

ADMINISTRATIVE PANEL DECISION

Nordstrom, Inc. and NIHC, Inc. v. Simon Rahman
Case No. D2023-1956

1. The Parties

The Complainants are Nordstrom, Inc., and NIHC, Inc., United States of America (“United States”), represented by The GigaLaw Firm, Douglas M. Isenberg, Attorney at Law, LLC, United States.

The Respondent is Simon Rahman, Bangladesh.

2. The Domain Name and Registrar

The disputed domain name <myNordstrom.ltd> (the “Disputed Domain Name”) is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 1, 2023. On May 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 3, 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 Complainants on May 4, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainants filed an amendment to the Complaint on May 6, 2023.

The Center verified that the Complaint together with the amendment to the 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 May 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 2, 2023.

The Center appointed Rosita Li as the sole panelist in this matter on June 13, 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.

In the present case, the Panel accepts that the Complainant, NIHC, Inc., is an intellectual property holding company for, and a wholly owned subsidiary of, the Complainant, Nordstrom, Inc. Given the corporate relationship between these two companies and that such relationship has been confirmed in previous UDRP decisions as submitted by the said two Complainants, the Panel determines that these two Complainants have sufficiently established a nexus between them, and elects to treat them as a single entity in this proceeding, and will be addressed collectively as “the Complainant”.

In the present case, the Panel determines that the Complaint should proceed solely against the underlying registrant, Simon Rahman (the “Respondent”), since it is the actual holder of the registration for the Disputed Domain Name as disclosed by the Registrar and against which the Complaint was initiated. The registrant information of the Disputed Domain Name was originally redacted for privacy.

4. Factual Background

The Complainant, based in the United States, is a leading fashion retailer and is a publicly traded company on the New York Stock Exchange (symbol JWN).

The Complainant submits that:

- Founded in 1901, it was recognized as the largest-volume fashion specialty store on the West Coast of the United States in 1971. It had a national expansion across the United States from 1973 to 1998 and its international expansion from the United States to Canada and Puerto Rico from 2014 to 2018.
- it serves customers in store at more than 350 Nordstrom, Nordstrom Local, and Nordstrom Rack locations, as well as through its Nordstrom and Nordstrom Rack apps and websites.
- it employs an average of 60,000 employees as of January 28, 2023 and reported net earnings of USD 119 million, and earnings before interest and taxes of USD 187 million for the quarter that ended January 28, 2023.
- It is the owner of numerous trade mark registrations in various jurisdictions worldwide for its NORDSTROM marks, including in Australia, Brazil, Canada, China, the European Union, India, Japan, New Zealand, Panama, the Philippines, the Republic of Korea, Taiwan, Province of China, United Kingdom, United States, and Uruguay (“NORDSTROM Marks”). The Complainant’s NORDSTROM Marks include but are not limited to the following United States trade mark registrations:
 - a) United States trade mark no. 1281000 for NORDSTROM, first use in November 1972, registered on June 5, 1984, duly renewed and covering class 42; and
 - b) United States trade mark no. 1280785 for NORDSTROM, first use in November 1972, registered on June 5, 1984, duly renewed and covering class 39.
- It is the registrant of and uses multiple domain names consisting of, or incorporating, its NORDSTROM Marks, including but not limited to <nordstrom.com> registered since July 14, 1994, and <mynordstrom.com> registered since August 24, 1999. The Complainant uses the domain name <mynordstrom.com> as a non-public closed website for its employees to provide them with administrative and employment related information (the “Complainant’s Website”).

The Disputed Domain Name was registered on October 15, 2021. According to the evidence provided by the Complainant, the Disputed Domain Name resolves to a website, using the Complainant’s NORDSTROM Marks, purporting to be the “Official Mynordstrom Login Portal”, providing information about “Nordstrom’s online employee portal” where employees allegedly “can view their payroll, work hours, compensation plans, Mypay information, and more” (the “Disputed Domain Name Website”).

5. Parties' Contentions

A. Complainant

The Complainant submits that the three elements set out under paragraph 4(a) of the Policy in relation to the Disputed Domain Name have been satisfied. A summary of the Complainant's submission is as follows.

