

## **ADMINISTRATIVE PANEL DECISION**

The Bank of New York Mellon v. Andriy Nychporuk  
Case No. D2023-5144

### **1. The Parties**

The Complainant is The Bank of New York Mellon, United States of America (“United States”), represented by Dinsmore & Shohl LLP, United States.

The Respondent is Andriy Nychporuk, Ukraine.

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

The disputed domain names <nexenbnymellons.com>, <nexenbnymellon.com>, <nexenmetlonbmy.com>, and <nxnbnymellon.com> are registered with Internet Domain Service BS Corp (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 8, 2023. On December 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On December 12, 2023, the Registrar transmitted by email to the Center its verification response, disclosing registrant and contact information for the disputed domain names 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 December 14, 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 amended Complaint on December 19, 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 January 9, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 29, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 5, 2024.

The Center appointed Mihaela Maravela as the sole panelist in this matter on February 19, 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**

According to information in the Complaint, the Complainant is a well-known leading global financial services and investments company that helps its clients manage and service their financial assets through the investment lifecycle. The Complainant is one of the three oldest banking corporations in the United States and one of the oldest banks in the world, having been established in 1784 as the Bank of New York. The Complainant, as of September 30, 2023, had approximately USD 45.7 trillion in assets under custody and/or administration, and USD 1.8 trillion in assets under management on behalf of clients around the world. The estimated number of employees worldwide in 2022 for the Complainant was 51,700.

The Complainant has used the names BNY Mellon and THE BANK OF NEW YORK MELLON continuously since 2007, when The Bank of New York Company, Inc. merged with Mellon Financial Corporation. The Complainant has also used the name NEXEN continuously since 2015. The Complainant is the owner of various registered trademarks, including the United States trademark no. 3585488 for BNY MELLON registered on March 10, 2009, covering services in classes 35 and 36, or the United States trademark no. 3553005 for THE BANK OF NEW YORK MELLON registered on December 30, 2008, for the classes of services 35 and 36, or the United States trademark no. 5041595 for NEXEN registered on September 13, 2016, for the classes of goods and services 9, 36 and 42.

The Complainant is the owner of the domain name <bnymellon.com> since December 4, 2006, which is used to promote the company's banking and financial services, and otherwise in the conduct of its business. The Complaint also maintains a login page for its customers to access their information at the sub-domain <nexen.bnymellon.com>.

The disputed domain name <nexenbnymellons.com> was registered on November 22, 2023, the disputed domain names <nexenbnymellon.com> and <nexenlmetlonbmy.com> were registered on November 23, 2023, and the disputed domain name <nxbnymellon.com> was registered on December 2, 2023. The disputed domain names currently resolve to a page stating "Dangerous site. Attackers on the site you're trying to visit might trick you into installing software or revealing things like your password, phone or credit card number. Chrome strongly recommends going back to safety". According to evidence with the Complaint, prior to the Complaint being filed, the disputed domain names used to resolve to a copycat of the Complainant's official website<sup>1</sup>.

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

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

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

Notably, the Complainant contends that the disputed domain names are confusingly similar to the Complainant's BNY MELLON and NEXEN marks, as the disputed domain names are comprised of a combination of these marks, often with deliberate though minor misspellings. The disputed domain name <nexenbnymellons.com> is essentially a straightforward combination of the Complainant's NEXEN and BNY MELLON marks, with the only difference being the addition of the extra letter "s" at the end of "mellon". The domain name <nexenbnymellon.com> is essentially a straightforward combination of the Complainant's

NEXEN and BNY MELLON marks, with the only difference being the addition of the extra letter “l” between the NEXEN and BNY MELLON. The disputed domain name <nexenlmetlonbmy.com> is a combination of the Complainant’s NEXEN and BNY MELLON marks, with minor differences of typographical nature: there is an extra letter “l” between the terms NEXEN and “metlon”, the terms “bmy” and “metlon” are presented in the reverse order that they are in the Complainant’s mark, the term “metlon” is an obvious misspelling of MELLON, and the term “bmy” is an obvious misspelling of BNY. The disputed domain name <nxnbnymellon.com> also essentially combines the Complainant’s NEXEN and BNY MELLON marks, with the only real difference being that the term NEXEN is misspelled as “nxn”.

As regards the second element, the Complainant argues that the Respondent is not commonly known by the disputed domain names or any portion thereof, nor is there any indication that the Respondent registered the disputed domain names as a trademark. Moreover, the Complainant has never assigned, sold or transferred any rights in any of its trademarks to the Respondent. Also, the Complainant has not granted the Respondent permission to use or register its marks as a domain name. Moreover, the Respondent is not making a legitimate noncommercial or fair use of the disputed domain names, nor is the Respondent using the disputed domain names in connection with a bona fide offering of goods or services. Instead, the Respondent has used the disputed domain names to resolve to a copycat site, mimicking the Complainant’s site. When Complainant first located the disputed domain names, each resolved to a virtual copy of the Complainant’s site, and the Complainant has taken action to attempt to shut down the sites.

