

ADMINISTRATIVE PANEL DECISION

Société des Produits Nestlé S.A v. Liana Humphrey
Case No. D2023-4903

1. The Parties

The Complainant is Société des Produits Nestlé S.A, Switzerland, represented by Studio Barbero S.p.A., Italy.

The Respondent is Liana Humphrey, South Africa.

2. The Domain Name and Registrar

The disputed domain name <nestleuklimited.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 November 24, 2023. On November 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 27, 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 Complainant on November 28, 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 amendment to the Complaint on November 29, 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 December 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 24, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 27, 2023.

The Center appointed Cherise Valles as the sole panelist in this matter on January 5, 2024. 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 the owner of over 2250 international and national trademark registrations worldwide for NESTLÉ (or variations thereof), including the following:

- International Trademark Registration. No. 400444 (word and device mark) of July 16, 1973, in classes 01, 05, 29, 30, 31, 32 and 33 (Annexes 3.1);
- International Trademark Registration No. 479337 (word mark) of August 12, 1983, in classes 01, 05, 29, 30, 31, 32 and 33 (Annexes 3.2);
- United Kingdom (UK) Trademark Registration No. 00000959461 (word mark) of May 12, 1970, in class 16 (Annex 3.8); and,
- South Africa trademark Registration No. 85/3632, of August 1, 1986 and duly renewed, in class 30.

The Complainant is Société des Produits Nestlé S.A. (SPN). SPN is part of Nestlé Group, founded in 1866 by Henri Nestlé. SPN is wholly owned by Nestlé S.A. The Complainant is the registered owner of the majority of the trademarks of the Nestlé Group. The Nestlé Group sells products and services all over the world in various industries, primarily in the food industry. Nestlé markets its products worldwide in over 190 countries, including in the UK, where the Complainant's affiliated company Nestlé UK Ltd is headquartered. The Complainant is the world's largest food consumer products company in terms of sales - the sales of the group were 84.3 billion Swiss Francs (CHF) worldwide in 2020 and CHF94.4 billion in 2022.

Nestlé has had a presence in the United Kingdom since 1868, when Henri Nestlé set up a sales office in London. The revenues of Nestlé UK amounted to near GBP 2 billion in 2022. The trademark NESTLÉ is also registered and used in South Africa, where the Respondent is located according to the information provided by the Registrar (Annex A to the Amendment). Nestlé's presence in South Africa was established on July 7, 1916, when it was registered as a company (Annex B to the Amendment).

According to Interbrand's annual Best Global Brands ranking for 2022 (in Annex 4.2), the trademark NESTLÉ was valued at USD 10,921 million and was ranked as the 67th most valuable trademark in the world.

The Complainant registered the word "Nestle" and variations thereof as a domain name in numerous generic Top-Level Domains ("gTLDs") and country code Top-Level Domains ("ccTLDs"). It registered the domain name <nestle.com> on October 25, 1994 (Annex 5).

The disputed domain name <nestleuklimited.com> was registered by the Respondent on July 21, 2023. The disputed domain name resolves to an undeveloped website, as shown in Annex 7.

The Complainant submitted that when it became aware of such registration and detrimental use of the disputed domain name, it instructed its authorized representative to commence reclaim activities. A cease-and-desist letter to the Respondent was sent on November 8, 2023 by email requesting the Respondent to immediately cease all use of the disputed domain name and transfer it to the Complainant free of any charges (Annex 9). The Respondent did not respond to this letter or to the reminder.

5. Parties' Contentions

A. Complainant

The Complainant asserts that each of the elements enumerated in paragraph 4(a) of the Policy and the corresponding provisions in the Rules have been satisfied. In particular, the Complainant asserts that:

- The disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.
- The Respondent lacks rights or legitimate interests in the disputed domain name.
- The disputed domain name has been registered and is being used in bad faith.

The Complainant requests the Panel to issue a decision finding that the disputed domain name be transferred to the Complainant, in accordance with paragraph 4(i) of the Policy.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

To prove this element, the Complainant must have relevant rights in a trademark and the disputed domain name must be identical or confusingly similar to such trademark.

The Complainant submits that the disputed domain name is confusingly similar to the trademark in which it has rights. The disputed domain name incorporates the NESTLÉ trademark with the addition of the term "uklimited". Given the Complainant's trademark registrations as detailed above, the Panel finds that the Complainant has established its trademark rights in "NESTLÉ" for the purposes of paragraph 4(a)(i) of the Policy.

As stated in section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), "[...] in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing".

The Panel in *HDMI Licensing Administrator, Inc. v. S Kumar, Knoxed Limited*, WIPO Case No. [D2018-2514](#), held that "The Disputed Domain Name incorporates the entirety of the Trade Mark, with the geographical term "UK" as the only addition [...]. A domain name which incorporates a registered trade mark only with the addition of a geographical term is often considered by panels to be confusingly similar to the relevant trade mark for the purposes of the first element."

The disputed domain name also includes the term "limited". The Panel notes that "[t]he addition of the terms "holdings" and "limited" into the disputed domain name does not prevent a finding of confusing similarity." See *Virgin Enterprises Limited v. virgin holdings*, WIPO Case No. [D2022-3421](#).

The accent that is found on the last letter of the Complainant's trademark NESTLÉ is omitted in the disputed domain name. Previous panels found that the addition or deletion of grammatical marks such as hyphens, apostrophes and circumflexes are irrelevant, and do not serve to reduce the confusing similarity. As stated, *inter alia*, in *Société des Produits Nestlé S.A. v. Sonia de Ferrero*, WIPO Case No. [D2016-1300](#): "The only

difference between the NESTLÉ Mark and the first (and dominant) portion of the Disputed Domain Name is the presence of the “accent aigu” in the NESTLÉ mark. This difference is immaterial to the purpose of the comparison”.

