

ADMINISTRATIVE PANEL DECISION

Nickmercs LLC v. Aarnav Paul

Case No. D2023-2511

1. The Parties

The Complainant is Nickmercs LLC, United States of America (“United States”), represented by BRANDIT GmbH, Switzerland.

The Respondent is Aarnav Paul, India.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 9, 2023. On June 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 9, 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, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 16, 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 June 20, 2023. The Respondent sent an informal email to the Center dated June 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 July 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 25, 2023. The Respondent did not submit any formal response. Accordingly, the Center notified the Parties with a Commencement of Panel Appointment Process email on July 31, 2023.

The Center appointed Steven A. Maier as the sole panelist in this matter on August 7, 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 business entity operated by an individual named Nicholas Kolcheff. Mr Kolcheff is better known by the name “Nickmercs” and is a professional social media streamer and online gamer. He has a community of followers known as “MFAM”.

The Complainant is the owner of:

- United States trademark registration number 6971228 for the word mark NICKMERCES, registered on February 7, 2003 with a filing date of August 6, 2021; and
- United States trademark registration number 6843390 for the word mark MFAM, registered on September 13, 2022 with a filing date of August 9, 2021.

The disputed domain name was registered on July 16, 2022.

The Complainant provides evidence that the disputed domain name has resolved to a website headed “Nickmercs Merch – Official Store” and “Nickmercs Merch Shop” which has offered clothing for sale online, including garments branded “MFAM”. The website included a photograph of Mr Kolcheff and information about him and his business activities.

5. Parties’ Contentions

A. Complainant

The Complainant submits that “Nickmercs” commenced his online activities in about 2011 and is now one of the most popular online performers, reaching up to 30,000 users in his live performances. He claims over 6.7 million followers on the platform Twitch and was reported in Forbes magazine to have increased his earnings from his online activities from USD 8 million in 2021 to USD 15 million in 2022.

The Complainant submits that the disputed domain name is identical or confusingly similar to its trademark NICKMERCES. It contends in particular that the addition of the term “merch” to that trademark does not prevent a finding of confusing similarity.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It states that it has no relationship with the Respondent and has never authorized it to use its NICKMERCES or MFAM trademarks, that the Respondent has not commonly been known by the disputed domain name and that the Respondent is making neither *bona fide* commercial use nor legitimate noncommercial or fair use of the disputed domain name. Instead, the Complainant submits that the Respondent registered and has used the disputed domain name to take unfair advantage of the reputation of the NICKMERCES trademark by selling unauthorized, branded merchandise under the pretence that its website is in some way legitimately connected with the Complainant.

The Complainant submits that the disputed domain name was registered and has been used in bad faith. It states that the name and mark NICKMERCES is an invented term, and also notes that the disputed domain name was registered after the Complainant had filed for its NICKMERCES and MFAM trademarks. It contends that it is therefore highly unlikely that the disputed domain name was adopted coincidentally. The Complainant adds that the disputed domain name has been used for the purpose of a website which expressly represents a connection with the individual “Nickmercs”, from which it is clear that the disputed domain name was selected with the Complainant’s trademark in mind.

The Complainant submits that the Respondent has used the disputed domain name for the purpose of a website which advertises and sells unauthorized merchandise bearing the Complainant's trademarks and which includes personal pictures of "Nickmercs". The Complainant submits in the circumstances that the Respondent attempts to mislead potential customers by creating a likelihood of confusion with the Complainant's NICKMERCs trademark and by leading the general public to believe that the goods advertised on its website are authorized by the Complainant.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

The Respondent did not file a formal Response in this proceeding. In its informal email to the Center dated June 20, 2023 it stated: "Sorry for the late reply! Sorry I'll remove all contents."

The Panel finds in the circumstances that the Respondent does not contest the Complainant's submissions.

6. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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

The Complainant has established that it has registered trademark rights in the mark NICKMERCs. The disputed domain name incorporates that mark in full with the addition of the term "merch", which does not prevent the Complainant's trademark from being recognizable within the disputed domain name. The Panel therefore finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

In the view of the Panel, the Complainant's submissions set out above give rise to a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. However, the Respondent does not contest the Complainant's submissions and has not submitted any explanation for its registration and use of the disputed domain name, or evidence of rights or legitimate interests on its part in the disputed domain name, whether in the circumstances contemplated by paragraph 4(c) of the Policy or otherwise. The Panel accepts the Complainant's submission that the Respondent has registered and used the disputed domain name for the purpose of a website which takes unfair commercial advantage of the Complainant's trademark rights, which does not constitute legitimate use of the disputed domain name. The Panel finds in the circumstances that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The Panel finds the Complainant's NICKMERCs trademark to be distinctive in nature and to have become widely known to identify the personality "Nickmercs" in social media and video gaming circles. In view of these matters and the Respondent's use of the disputed domain name, there can be no doubt that the

Respondent registered the disputed domain name with the Complainant's trademark in mind and with the intention of taking commercial advantage of that trademark.

The Panel finds the disputed domain name to be inherently deceptive, as inevitably misrepresenting to a significant number of Internet users that it links to a website which is authorized by, or otherwise commercially affiliated with, the Complainant.

Indeed the Respondent's website expressly continues that misrepresentation by describing itself as the "Nickmercs Merch – Official Store" while offering merchandise, including that branded with the Complainant's MFAM trademark, without any authorization from the Complainant. The website exacerbates the likelihood of confusion by including photographs of "Nickmercs" and information about him and his business activities.

The Panel therefore finds that, by using the disputed domain name, 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 trademarks as to the source, sponsorship, affiliation, or endorsement of its website or of a product or service on its website (paragraph 4(b)(iv) of the Policy).

The Panel finds in the circumstances that the disputed domain name has been 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, <nickmercsmerch.com>, be transferred to the Complainant.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: August 21, 2023