

ADMINISTRATIVE PANEL DECISION

Nutrien, Ltd. v. Name Redacted

Case No. D2023-1719

1. The Parties

The Complainant is Nutrien, Ltd., Canada, represented by Faegre Drinker Biddle & Reath, United States of America (“United States”).

The Respondent is Name Redacted¹.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 19, 2023. On April 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 19, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 20, 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 25, 2023.

The Center verified that the Complaint together with 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”).

¹ The Respondent appears to have used the name of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted the Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on April 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 16, 2023. An early and informal Response was filed with the Center on April 26, 2023. On May 12, 2023, an additional email communication in English was received from the attorney of the party named as the Respondent by the Registrar, indicating a potential identity theft of which the Center acknowledged receipt.

The Center appointed Kaya Köklü as the sole panelist in this matter on May 30, 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 provider of agricultural crop inputs and services with its registered seat in Canada. It is internationally active and employs over 23,500 people worldwide.

The Complainant is the owner of the NUTRIEN trademark, which is registered in a large number of jurisdictions (Annex 8 to the Complaint). For instance, the Complainant is the owner of the United States Trademark Registration No. 6,219,203, registered on December 15, 2020, covering protection for a large variety of goods and services as protected in classes 1, 2, 4, 5, 9, 16, 20, 29, 30, 31, 35, 36, 37, 39, 40, 41, 42, 44, and 45 (Annex 8 to the Complaint).

The Complainant further owns and operates the domain name <nutrien.com>, which was first registered in 2011, and acquired by the Complainant in 2017 (Annex 3 to the Complaint).

The Respondent is an individual, whose name is redacted since a third party may have used her or his identity and address for registering the disputed domain name without her or his consent (Supplemental Annex to the Amended Complaint).

The disputed domain name was registered on November 23, 2021.

The disputed domain name resolves to an active website offering a variety of agricultural fertilizers and supplements incorporating the Complainant's NUTRIEN trademark, such as "RootNutrien" and "FlowerNutrien" (Annex 4 to the Complaint). In addition, the offered products on the associated website partly also incorporate other trademarks of the Complainant, such as "LecTec" (Annex 4 to the Complaint). The associated website lists the business "AgVanced BioNutrien USA Corp."

5. Parties' Contentions

A. Complainant

The Complainant requests the transfer of the disputed domain name.

The Complainant claims that the actual identity of the Respondent is "Dan Lee" or his affiliated entity "AgVanced BioNutrien USA Corp.", stating that "Dan Lee" is a former employee of a supplier to the Complainant's subsidiary, Loveland Products, Inc., and that "Dan Lee" has used the Complainant's intellectual property rights without authorization in prior instances.

The Complainant is of the opinion that the disputed domain name is confusingly similar to its NUTRIEN trademark.

The Complainant further argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

In addition, the Complainant is convinced that the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

An early and informal Response was filed with the Center on April 26, 2023, in the name of the Respondent, whose name is redacted for identity theft reasons. In this Response, the sender of the email communication, purporting to be the Respondent, argues, among others, that he does not see “any thing wrong” with the disputed domain name, arguing that he “registered it first” and has “leased out” the disputed domain name to “Agvanced Bionutrien USA in late fall last year”. The Respondent claims that should there be any issue with the content of the disputed domain name, then the appropriate contact is with “the lessee Agvanced Bionutrien USA”.

On May 12, 2023, the Center received another email communication from an attorney stating that the Respondent, as confirmed by the Registrar, has no connection to the disputed domain name and that she or he has no access to email or phone numbers as disclosed by the Registrar.

6. Discussion and Findings

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark 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.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant’s contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel might, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

It is further noted that the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views stated therein.

6.1 Preliminary Consideration: Respondent Identity

While an early Response was received from the named Respondent, using the Registrar-confirmed email address for the Respondent, a third party email communication was received stating that the named Respondent as indicated by the Registrar was actually not the owner, or aware, of the registration of the disputed domain name. The email was from the legal representative of the named Respondent as indicated by the Registrar, expressing no connection to the phone number of email address disclosed by the Registrar in association with the Respondent contact details for the disputed domain name.

