

## **ADMINISTRATIVE PANEL DECISION**

### **Novagold Resources Inc. v. Kenya Johnson, Vigorous General Hotel Case No. D2023-3520**

#### **1. The Parties**

The Complainant is Novagold Resources Inc., Canada, represented by Cassels Brock & Blackwell, LLP, Canada.

The Respondent is Kenya Johnson, Vigorous General Hotel, Canada.

#### **2. The Domain Name and Registrar**

The disputed domain name <novagoldinc.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 August 19, 2023. On August 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 21, 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 August 23, 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 August 24, 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 August 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 13, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 14, 2023.

The Center appointed Aaron Newell as the sole panelist in this matter on September 22, 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:

- i) has been doing business since around 1984 and is presently listed on the New York Stock Exchange and Toronto Stock Exchange;
- ii) is involved in the commercial exploitation of mining properties and as at the time of filing the Complaint was involved in one of the largest known open-pit gold deposits in the world, being the Donlin Gold project in Alaska;
- iii) owns numerous registered trade marks for the sign NOVAGOLD including but not limited to Canadian Trademark Registration No. TMA868037 for NOVAGOLD (registered December 30, 2013) and covering *Mining services; geophysical exploration for the mining industry; technical supervision and inspection in the field of geological mining*. The Panel notes that at the time that this application was filed, Canada did not operate under the Nice Classification system and therefore this registration was not filed in any specific classes;
- iv) has since 2008 operated a website at <novagold.com> at which it promotes its activities and does so by prominent reference to its NOVAGOLD name;
- v) enjoys a moderate but material following on various social media accounts including Facebook, X (formerly Twitter), LinkedIn and YouTube;
- vi) in the two years up to January 2021 enjoyed an approximate average of four thousand monthly visitors to its website at <novagold.com>;
- vii) has provided evidence that the disputed domain name was in July 2023 used to contact a number of the Complainant's suppliers and seek goods and/or services from those suppliers under the pretense of being the Complainant.

The Respondent did not respond to the Complaint and did not engage with the proceedings.

The disputed domain name was registered on June 30, 2023. The publicly-available Whois information shows a privacy service as the recorded registrant.

The Panel notes by way of its own research that the disputed domain name presently resolves to a pay-per-click ("PPC") advertising page that links through to websites feature businesses that have no obvious connection with the Complainant and that offers services that relate to the Complainant's industry, which was also the case at filing of the Complaint as evidenced by the Complainant.

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

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

The Complainant asserts that:

- i) the disputed domain name fully incorporates the Complainant's registered NOVAGOLD trademark and therefore is confusingly similar with the Complainant's rights;

- ii) the disputed domain name has been used for e-mails that falsely give the impression that the Respondent is or is somehow related to the Complainant;
- iii) in this same way, the disputed domain name has been used to impersonate the Complainant;
- iv) the disputed domain name has been used as described in ii) and iii) above for the purposes of commercial gain;
- v) the Respondent has no connection with the Complainant and is not authorized by the Complainant to use its trade marks including and in particular the distinctive NOVAGOLD name, has used the disputed domain name unlawfully, has never made a *bona fide* offering of goods or services by reference to the disputed domain name, has never been commonly known by the disputed domain name, has not made any legitimate or noncommercial or fair use of the disputed domain name and has no other conceivable valid interest in the disputed domain name and/or the NOVAGOLD name;
- vi) given the assertions at ii) through v) above, the Respondent has no rights or legitimate interests in the disputed domain name, which in the circumstances has been registered and used in bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy requires that the Complainant prove:

- i) the disputed domain name registered by the Respondent 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 with respect to 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 disputed domain name contains the Complainant's registered trade mark NOVAGOLD in its entirety.

Panels frequently find that the inclusion of an entire registered mark renders the disputed domain name confusingly similar to the included trade mark.

In this case, the use of the additional term "inc" in the disputed domain name does nothing to prevent a finding of confusing similarity, as the Complainant's trade mark remains easily recognizable within the disputed domain name. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8.

The Panel finds that the disputed domain name is confusingly similar to a registered trade mark in which the Complainant has rights.

The Complainant has therefore met the first requirement.

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

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving that 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 [WIPO Overview 3.0](#), section 2.1.

By way of its assertions outlined above in section 5.A ii) through 5. A. v) inclusive, the Complainant has made out a *prima facie* case that the Respondent does not have rights and/or legitimate interests in the disputed domain name.

The Respondent did not respond, and therefore has done nothing to challenge the Complainant's assertions.

Accordingly, and taking into account the Panel's further findings below, there is no basis on which the Panel can find that the Respondent has any rights or legitimate interests in the disputed domain name.

The Complainant has therefore met the second requirement.

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

The Complainant provided copies of emails whereby email addresses at the disputed domain name are used to impersonate the Complainant in correspondence with numerous third-party businesses. The emails are of a commercial nature and appear to manifest an intention to obtain goods and/or services from third parties under the pretense of being a *bona fide* and/or existing customer, namely the Complainant. The individual using the disputed domain name for these emails most often seeks to obtain the requested goods and pay within thirty days of delivery, often proposing this arrangement on the basis of a pre-existing relationship between the supplier and the Complainant.

The Respondent failed to respond to the Complaint and therefore failed to challenge the Complainant's evidence and assertions which are *prima facie* credible.

UDRP paragraph 4(b) provides that the following scenario constitutes evidence of a respondent's bad faith:

“(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.”

Panels have found that the following types of evidence support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark: (i) actual confusion, (ii) seeking to cause confusion (including by technical means beyond the domain name itself) for the respondent's commercial benefit, even if unsuccessful.

Further, as noted in [WIPO Overview 3.0](#) section 2.13.1, the use of a domain name to impersonate a third party, including by way of use of that party's registered trade mark as part of a domain name, is manifestly considered to be evidence of bad faith.

In the absence of any denial of, justification of or explanation for the conduct outlined in the Complainant's evidence, the Panel accepts the Complainant's assertion that the Respondent used the disputed domain name to impersonate the Complainant for commercial gain.

The Complainant has therefore met the third requirement.

## 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, <novagoldinc.com>, be transferred to the Complainant.

*/Aaron Newell/*

**Aaron Newell**

Sole Panelist

Date: October 6, 2023