

ADMINISTRATIVE PANEL DECISION

The Bank of New York Mellon v. Jacob Olaf
Case No. D2023-5295

1. The Parties

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

Respondent is Jacob Olaf, United States.

2. The Domain Names and Registrar

The disputed domain names <nexen-bnymellon.com>, <nexen-bnynellom.com>, and <nxn-bnymellon.com> are registered with PSI-USA, Inc. dba Domain Robot (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 19, 2023. On December 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On December 22, 2023, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 Respondent of the Complaint, and the proceedings commenced on January 2, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 22, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on January 23, 2024.

The Center appointed Georges Nahitchevansky as the sole panelist in this matter on February 2, 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

Complainant, The Bank of New York Mellon, is a chartered bank organized under the laws of the State of New York, United States. Complainant is a global financial assets and investment company. Complainant owns and uses the names and marks BNY MELLON, THE BANK OF NEW YORK MELLON and NEXEN in connection with its financial services. Complainant owns trademark registrations for its marks in the United States. These include registrations for (i) BNY MELLON (Registration No. 3,585,488) which issued to registration on March 10, 2009, (ii) THE BANK OF NEW YORK MELLON (Registration No. 3,553,005) which issued to registration on December 30, 2008, and (iii) NEXEN (Registration No. 5,041,595) which issued to registration on September 1, 2016.

Complainant also owns and uses the domain name <bnymellon.com> to provide information concerning Complainant and its services. Of particular relevance, Complainant maintains a login page for its customers to access their information at <nexen.bnymellon.com>.

Respondent who appears to be based in the State of New Jersey, United States registered the disputed domain names between November 21, 2023 and November 30, 2023. At some point thereafter, Respondent appears to have used the disputed domain names for login web pages that mimicked Complainant's login page at <nexen.bnymellon.com>. When Complainant discovered the disputed domain names and associated websites, Complainant took steps to take down the websites at the disputed domain names. Currently, the disputed domain names do not resolve to active web pages of websites.

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 names.

Notably, Complainant contends that the disputed domain names either incorporate Complainant's exact BNY MELLON and NEXEN marks, or a typo version of such marks, and are being used in bad faith as part of a likely fraudulent scheme to obtain the login information 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 names are 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 names; and
- (iii) the disputed domain names were 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 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 that Complainant has shown rights in the BNY MELLON and NEXEN marks for purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. The Panel further finds that combinations of Complainant's BNY MELLON and NEXEN marks are clearly reproduced within the disputed domain names in either their exact form, or in a typo version such as "bny nellom" or "nxxn." Accordingly, the disputed domain names are confusingly similar to Complainant's BNY MELLON and NEXEN 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 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 that Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain names. Respondent, who has failed to appear in this proceeding, 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 names such as those enumerated in the Policy or otherwise.

Here, Respondent has only used the disputed domain names as part of what amounts to a fraudulent scheme. Respondent has used the disputed domain names that essentially copy Complainant's BNY MELLON and NEXEN marks for websites that mimic Complainant's login page at <nexen.bnymellon.com>. Such use has likely been done to trick unsuspecting consumers into providing their login information and is thus 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 names, which are based on Complainant's BNY MELLON and NEXEN marks, for websites that attempt to pass themselves off as official login pages for Complainant and its services. Such actions, which amount to fraud, are opportunistic 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 names constitute 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 names <nexen-bnymellon.com>, <nexen-bnynellom.com> and <nxn-bnymellon.com> be transferred to Complainant.

/Georges Nahitchevansky/

Georges Nahitchevansky

Sole Panelist

Date: February 16, 2024