It is standard practice when comparing a disputed domain name to a complainant’s trademark not to take the Top-Level Domain (“TLD”) into account. See section 1.11.1 of the [WIPO Overview 3.0](#), which states that the applicable TLD in a domain name (e.g., “.com”, “.club”, “.nyc”) is viewed as a standard registration requirement and, as such, is disregarded under the first element of the confusing similarity test. In the present case, the TLD “.com” is disregarded under the first element of the confusing similarity test.

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 sets out a non-exhaustive set of circumstances, any of which, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate a respondent’s rights or legitimate interests to a domain name for the purposes of paragraph 4(a)(ii) of the Policy.

The Respondent did not submit a Response or attempt to demonstrate any rights or legitimate interests in the disputed domain name, whether on the basis of the non-exhaustive examples set out in paragraph 4(c) of the Policy or on any other basis, and the Panel draws inferences from this failure, where appropriate, in accordance with paragraph 14(b) of the Rules.

It is recognised in cases under the Policy that it is sufficient for a complainant to make a *prima facie* case under the second element of the Policy, not rebutted by the respondent, that the respondent has no rights or legitimate interests in the domain name concerned upon which the burden of production of evidence shifts to the Respondent (see, for example, *Paris Saint-Germain Football v. Daniel Macias Barajas, International Camps Network*, WIPO Case No. [D2021-0019](#); *Spinrite Inc. v. WhoisGuard, Inc. / Gabriella Garlo*, WIPO Case No. [D2021-0012](#), and the discussion in section 2.1 of the [WIPO Overview 3.0](#)). If a respondent fails to rebut such a *prima facie* case by demonstrating rights or legitimate interests in the disputed domain name in accordance with paragraph 4(c) of the Policy, or on any other basis, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant submits that the Respondent is not an employee, licensee, authorized agent of the Complainant or in any other way authorized to use the Complainant’s trademark NESTLÉ. The Complainant asserts that the Respondent is unable to invoke any of the circumstances set out in paragraph 4(c) of the Policy in order to demonstrate rights or legitimate interests in the disputed domain name. In particular, the Respondent cannot assert that, prior to any notice of this dispute, she was using, or had made demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services in accordance with paragraph 4(c)(i) of the Policy.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the 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.

The Complainant submits that the disputed domain name has been used for fraudulent purposes. The Respondent created the email address “[...]@nestleuklimited.com” and referred to it as the contact email address in a procurement tender notice letter – that misappropriated the Complainant’s trademarks and indicated the company information for Nestlé UK Limited – in an elaborate fraudulent scheme to sell products. The Respondent has used the disputed domain name to induce the recipients of such communications to mistakenly believe that the Respondent had a connection with the Complainant or its affiliated company in the UK (Annex 8).

Panels have held that the use of a domain name for illegal activity such as impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. See [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

For this element, the Complainant is required to prove that the disputed domain name was registered and that it was being used in bad faith. The term “bad faith” is “broadly understood to occur where a respondent takes unfair advantage of, or otherwise abuses, a complainant’s mark”. See section 3.1 of the [WIPO Overview 3.0](#). Paragraph 4(b) of the Policy sets out four non-exhaustive examples of circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith, namely:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration 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 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 online 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 its website or location.

Previous UDRP panels have found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typographical errors or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#). Here, the combination of the NESTLÉ trademark with the two letters “uk” may increase confusion since users could believe that the disputed domain name is being used by the Complainant in connection with its official website for the United Kingdom.

In light of the fact that the trademark NESTLÉ is well-known and has been used extensively since 1866, it is inconceivable that the Respondent was unaware of the existence of the Complainant’s registered trademark and its worldwide reputation at the time of registration of the disputed domain name. See, *inter alia*, *Aktiebolaget Electrolux v. Domain ID Shield Service Co., LTD / Dorian Cosentino, Planeta Servidor*, WIPO Case No. [D2010-1277](#). The Panel finds that the disputed domain name was registered in bad faith.

The disputed domain name has been used in bad faith. As described above, the Respondent engaged in an elaborate fraudulent scheme in which it used an email address impersonating the Complainant’s UK affiliated company to sell products. As noted by the *Panel in Halliburton Energy Services, Inc. v. Registration Private, Domains By Proxy, LLC / Name Redacted*, WIPO Case No. [D2015-2094](#): “The Respondent appears to have used the Disputed Domain Name to engage in a “phishing” identity theft scheme and fraud upon Complainant and its vendors, by sending emails using the Disputed Domain Name and purporting to be from Complainant. That alone amounts to bad faith.”

As a final element showing a lack of *bona fide*, the Respondent did not reply to the cease-and-desist letter sent by the Complainant's representative. As the panel found in *The Great Eastern Life Assurance Company Limited v. Unasi Inc.*, WIPO Case No. [D2005-1218](#), “[b]y operation of a common sense evidentiary principle, the Respondent’s failure to counter the allegations of the cease and desist letter amounts to adoptive admission of the allegations”.

Panels have held that the use of a domain name for illegal activity such as impersonation/passing off constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the 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 <nestleuklimited.com> be transferred to the Complainant.

/Cherise Valles/

Cherise Valles

Sole Panelist

Date: January 19, 2024