

## ADMINISTRATIVE PANEL DECISION

AllSouth Federal Credit Union v. Auburn Nelson  
Case No. D2023-4025

### 1. The Parties

Complainant is AllSouth Federal Credit Union, United States of America, represented by Nelson Mullins Riley & Scarborough, L.L.P., United States of America.

Respondent is Auburn Nelson, United States of America.

### 2. The Domain Name and Registrar

The disputed domain name <allsouthfcualerts.online> is registered with HOSTINGER Operations, UAB (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 26, 2023. On September 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 28, 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 (Privacy Protect, LLC, (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to Complainant on September 29, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on October 18, 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 Respondent of the Complaint, and the proceedings commenced on October 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 13, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on November 14, 2023.

The Center appointed Georges Nahitchevansky as the sole panelist in this matter on December 4, 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**

Complainant, AllSouth Federal Credit Union, is a federally chartered credit union based in the United States of America. Complainant owns and uses the marks ALLSOUTH and ALLSOUTH FEDERAL CREDIT UNION in connection with its financial, credit union and banking services and owns trademark registrations in the United States of America for these marks. These include registrations for (i) ALLSOUTH FEDERAL CREDIT UNION (Registration No. 2,977,711) that issued to registration on July 26, 2005, and (ii) ALLSOUTH (registration No. 6,118,269) that issued to registration on August 4, 2020. Complainant also owns and uses the domain name <allsouth.org> for a website that advertises Complainant's services, and which provides a portal for its banking and financial services.

Respondent registered the disputed domain name on September 21, 2023. Since registering the disputed domain name, Respondent has used such for a website that appears to be an online banking login page for "AllSouth Federal Credit Union". Respondent also appears to have sent text messages to consumers advising that their accounts are on hold and requesting that they visit the website at the disputed domain name to restore access to their accounts. Currently, the disputed domain name does not resolve to an active website or page.

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

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

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, Complainant contends that the disputed domain name incorporates and trades upon Complainant's ALLSOUTH and ALLSOUTH FEDERAL CREDIT UNION marks and is being used in bad faith as part of a phishing scheme to obtain the user names and passwords of Complainant's customers.

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

Respondent did not reply to Complainant's contentions.

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

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

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

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

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

Based on the available record, the Panel finds Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. The Panel further finds the entirety of Complainant's ALLSOUTH mark is reproduced within the disputed domain name and that the disputed domain name essentially reproduces Complainant's ALLSOUTH FEDERAL CREDIT UNION mark by using ALLSOUTH with the abbreviation "fcu" which stands for "federal credit union." Although the addition of the term "alerts" may bear on the assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8 Accordingly, the disputed domain name is confusingly similar to Complainant's ALLSOUTH and ALLSOUTH FEDERAL CREDIT UNION marks for purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the first element of the Policy has been established.

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

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Here, Respondent has only used the disputed domain name as part of a phishing scheme. Respondent has used the disputed domain name for a website that provides a purported online banking login page for Complainant in order to trick unsuspecting consumers into providing their user names and passwords. Such use is not legitimate. As Panels have consistently held, the use of a domain name for illegal activity such as phishing and related fraud can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Based on the available record, the Panel finds the second element of the Policy has been established.

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

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that Respondent has registered and used the disputed domain name, which is based on Complainant's marks, for a website that attempts to pass itself off as an official login page for Complainant and its services. Respondent has also gone so far as to send consumers texts advising that their accounts with Complainant have been locked and directing them to Respondent's website at the disputed domain name in order to restore access to their accounts. Such actions are parasitic and in bad faith. [WIPO Overview 3.0](#), section 3.4.

Having reviewed the record, the Panel finds Respondent's registration and use of the disputed domain name constitutes bad faith under 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 <allsouthfcaalerts.online> be transferred to Complainant.

*/Georges Nahitchevansky/*

**Georges Nahitchevansky**

Sole Panelist

Date: December 18, 2023