

## **ADMINISTRATIVE PANEL DECISION**

New Relic, Inc. v. Web.com Holding Account and Domain Admin / Media Matrix LLC

Case No. D2023-2526

### **1. The Parties**

The Complainant is New Relic, Inc., United States of America (“United States”), represented by SafeNames Ltd., United Kingdom.

The Respondents are Web.com Holding Account, United States, and Domain Admin / Media Matrix LLC, United States.

### **2. The Domain Names and Registrars**

The disputed domain names <newrellic.com> and <wwwnewrelic.com> are registered with Network Solutions, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 12, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On June 15, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrants and contact information for the disputed domain names which differed from the named Respondents (Unknown) and contact information in the Complaint.

The Center sent an email communication to the Complainant on June 21, 2023, providing the registrants 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 July 3, 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 Respondents of the Complaint, and the proceedings commenced on July 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 7, 2023. The Respondents did not submit any response.

Accordingly, the Center notified the Respondents' default on August 8, 2023.

The Center appointed William F. Hamilton as the sole panelist in this matter on August 11, 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 leading software-as-a-service provider of application performance management tools. The Complainant operates internationally with offices in the United States, Europe, the Middle East, Asia, and Oceania.

The Complainant's principal business website is "www.newrelic.com", which received more than 2.3 million visits per month in 2023.

The Complainant owns numerous trademark registrations for the trademark NEW RELIC (the "Mark"), the earliest of which is United States Patent and Trademark Office Registration No. 3626844, registered on March 26, 2009.

The disputed domain names resolve to websites featuring pay-per-click ("PPC") links to services competitive to the services offered by the Complainant.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant asserts the disputed domain names are confusingly similar to the Mark. The disputed domain name <newrelic.com> merely adds the letter "l" to the Mark, and the disputed domain name <wwwnewrelic.com> adds to the Mark the prefix "www". Both disputed domain names employ typosquatting techniques. The Complainant asserts that the Complainant never authorized the Respondents to use the disputed domain names, that the Respondents are not generally known by the disputed domain names, never operated a business under the disputed domain names, have not advertised the disputed domain names, and never engaged in any *bona fide* commercial activity in connection with the disputed domain names. The Complainant asserts that the Respondents knew or should have known of the Mark with reasonable investigation and registered, and used the disputed domain names in bad faith.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

##### **Consolidation:**

The Panel accepts the consolidated Complaint against the Respondents regarding the disputed domain names.

The WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2, provides that "where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties".

On the evidence provided the Panel determines that that the Respondents are more than likely affiliated entities under common direction. The name “New Venture Services, Corp.” appears in the registration records of both disputed domain names, the disputed domain names were registered with the same Registrar, the disputed domain names utilize typosquatting techniques pertaining to the Complainant’s NEW RELIC trademark, the disputed domain names each resolve to similar PPC websites, and the Respondents have not contested consolidation.

The Panel finds that consolidation would enhance the efficient handling of the Complainant’s claims and that consolidation will be fair and not work a prejudice against the Respondents.

### **Policy Requirements:**

Under paragraph 4(a) of the Policy, to succeed the Complainant must satisfy the Panel that:

- (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant have rights;
- (ii) the Respondents have no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names were registered and is being used in bad faith.

### **A. Identical or Confusingly Similar**

The Panel finds that the disputed domain names are confusingly similar to the Complainant’s Mark.

The disputed domain name <newrellic.com> merely adds the letter “l” to the Mark, and the disputed domain name <wwwnewrelic.com> adds to the Mark the prefix “www”.

A domain name which wholly incorporates a complainant’s registered mark is sufficient to establish confusingly similarity for the purposes of the Policy when, as here, the Mark is clearly recognizable within the disputed domain names notwithstanding minor non-material additions. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.8 (“where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographic, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element”). In this case, the Mark is clearly recognizable in the disputed domain name <wwwnewrelic.com>.

With respect to the disputed domain name <newrellic.com>, a “domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element”. See [WIPO Overview 3.0](#), section 1.9. The disputed domain name <newrellic.com> contains an obvious misspelling through addition of the second letter “l” in the disputed domain name.

The generic Top-Level Domain of the disputed domain names, in this case “.com”, may be disregarded for the purposes of assessment under the first element, as it is viewed as a standard registration requirement. [WIPO Overview 3.0](#), section 1.11.1. *Monster Energy Company, a Delaware Corporation v. J.H.M. den Ouden*, WIPO Case No. [D2016-1759](#).

The Complainant has met its burden under paragraph 4(a)(i) of the Policy.

### **B. Rights or Legitimate Interests**

The Panel finds on the evidence presented that the Respondents have no rights or legitimate interests in the disputed domain names.

The Complainant has specifically disavowed providing the Respondents with permission to use the disputed domain names or the Mark. There is no evidence that the Respondents have conducted any *bona fide* business under the disputed domain names or are commonly known by the disputed domain names. The Complainant has established a *prima facie* case in its favor, which shifts the burden of production on this point to the Respondents. The Respondents, however, have failed to come forth with any evidence showing any rights or legitimate interests in the disputed domain names. Moreover, the disputed domain names will likely confuse unsuspecting Internet users into believing the disputed domain names would resolve websites associated, sponsored, or affiliated with the Complainant.

The facts and circumstances presented to the Panel demonstrate that the Respondents do not have any rights or legitimate interests in the disputed domain names. The Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

### **C. Registered and Used in Bad Faith**

Under paragraph 4(b) of the Policy, bad faith may be established by any one of the following non-exhaustive scenarios:

- (i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the 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 on the evidence presented that the disputed domain names were registered and used in bad faith.

A simple Internet search, which should normally be undertaken when before registering a domain name would have quickly disclosed the Mark. Moreover, the Mark is well-known in the software application performance management tools industry in the United States where the Respondents are reportedly located. Given the minor differences between the Complainant's unique Mark and the disputed domain names, it strains credulity to believe that the Respondents innocently and unknowingly registered and used the disputed domain names especially when the PPC websites link to services competitive with the Complainant's services.

Finally, even ignoring the above compelling evidence of bad faith registration and use, it is difficult to conceive of any use that the Respondents might make of the disputed domain names without the Complainant's consent that would not involve bad faith. *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *Verner Panton Design v. Fontana di Luce Corp*, WIPO Case No. [D2012-1909](#) (where the reputation of a complainant in a given mark is significant and the mark bears strong similarities to the disputed domain name, the likelihood of confusion is such that bad faith may be inferred).

The Complainant has met their burden under 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 names <newrellic.com> and <wwwnewrelic.com> be transferred to the Complainant.

*/William F. Hamilton/*

**William F. Hamilton**

Sole Panelist

Date: August 25, 2023