

## **ADMINISTRATIVE PANEL DECISION**

NOSE v. GGray Jason

Case No. D2024-1389

### **1. The Parties**

The Complainant is NOSE, France, represented by Maître Chapoullié, Avocat au Barreau de Paris, France.

The Respondent is GGray Jason, United States of America (“United States”)

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

The disputed domain name <noseparis-fr.com> is registered with Gname.com Pte. Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 2, 2024. On April 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 4, 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 (Redacted for privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 8, 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 amended Complaint on April 9, 2024.

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 April 10, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 30, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 3, 2024.

The Center appointed Miguel B. O’Farrell as the sole panelist in this matter on May 16, 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, NOSE, is a French company founded in 2011. Its main activity is the sale of high-end perfumes and cosmetics both in shops and online on its website with the domain name <noseparis.com>.

The Complainant owns several trademark registrations for NOSE, including International Trademark Registration, designating notably European Union, No. 1220643 NOSE, which was registered on May 9, 2014 for Internet sale services for perfumes, cosmetics and similar goods in class 35 and 44.

It is used for these services since 2011 and the Complainant has a concept shop NOSE in Paris.

NOSE has acquired a strong reputation in the fragrance world, not only in France but also internationally, and has obtained extensive media coverage.

The disputed domain name was registered on January 3, 2024 and resolves to a website offering goods similar to those offered by the Complainant which imitates the Complainant's official website.

#### **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 that the website to which the disputed domain name resolves is a copy of the Complainant's official website at "www.noseparis.com", in which the Respondent offers the fragrances and products offered in the Complainant's official website.

The Respondent does not have any authorization from the Complainant to use the trademark NOSE in the disputed domain name, which the Respondent has registered and uses in bad faith to create confusion with the Complainant's NOSE trademark for commercial gain.

##### **B. Respondent**

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

#### **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. The addition of "paris" and of "fr" at the end of the disputed domain name are not sufficient to prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark NOSE, [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.

The Panel finds the second element of the Policy has been established.

## **C. Registered and Used in Bad Faith**

The Panel is satisfied that the Respondent must have been aware of the Complainant’s trademark NOSE mentioned in paragraph 4 above (“Factual Background”) when it registered the disputed domain name on January 3, 2024, many years after the Complainant had registered and used the NOSE trademark.

In accordance with section 3.1.4 of [WIPO Overview 3.0](#), the Panel considers that the inclusion of the Complainant’s NOSE trademark in the disputed domain name creates a presumption of bad faith.

The Respondent when registering the disputed domain name has targeted the Complainant’s trademark NOSE and added the term “paris” and “fr”, to further confuse Internet users and lead them to believe that the website to which the disputed domain name resolves is the official website of the Complainant, and thereby capitalizes on the fame of the Complainant’s trademark for its own monetary benefit.

The clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent’s choice of the disputed domain name is also a significant factor to consider that the disputed domain name was registered in bad faith (as stated in section 3.2.1 of [WIPO Overview 3.0](#)).

Furthermore, the fact that the website to which the disputed domain name resolves offers for sale goods competing with those offered by the Complainant, some at abnormally low prices, is evidence of bad faith use.

The Panel finds that the Respondent has registered and uses the disputed domain name intentionally to attempt to attract for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s NOSE trademark as to the source, sponsorship, affiliation, or endorsement. This amounts to bad faith under 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 <noseparis-fr.com> be transferred to the Complainant.

*/Miguel B. O'Farrell/*

**Miguel B. O'Farrell**

Sole Panelist

Date: May 27, 2024