

ADMINISTRATIVE PANEL DECISION

Société des Produits Nestlé S.A. v. Prairie Web Development
Case No. D2024-0557

1. The Parties

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

The Respondent is Prairie Web Development, China.

2. The Domain Name and Registrar

The disputed domain name <recetasnestle.com> is registered with Rebel Ltd (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 7, 2024. On February 7, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 8, 2024, the Registrar transmitted by email to the Center its verification 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 February 9, 2024, 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 February 12, 2024.

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 February 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 6, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 8, 2024.

The Center appointed Alissia Shchichka as the sole panelist in this matter on March 15, 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 Société des Produits Nestlé S.A., a subsidiary of Nestlé S.A., which was established in 1866 by Henri Nestlé. The Complainant holds the majority of trademarks within the Nestlé Group and operates globally across various industries, notably in food, including baby foods, breakfast cereals, chocolate & confectionery, coffee & beverages, bottled water, dairy products, ice cream, prepared foods, food services, and pet food.

Nestlé's products are distributed in 188 countries, with over 275,000 employees worldwide and more than 340 production facilities across 77 countries. In terms of sales, Nestlé is one of the world's largest food consumer products companies.

To illustrate the scale of its operations, Nestlé reported global sales of 84.3 billion Swiss Francs (CHF) in 2020 and 94.4 billion CHF in 2022. In 2022, Nestlé was ranked as the 106th largest company in the world according to Fortune Magazine's "Fortune Global 500" list.

In China, where the Respondent is located, the Complainant has had a presence since 1908, with its first sales office established in Shanghai. Presently, Nestlé operates 22 factories, multiple R&D and innovation centers, and employs over 26,000 people in China.

The Complainant has provided evidence that it is the registered owner of numerous NESTLÉ trademarks, including, but not limited to the following:

- International Trademark Registration No. 638768, for a word mark NESTLÉ, registered on June 28, 1995, in classes 35, 39, 41, and 42, designating among others China;
- Chinese Trademark Registration No. 267463, registered on October 30, 1986, for a figurative mark NESTLE, in class 30;
- Chinese Trademark Registration No. 262449, registered on September 10, 1986, for a figurative mark NESTLÉ, in class 29.

The Complainant also owns numerous generic Top-Level Domains ("gTLDs") and country code Top-Level Domains ("ccTLDs") domain names, which include <nestle.com> (registered on October 25, 1994), <recetasnestle.com.mx>, <recetasnestle.cl>, <recetasnestle.com.ar> and <recetasnestle.com.do>.

The Complainant uses "www.nestle.com" as its primary online platform for business promotion. Additionally, it operates various websites such as "www.recetasnestle.com.mx", "www.recetasnestle.cl", "www.recetasnestle.com.ar", and "www.recetasnestle.com.do" to provide users with recipes and tips related to the Complainant's branded products, thereby enhancing brand visibility.

The disputed domain name was registered on September 22, 2007, and at the time of filing of the Complaint, it resolved to a parking page featuring pay-per-click ("PPC") links related to third parties operating in a similar sector as the Complainant, along with the message "this domain is for sale". The Complainant has also provided evidence showing the historical use of the disputed domain name for a similar parking page featuring PPC links or an inactive website.

At the time of drafting the decision, the disputed domain name leads to the above-mentioned parking page with PPC links on some devices or redirects to a third party webpage on other devices, presumably depending on the IP addresses of users.

The Complainant sent a cease-and-desist letter to the Respondent via the Registrar on November 17, 2023, requesting a transfer of the disputed domain name. However, the Respondent did not respond to the Complainant's letter.

The Respondent, according to the disclosed Whois information for the disputed domain name, is located in China.

5. Parties' Contentions

A. Complainant

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

Notably, the Complainant asserts that the NESTLÉ trademark is well known.

According to the Complainant, the disputed domain name is confusingly similar to the Complainant's trademark NESTLÉ as it incorporates the entire trademark. The addition of the generic Spanish term "recetas" ("recipes" in English) to the NESTLÉ trademark does not alter the overall impression that the disputed domain name is associated with the Complainant's trademark or prevent the confusing similarity between the disputed domain name and the Complainant's trademark. On the contrary, this term increases the likelihood of confusion since it refers to the Complainant's business activities. With regards to the gTLD ".com", which forms part of the disputed domain name, the Complainant requests that the Panel disregard it under the first element as it is a standard registration requirement.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name since (1) the Complainant is not affiliated with the Respondent, and it has never licensed or otherwise authorized the Respondent to apply to register the disputed domain name; (2) the Respondent is not commonly known by the disputed domain name; (3) the Respondent's use of the disputed domain name to display sponsored links for commercial gain through the PPC system does not constitute a legitimate noncommercial or fair use, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's trademark; and (4) the Respondent failed to respond to the cease-and-desist letter and subsequent reminders from the Complainant's authorized representative, demonstrating a refusal to engage in communication with the Complainant to address its allegations.