The Response from the Registrar-confirmed email for the Respondent indicates that the disputed domain name was leased to “Agvanced Bionutrien USA”, to which the Complaint argues is affiliated with the presumed underlying registrant, “Dan Lee”. Ultimately, the Panel notes that the Respondent used a name and physical address otherwise unassociated with it and the disputed domain name in furtherance of a multi-layered obfuscation, likely in an attempt to shield its illegitimate conduct from this, or any, UDRP proceeding. See [WIPO Overview 3.0](#), section 4.4.6.

While the Respondent claims that any complaint regarding the disputed domain name should be directed to the alleged lessee, “Agvanced Bionurtien USA”, the Panel notes that the Respondent is defined by the Rules as the holder of a domain-name registration against which a complaint is initiated and takes note of the Respondent’s own bad faith registration of the disputed domain name using fraudulent registrant details. Accordingly, while the Respondent’s name is redacted from this Decision, any reference herein to the “Respondent” should be interpreted as reference to the underlying registrant that registered and uses the disputed domain name, unless otherwise indicated.

A. Identical or Confusingly Similar

To begin with, the Panel confirms that the Complainant has satisfied the threshold requirement of having relevant trademark rights in NUTRIEN.

The Panel further finds that the disputed domain name is confusingly similar to the Complainant’s NUTRIEN trademark, as it fully incorporates the Complainant’s trademark.

As stated in section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms would generally not prevent a finding of confusing similarity. The addition of the term “cannabis” does not, in view of the Panel, prevent a finding of confusing similarity between the disputed domain name and the Complainant’s NUTRIEN trademark.

Accordingly, the Panel finds that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

In view of the above, the Panel is satisfied that the Complainant has met the requirements under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

While the burden of proof remains with the Complainant, the Panel recognizes that this would often result in the impossible task of proving a negative, in particular as the evidence needed to show the Respondent’s rights or legitimate interests is primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production of evidence shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name to meet the requirements of paragraph 4(a)(ii) of the Policy. *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

As indicated above, the Center received an email communication on May 12, 2023, from an attorney convincingly stating that the Respondent as indicated by the Registrar did not register and has no connection to the disputed domain name. This statement is further supported by the Complainant’s Supplemental Annex to the Amended Complaint. The Panel finds that an illegal activity such as identity theft, can never confer rights or legitimate interests on a respondent. See section 2.13 of the [WIPO Overview 3.0](#).

Moreover, with its Complaint, the Complainant has provided uncontested *prima facie* evidence that the Respondent has no rights or legitimate interests, particularly no license to use the Complainant’s trademark within the disputed domain name. Rather, the Complainant has furnished evidence demonstrating that the referenced business on the website associated with the disputed domain name, as well as being the same business to which the early Response claims the disputed domain name was leased to, is connected to an

individual familiar with the Complainant from a prior business relationship and who has also usurped the Complainant's intellectual property rights in other commercial ventures without the Complainant's authorization.

In addition, the Panel finds that the nature of the disputed domain name carries a risk of implied affiliation or association and that such implied affiliation was obviously the intent of the person, who registered the disputed domain name.

Consequently, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel is convinced that the disputed domain name has been registered and is being used in bad faith.

At the date of registration of the disputed domain name, the Complainant's NUTRIEN trademark was already registered and internationally used. It is obvious to the Panel, that the disputed domain name has been deliberately chosen to target the Complainant and its business.

This finding is supported by the use of the disputed domain name for offering agricultural fertilizers and supplements incorporating the Complainant's NUTRIEN trademark, which in view of the Panel is additional evidence that Internet users visiting the website associated with the disputed domain name shall be attracted by deliberately creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation or endorsement of the website. Also, the website associated with the disputed domain name references a business in direct competition with the Complainant and whose associated operations manager was a former employee of a supplier to the Complainant's subsidiary, reinforcing the Respondent's likely actual knowledge of the Complainant.

Moreover, the attorney for the Respondent as indicated by the Registrar, convincingly stated in the email communication to the Center of May 12, 2023, to be a victim of identity theft with no connection to the disputed domain name, supported by screenshots and references in the Complainant's Supplemental Annex to the Amended Complaint. In view of the Panel, the fact that the disputed domain name was registered using stolen personal information further demonstrates that the disputed domain name was registered and is being used for an illicit purpose.

All in all, the Panel concludes that the disputed domain name was registered and is being used in bad faith and that the Complainant consequently has also satisfied the third element of the Policy, namely, paragraph 4(a)(iii) of the Policy.

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

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: June 13, 2023