With respect to the third element, the Complainant argues that the Respondent undoubtedly had knowledge of the Complainant’s rights in its trademarks prior to registering the disputed domain names. There is no other reasonable explanation for the registration of these domain names, which all combine the Complainant’s NEXEN and BNY MELLON marks, some with typographical errors common to typosquatting. Also, the fact that the disputed domain names resolved to a copycat site mimicking the Complainant’s site, which created a clear likelihood of confusion with the Complainant’s mark, and the Respondent’s use of a privacy protection service in order to conceal his/her identity, taken together with the fact that the Respondent has no legitimate interests in the disputed domain names, demonstrate that the Respondent has acted in bad faith. This also creates a situation ripe for financial fraud. Given the nature of the Complainant’s business, consumers are often in the position of entrusting the Complainant with sensitive personal and financial data, as well as (potentially) the means to access user’s financial resources. The disputed domain names provide the Respondent with the means to impersonate the Complainant and obtain this information from misled consumers or through malicious cyberattacks, or to capture login information through code used in the process of redirecting users to the Complainant’s actual site, leaving the Respondent free to take actions that could be financially ruinous to affected individuals. The potential for financial fraud here itself can constitute bad faith as per the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition.

Since the Respondent’s mailing address is stated to be in Ukraine, which is subject to an international conflict at the date of this Decision that may impact case notification, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

Having considered all the circumstances of the case, the Panel is of the view that it should. There is no suggestion before the Panel that notification of the Complaint did not reach the Respondent, for example, no

notices of non-delivery were generated by the email notification to the Respondent's email address as confirmed by the Registrar, and the notification sent via the "www.domain-contact.org" appears as successfully sent. The Panel also notes that the Complainant has specified in the Complaint that any challenge made by the Respondent to any decision to transfer or cancel the disputed domain names shall be referred to the jurisdiction of the Courts of the location of the principal office of the concerned registrar, in this case, Nassau, Bahamas.

It is moreover noted that, for the reasons which are set out later in this Decision, the Panel has no serious doubt (albeit in the absence of any Response) that the Respondent registered and has used the disputed domain names in bad faith and with the intention of unfairly targeting the Complainant's goodwill in its trademarks.

The Panel concludes that the Parties have been given a fair opportunity to present their case, and so that the administrative proceeding takes place with due expedition the Panel will proceed to a Decision accordingly.

The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain names are 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 names, and (iii) the disputed domain names have been registered and are 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 the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The 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 finds the Complainant's mark NEXEN is recognizable within the disputed domain names <nexenbnymellons.com>, <nexenlnbymellon.com>, <nexenlmetlonbmy.com>, which incorporate the trademark NEXEN of the Complainant in addition to typosquatted versions of the Complainant's BNY MELLON trademark. Also, the Panel finds the Complainant's mark BNY MELLON is recognizable within the disputed domain name <nxbnymellon.com> which incorporates the trademark BNY MELLON of the Complainant in addition to a typosquatted version of the Complainant's trademark NEXEN. Accordingly, the disputed domain names are confusingly similar to the marks for the purposes of the Policy. [WIPO Overview 3.0](#), sections 1.7, 1.9.

It is the settled view of panels applying the Policy that the Top-Level Domain ("TLD") (here ".com") should be disregarded under the first element test.

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 the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names. 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 names such as those enumerated in the Policy or otherwise. Rather, according to unrebutted evidence in the case file, the Respondent has used the disputed domain names to direct Internet users to a copycat version of the Complainant’s website. The Panel is of the view that such use cannot confer any rights or legitimate interests in the disputed domain names to the Respondent.

Panels have held that the use of a domain name for illegal activity (here, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Also, there is no evidence that the Respondent is commonly known by the disputed domain names within the meaning of paragraph 4(c)(ii) of the Policy.

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.

The disputed domain names were registered many years after the Complainant had obtained registration of its trademarks. The disputed domain names are confusingly similar with the Complainant’s trademarks. Moreover, the disputed domain names resolved to a copycat version of the Complainant’s website. Under these circumstances, there can be little doubt that the Respondent was aware of the Complainant’s trademark at the registration date of the disputed domain names. The typosquatted character of the disputed domain names and the use of a combination of the Complainant’s trademarks further supports this finding.

As regards the use of the disputed domain names, the Panel finds that, according to the unrebutted evidence submitted by the Complainant, the disputed domain name resolved before the date of the Complaint to a copycat version of the Complainant’s website. This amounts to use in bad faith under the terms of paragraph 4(b)(iv) of the Policy, which is further aggravated by the industry field of the Complainant, as banking activities are strictly regulated. Furthermore, the Respondent has not replied to the Complainant’s contentions and there appears to be no plausible good faith use to which the disputed domain names could be put considering they are combinations of the Complainant’s longstanding trademarks, consisting of inherently misleading typographical errors, reflecting the Respondent’s ultimate intent to confuse unsuspecting Internet users into believing that the disputed domain names are operated by the Complainant. These circumstances are further indications of bad faith.

Moreover, the Respondent's bad faith registration and use of the disputed domain names can also be inferred from the current warnings on the relevant websites, that the disputed domain names resolve to websites that are deceptive, stating that "'Dangerous site. Attackers on the site you're trying to visit might trick you into installing software or revealing things like your password, phone or credit card number. Chrome strongly recommends going back to safety'".

The Panel finds that the Complainant has established the third element 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 <nexenbnymellons.com>, <nexenlnbymellon.com>, <nexenlmetlonbmy.com>, and <nxbnymellon.com> be transferred to the Complainant.

*/Mihaela Maravela*

**Mihaela Maravela**

Sole Panelist

Date: March 1, 2024