

ADMINISTRATIVE PANEL DECISION

Société des Produits Nestlé S.A. v. David Czinczenheim
Case No. D2024-1013

1. The Parties

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

The Respondent is David Czinczenheim, France.

2. The Domain Name and Registrar

The disputed domain name <nestlegroupbrands.com> is registered with AsiaDomains, Incorporated (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 7, 2024. On March 7, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 16, 2024, 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 (Statutory Masking Enabled) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 19, 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 March 20, 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 March 21, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 10, 2024. The Center received an informal email from the Respondent on March 19, 2024, stating “I can transfer the domain to the Complainant.” The Respondent did not submit any formal response. Accordingly, the Center notified the Parties of the Commencement of Panel Appointment Process on April 11, 2024.

The Center appointed Willem J. H. Leppink as the sole panelist in this matter on April 18, 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 following facts are undisputed.

The Complainant is part of Nestlé Group, founded in 1866 and wholly owned by Nestlé S.A. The Complainant sells products and services all over the world in various industries, primarily in the food industry. The Complainant markets its products worldwide in 188 countries, has about 275,000 employees worldwide and operates more than 340 production centers in 77 countries.

The trademark NESTLÉ of the Complainant is protected as a registered trademark in a multitude of countries worldwide, e.g. the European Union trademark registration No. 002977569 for the word mark NESTLE with registration date May 25, 2004, for products and services in classes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45.

The Complainant's main website can be found at <nestle.com>.

All of the Complainant's trademarks were registered before the disputed domain name, which was registered on May 31, 2023.

At the time of the filing of the Complaint the disputed domain name resolved to the domain name marketplace, dan.com, where the disputed domain name was offered for sale. Currently, the disputed domain name resolves to a parked page.

The Complainant sent a data disclosure request to the concerned registrar and a cease-and-desist letter to the registrant, but this communication remained unanswered by the Respondent.

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 contends the following.

The disputed domain name incorporates the whole of the Complainant's trademark. Furthermore, the combination of the Complainant's trademark with the generic terms "group" and "brands" is insufficient to prevent a finding of confusing similarity of the disputed domain name with the Complainant's trademark and may increase confusion amongst Internet users. Also, the omission of the accent on the last letter "e" is insufficient to reduce the identity or confusing similarity.

The Respondent is not in any way authorized to use the Complainant's trademarks. The Respondent is not commonly known by the disputed domain name. Furthermore, there is no evidence that the Respondent might have used the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's trademark. Instead, the offering for sale of the disputed domain name does not amount to a bona fide offering of goods or services or to a legitimate noncommercial or fair use of the disputed domain name.

The Complainant contends that its trademark is well-known and that it is therefore inconceivable that the Respondent was unaware of the existence of the Complainant's trademark at the time of registration of the disputed domain name. Moreover, the composition of the disputed domain name, combining the Complainant's trademark with the terms "group" and "brands", suggests that the Respondent was indeed well aware of the Complainant. Therefore, it is submitted that the Respondent registered the disputed domain name with the clear intention to target the Complainant's trademark.

As an additional circumstance evidencing the Respondent's bad faith, it should be noted that the Respondent has been respondent in a number of previous UDRP cases, of which all decisions were to transfer the disputed domain name. Therefore, the Respondent has engaged in a pattern of bad faith.

B. Respondent

The Respondent did not submit a formal Response to the Complaint. However, the Respondent informally replied to the to the Notice of Registrant Information notification from the Center and stated that it is able to transfer the domain to the Complainant.

6. Discussion and Findings

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 entirety of the mark is reproduced 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 terms here the words "group" and "brands" may bear on assessment of the second and third elements, the Panel finds the addition of such terms 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 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. On the contrary, the Respondent only stated that it is able to transfer the disputed domain name.

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 Panel notes that the Respondent has not substantively replied to the Complaint and has as such not rebutted the Complainant's contentions. To the contrary, the Respondent has stated that it is willing to transfer the disputed domain name.

Based on the available record, the Panel finds that the Respondent has registered the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to the Complainant for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the disputed domain name.

Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness and reputation of the Complainant's trademark, and the composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Finally, the Panel notes that the Respondent has a pattern of conduct of registering abusive domain names incorporating third parties' trademarks and has been cited as respondent in various cases which resulted in transfer of disputed domain names.

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 <nestlegroupbrands.com> be transferred to the Complainant.

/Willem J. H. Leppink/

Willem J. H. Leppink

Sole Panelist

Date: April 26, 2024