Finally, the Complainant argues that the Respondent has registered and is using the disputed domain name in bad faith since: (1) the Complainant's trademark significantly predates the registration of the disputed domain name and the Complainant's NESTLÉ trademark is well known, indicating that the Respondent knew about the Complainant's trademark; (2) the Respondent's use of the disputed domain name in connection with the PPC parking website demonstrates that the Respondent knowingly targeted the Complainant's prior registered trademark to generate traffic to the disputed domain name and gain financial benefit by leveraging the reputation of the Complainant's trademark; (3) the Complainant's NESTLÉ trademark was previously displayed on the website linked to the disputed domain name in 2008 and 2009, providing clear evidence that the Respondent, by registering the disputed domain name, was actually aware of, and intended to target, the Complainant and its trademark NESTLÉ; and (4) the facts that disputed domain name has been offered for sale by the Respondent, and the Respondent's failure to respond to a cease-and-desist letter can be considered evidence of bad faith;

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant carries the burden of proving:

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

The Respondent's default in the case at hand does not automatically result in a decision in favor of the Complainant, however, paragraph 5(f) of the Rules provides that if the Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint.

Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from the Respondent's failure to submit a response as it considers appropriate.

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.

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 mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other term, here, "recetas" ("recipes" in English), may bear on 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.

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 name.

The Complainant has confirmed that the Respondent is not affiliated with the Complainant, or otherwise authorized or licensed to use the NESTLÉ trademark or to seek registration of any domain name incorporating the trademark. The Respondent is also not known to be associated with the NESTLÉ trademark, and there is no evidence showing that the Respondent has been commonly known by the disputed domain name. [WIPO Overview 3.0](#), section 2.3.

Based on the available record, the Panel finds that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain, to misleadingly divert consumers or to tarnish the trademark or service mark at issue. [WIPO Overview 3.0](#), section 2.4.

Indeed, the Respondent so far obviously has neither used the disputed domain name for a bona fide offering of goods or services, nor for a legitimate noncommercial or fair purpose, but merely has offered it for online sale and for a parking page offering PPC links. Given that the disputed domain name consists of the Complainant's well-known NESTLÉ trademark along with the Spanish term "recetas" ("recipes" in English), such use of the disputed domain name does not represent a bona fide offering because it capitalizes on the reputation and goodwill of the Complainant's trademark. [WIPO Overview 3.0](#), section 2.9. The Panel further notes that the Complainant operates a range of domain names incorporating the term "recetas", all dedicated to recipe-sharing platforms featuring the Complainant's products, such as <recetasnestle.com.mx>, <recetasnestle.cl>, <recetasnestle.com.ar>, and <recetasnestle.com.do>.

Finally, the Panel also notes that the composition of the disputed domain name, carries a risk of implied affiliation or suggests sponsorship and/or endorsement by the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

Accordingly, the Complainant has provided evidence supporting its prima facie claim that the Respondent lacks any 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.

Therefore, the Panel concludes that the Respondent does not have any rights or legitimate interests in the disputed domain name and the Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

The Panel finds that the Complainant has established the second element of the Policy.

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.

On the issue of registration, the Panel observes that the Complainant's rights to the well-known NESTLÉ trademarks substantially precede the Respondent's registration of the disputed domain name. Consequently, the Respondent knew or should have known of the Complainant's trademarks at the time of registering the disputed domain name. [WIPO Overview 3.0](#), section 3.2.2.

Further, the mere registration of the disputed domain name that is confusingly similar to the Complainant's well-known trademark by the Respondent, who is unaffiliated with the Complainant, can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4.

On the issue of use, the disputed domain name redirects visitors to a PPC website displaying a variety of links leading to third party active websites. These websites are not affiliated with the Complainant but are related to the Complainant's business. This is evidently done with the purpose of generating PPC revenue.

Therefore, the Panel finds that the Respondent has intentionally sought to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's NESTLÉ trademark regarding the source, sponsorship, affiliation, or endorsement of the website. Consequently, this constitutes a bad-faith use of the disputed domain name. [WIPO Overview 3.0](#), sections 3.1.4 and 3.5.

In this context, the Panel also attaches significance to the fact that the Respondent did not file any Response addressing the Complainant's allegations. The Panel finds that, in the circumstances of this case, the Respondent's registration and use of the disputed domain name constitute bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

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 name <recetasnestle.com> be transferred to the Complainant.

/Alissia Shchichka/

Alissia Shchichka

Sole Panelist

Date: March 29, 2024