable within the disputed domain name; see the [WIPO Overview 3.0](#), section 1.7. Whilst the addition of the word "gift", may bear on assessment of the second and third elements, the Panel finds the addition of this term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy; see the [WIPO Overview 3.0](#), section 1.8.

Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. The Panel therefore finds that the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, 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 the [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name. In particular, the Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made 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.; see paragraph 4(c)(i) of the Policy and the [WIPO Overview 3.0](#), section 2.2;

- the Respondent has not been commonly known by the disputed domain name; see paragraph 4(c)(ii) of the Policy and the [WIPO Overview 3.0](#), section 2.3;
- the Respondent is not 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; see paragraph 4(c)(iii) of the Policy and the [WIPO Overview 3.0](#), section 2.4;
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.

Additionally, the current use of the website to which the disputed domain name resolves, as described above, suggests that it may be being used for fraudulent purposes. As explained at section 2.13.1 of the [WIPO Overview 3.0](#), prior UDRP panels have held that the use of a domain name for illegal activity, including “phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud” can never confer rights or legitimate interests on a respondent.

For the above reasons, based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The use to which the disputed domain name was purportedly being put, as at the date of filing the Complaint, was to solicit affiliates albeit, as the Complainant has pointed out, the content of the Respondent’s website made little sense and there is significant doubt as to whether commercial activity was actually being conducted by the Respondent at this time. In any event, Internet users aware of the Complainant’s NOKIA brand who visited the Respondent’s website are apt to have assumed, from the confusing similarity between the disputed domain name and the Complainant’s mark, that it had some connection with the Complainant. Whilst they were soon likely to have realized their mistake, nonetheless, the Respondent will by then have had the opportunity to seek to derive financial benefit from their visit, whether through phishing or other means. In this respect see, for example, *Yahoo! Inc. v. Hildegard Gruener*, WIPO Case No. [D2016-2491](#), in which the panel explained, in the context of websites featuring pay-per-click links, that “[...] the use, to which the disputed domain names are put, namely parking pages featuring sponsored advertising links, is calculated to attract Internet users to the site in the mistaken belief that they are visiting a site of or associated with the Complainant. The object has to be commercial gain, namely pay-per-click or referral revenue achieved through the visitors to the site clicking on the sponsored advertising links. Even if visitors arriving at the websites to which the disputed domain name[s] resolve become aware that these websites are not such of the Complainant, the operators of these websites will nonetheless have achieved commercial gain in the form of a business opportunity, namely the possibility that a proportion of those visitors will click on the sponsored links”.

The same underlying principle is applicable to the Respondent’s website in that, irrespective of the content of the website to which the disputed domain name resolved, it is the confusing similarity between the disputed domain name and the Complainant’s mark which will have attracted Internet users to it. Such conduct falls within the circumstance of bad faith registration and use set out at paragraph 4(b)(iv) of the Policy namely the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of its website.

Additionally, whilst paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. In particular, prior

panels have held the following circumstances as relevant in assessing whether the respondent's registration of a domain name is in bad faith namely; (i) the nature of the domain name (for example, a domain name incorporating the complainant's mark plus an additional term such as a descriptive or geographic term; (ii)), a clear absence of rights or legitimate interests coupled with no credible explanation for the respondent's choice of the domain name; see the [WIPO Overview 3.0](#), section 3.2.1. Both these circumstances apply in the current proceedings.

The use presently being made of the disputed domain name, as described above, appears to involve fraudulent activity. Prior UDRP panels have held that the use of a domain name for illegal activity including phishing, identity theft or malware distribution, constitutes bad faith; see the [WIPO Overview 3.0](#), section 3.4.

For the above reasons, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy and that the third element of the Policy has been established.

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 <nokiagift.com> be transferred to the Complainant.

/Antony Gold/

Antony Gold

Sole Panelist

Date: June 15, 2023.