- (i) The Complainant submits that the Disputed Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights. The Complainant contends that:
 - the Complainant is the owner of numerous trade mark registrations worldwide for its NORDSTROM Marks;
 - the Top-Level Domain ("TLD") of the Disputed Domain Name ".ltd" is viewed as standard registration requirement and should be disregarded under the similarity test; and
 - The Disputed Domain Name contains the Complainant's NORDSTROM Marks in their entirety and the inclusion of the word "my" is irrelevant and does not prevent a finding of confusing similarity.
- (ii) The Complainant submits that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Complainant contends that:
 - the Complainant has never assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or use its NORDSTROM Marks in any manner;
 - the Respondent has failed to create a *bona fide* offering of goods or services under the Policy by using the Disputed Domain Name in connection the Disputed Domain Name Website that:
 - a) uses the Complainant's NORDSTROM Marks;
 - b) falsely purports to be a website for, or otherwise associated with, the Complainant and the Complainant's Website; and
 - c) purports to provide information about "Nordstrom's online employee portal" where employees allegedly "can view their payroll, work hours, compensation plans, Mypay information, and more";
 - the Respondent has never been commonly known by the Disputed Domain Name and has never acquired any trade mark or service mark rights in the Disputed Domain Name. Hence, the Respondent cannot establish rights or legitimate interests in respect to the Disputed Domain Name;
 - the Complainant has used its NORDSTROM Marks for more than 50 years and has 79 trade mark registrations for marks for or incorporating the word "nordstrom". As such, it is practically impossible for the Respondent to be commonly known by the NORDSTROM Marks;
 - the Respondent's use of the Disputed Domain Name Website is clearly not legitimate and are clearly misleading. Hence, the Respondent cannot establish rights or legitimate interests in respect of the Disputed Domain Name;
 - the Disputed Domain Name Website misleadingly diverts consumers under the doctrine of "initial interest confusion"; and
 - the Respondent's use of the Disputed Domain Name cannot qualify as "fair use" because it clearly suggests an affiliation with the Complainant. By creating the Disputed Domain Name Website that offers content designed to confuse users into believing they have reached the Complainant's own websites, the Disputed Domain Name Website suggests that it is sponsored or endorsed by the Complainant and/or that it is the Complainant's own website.
- (iii) The Complainant submits that the Disputed Domain Name was registered and is being used in bad faith. The Complainant contends that:
 - the Complainant's NORDSTROM Marks are famous and/or widely known. Given the global reach and popularity of the Complainant's services under its NORDSTROM Marks, as well as the similarities between the Disputed Domain Name and the Complainant's own domain names, it is implausible that

- the Respondent was unaware of the Complainant and the NORDSTROM Marks when the Respondent registered the Disputed Domain Name;
- the similarities between the Disputed Domain Name Website and the Complainant's Website make it clear that the Respondent's registration and use of the Disputed Domain Name creates a likelihood of confusion with the Complainant's NORDSTROM Marks as to the source, sponsorship, affiliation, or endorsement of the Disputed Domain Name Website or location or of a product or service on the Disputed Domain Name Website or location;
 - the Respondent has been using the Disputed Domain Name in order to pass off the Disputed Domain Name Website as a website of or otherwise authorized or approved by the Complainant;
 - the Respondent's intention in registering the Disputed Domain Name appears to be to engage in phishing or other inappropriate activities by causing confusion among users who intent to visit the Complainant's Website;
 - the Respondent is a repeated cybersquatter and has a pattern of registering trademark-abusive domain names, apart from the Disputed Domain Name, in at least two other domain name dispute proceedings; and
 - given that the Disputed Domain Name is so obviously connected with the Complainant, the Respondent's actions suggest "opportunistic bad faith" in violation of the Policy.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that a complainant must satisfy each of the following three elements in a 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

According to section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), TLDs such as ".ltd" in a disputed domain name do not typically form part of the relevant assessment in the test of confusing similarity. The Panel will accordingly consider the second level part of the Disputed Domain Name (*i.e.*, "mynordstrom").

The Panel has considered the list of trade mark registrations under the name of the Complainant submitted as evidence in the Complaint and accepts that the Complainant has well over 72 trade mark registrations for or incorporating the term "Nordstrom" across numerous jurisdictions around the world.

The Complainant has demonstrated that it is the proprietor of the NORDSTROM Marks, including but not limited to its NORDSTROM United States trade mark registrations, and that their NORDSTROM Marks were registered significantly earlier than the Disputed Domain Name.

According to section 1.7 of the [WIPO Overview 3.0](#), "where a domain name incorporates the entirety of a trademark [...] the domain name will normally be considered confusingly similar to that mark." The Disputed Domain Name incorporates the Complainant's NORDSTROM Marks in their entirety. The addition of the term "my" in the Disputed Domain Name does not prevent a finding of confusing similarity between the Disputed Domain Name and the Complainant's NORDSTROM Marks.

Accordingly, the Panel is of the view that the Disputed Domain Name is confusingly similar to the Complainant's marks and the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

According to section 2.1 of the [WIPO Overview 3.0](#), "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".

The Panel accepts the Complainant's submissions that the Respondent does not appear to own any trade mark registrations or applications containing or consisting of the term "Nordstrom" nor is the Respondent commonly known by the Disputed Domain Name. The Panel notes that the Complainant has never assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or use its NORDSTROM Marks in any manner. Considering the evidence submitted by the Complainant, the Panel accepts that the Disputed Domain Name Website clearly displays the Complainant's NORDSTROM Marks, purports to be the "Official Mynordstrom Login Portal", and purports to provide information about the Complainant's non-public closed site for its employees to provide them with administrative and employment related information.

Considering the Disputed Domain Name Website resolves to what appears to be a fraudulent copy of the Complainant's Website which displays the Complainant's NORDSTROM Marks, includes numerous references to the Complainant's domain name <mynordstrom.com>, and purports to provide administrative and employment-related information to employees of the Complainant, the Panel is prepared to find that the Respondent does not use the Disputed Domain Name in connection with a *bona fide* offering of goods or services. The Panel finds it apparent that the Respondent has the intention to divert Internet users, namely, the Complainant's employees, seeking to find the Complainant and/or the Complainant's online employee portal to the Disputed Domain Name by impersonating the Complainant. The Panel agrees that use of the Disputed Domain Name, which is also inherently misleading, by the Respondent was an attempt to capitalize on the reputation and goodwill of the Complainant's NORDSTROM Marks and mislead Internet users. As such, the Panel does not find that the use of the Disputed Domain Name Website is for a legitimate noncommercial or fair use. Moreover, this Panel is prepared to find that the evidence submitted by the Complainant regarding the Respondent's involvement in at least two other domain name dispute proceedings supports the submission that the Respondent has engaged in a pattern of trademark-abusive domain name registrations which cannot constitute legitimate fair use ([WIPO Overview 3.0](#), section 2.5.3.).

Further, according to section 2.13.1 of the [WIPO Overview 3.0](#), UDRP panels have consistently held that, "the use of a domain name for illegal activity (e.g., phishing, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent". Although there is no evidence of the Respondent using the Disputed Domain Name for phishing activity, the Panel notes that the Respondent has failed to explain its conduct and has the intention to impersonate/pass off as the Complainant by falsely claiming that the Disputed Domain Name Website is the "Official Mynordstrom Login Portal" through using a domain name that is identical to the Complainant's domain name <mynordstrom.com> (apart from the TLD).

Considering the foregoing, the Panel is satisfied that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests, and that paragraph 4(a)(ii) of the Policy has been satisfied.

C. Registered and Used in Bad Faith

According to section 3.1.4 of the [WIPO Overview 3.0](#), UDRP panels have "consistently found that the mere registration of a domain name that is identical or confusingly similar [...] to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith".

The Panel finds that at the time of registration of the Disputed Domain Name in 2021, the Complainant's NORDSTROM Marks were already registered in various parts of the world. The Panel agrees that the Complainant's NORDSTROM Marks are well known and reputable amongst the general public. Considering the reputation of the NORDSTROM Marks, it would not be plausible for the Respondent to claim that it was unaware of the Complainant and its NORDSTROM Marks. The Panel is prepared to infer that the Respondent knew or should have known that its registration of the Disputed Domain Name would be confusingly similar to the Complainant's NORDSTROM Marks ([WIPO Overview 3.0](#), section 3.2.2.). Accordingly, the Panel finds that the Respondent registering the Disputed Domain Name, which is confusingly similar to the Complainant's NORDSTROM Marks, which are well known and registered substantially earlier, is a clear indicator of bad faith.

Moreover, factors such as domain names which carry a risk of implied affiliation, and a clear absence of rights or legitimate interests are all indicative of bad faith ([WIPO Overview 3.0](#), section 3.2.1). The Panel accordingly considers its findings in sections 6.A. and 6.B., coupled with the fact that the Respondent failed to explain his choice of the Disputed Domain Name to be clear indicators of the Respondent's bad faith.

Considering the appearance and use of the Disputed Domain Name Website purporting to provide administrative and employment-related information to the Complainant's employees, using the Complainant's NORDSTROM Marks, and referring throughout the site to the Complainant's actual employment portal associated with the Complainant's domain name <mynordstrom.com>, and even including a header stating, "official Mynordstrom Login Portal", the Panel is prepared to find that the Respondent has attempted to pass off as an official website of the Complainant, to benefit from the reputation and goodwill of the Complainant's NORDSTROM brand. While the Panel notes that the Disputed Domain Name Website includes a disclaimer at the bottom of the page which states, "This website is not associated with the Mynordstrom", according to section 3.7 of the [WIPO Overview 3.0](#), "where the overall circumstances of a case point to the respondent's bad faith, the mere existence of a disclaimer cannot cure such bad faith. In such cases, panels may consider the respondent's use of a disclaimer as an admission by the respondent that users may be confused". Considering the overall circumstances of the present case, the Panel is prepared to find that the Respondent registered and used the Disputed Domain Name Website primarily for the purpose of attempting to attract, for commercial gain, Internet users to his website by creating confusion with the Complainant's NORDSTROM Marks as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or of the service(s) on the Respondent's website to the Complainant ([WIPO Overview 3.0](#), section 3.1).

In view of the foregoing, the Panel is of the view that paragraph 4(a)(iii) of the Policy has been satisfied, *i.e.*, the Disputed Domain Name was registered and is being used in bad faith.

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 <mynordstrom.ltd> be transferred to the Complainants.

/Rosita Li/

Rosita Li

Sole Panelist

Date: June 27, 2023