

## **ADMINISTRATIVE PANEL DECISION**

National Council of State Boards of Nursing, Inc. v. Leonard Nicky  
Case No. D2024-2333

### **1. The Parties**

Complainant is National Council of State Boards of Nursing, Inc., United States of America, represented by Vedder Price P. C., United States.

Respondent is Leonard Nicky, United States.

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

The disputed domain name <nclexs.org> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 7, 2024, with regards the disputed domain name and the domain name <nnclx.org>. On June 7, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name and the domain name <nnclx.org>. On June 11, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name and the domain name <nnclx.org>, which differed from the named Respondent (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint.

The Center sent an email communication to Complainant on June 12, 2024, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, requesting Complainant to either file a separate complaint for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity and/or that all domain names are under common control. Complainant filed an amended Complaint on June 13, 2024, relating only to the disputed domain name and withdrawing the Complaint as it related to the domain name <nnclx.org>.

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 Respondent of the Complaint, and the proceedings commenced on June 24, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 14, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on August 2, 2024.

The Center appointed Lorelei Ritchie as the sole panelist in this matter on August 8, 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 is a not-for-profit organization based in the United States. For decades prior to the registration of the disputed domain name, Complainant has offered services related to the education and licensing of nurses under the mark NCLEX. In this regard, Complainant is the owner of several registrations for the NCLEX mark in the United States and globally. These include, among others, United States Registration No. 2,078,246 (registered July 15, 1997). Complainant also owns several registrations on its NCLEX mark with additional terms, including United States Registration No. 2,080,449 (registered July 22, 1997) for NCLEX-RN.

The disputed domain name was registered on January 17, 2024. Respondent has used the disputed domain name to resolve to a website that appears to impersonate an official website of Complainant, including information and content related to education and licensing of prospective nurses, and displaying Complainant's registered marks therewith. Respondent has no affiliation with Complainant, nor any license to use its marks.

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

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

Complainant contends that (i) the disputed domain name is identical or confusingly similar to Complainant's trademarks, (ii) Respondent has no rights or legitimate interests in the disputed domain name; and (iii) Respondent registered and is using the disputed domain name in bad faith.

Specifically, Complainant contends that it owns rights to the NCLEX mark for which it has "extensive and continuous use" for "over 35 years." Complainant contends that Respondent has incorporated in full Complainant's NCLEX mark into the disputed domain name, with only the addition of "a single, generic, non-source identifying letter." Complainant further contends that Respondent lacks rights or legitimate interest in the disputed domain name, and rather has registered and is using it in bad faith, having simply acquired the disputed domain name for Respondent's own commercial gain, with use of a website intended to confuse prospective consumers and partners of Complainant.

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

Respondent did not reply to 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. Complainant has shown rights in respect of a trademark or service mark, NCLEX, for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Although the addition of other terms or letters (here, the single letter “s”) may bear on assessment of the second and third elements, the Panel finds the addition of such letter does not prevent a finding of confusing similarity between the disputed domain name and Complainant’s mark for purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel therefore finds that the disputed domain name is confusingly similar to a trademark in which Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

## **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 Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent 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 name such as those enumerated in the Policy or otherwise. Panels have held that the use of a domain name for illegal activity, including impersonating an official website, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel finds that Complainant has provided sufficient evidence of Respondent’s lack of “rights or legitimate interests” in accordance with paragraph 4(a)(ii) of the Policy which Respondent has not rebutted.

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

There are several ways that a complainant can demonstrate that a domain name was registered and used in bad faith. These include, for example, as set forth in Paragraph 4(b) of the Policy, (i) registration to sell the domain name to the complainant at a profit; (ii) pattern of bad faith conduct; (iii) disrupting the business of a competitor; or (iv) intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the complainant’s mark.

As noted in Section 4 of this Panel’s decision, Respondent has used the disputed domain name to resolve to a website that appears to impersonate an official website of Complainant, including information and content related to education and licensing of prospective nurses, and displaying Complainant’s registered marks therewith. Such use reflects Respondent’s actual knowledge of Complainant’s registered marks and intent to mislead Internet users falsely believing themselves to be interacting with Complainant.

Therefore, the Panel finds sufficient evidence that Respondent registered and used the disputed domain name in bad faith for purposes of paragraph (4)(a)(iii) 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 <nclexs.org> be transferred to Complainant.

*/Lorelei Ritchie/*

**Lorelei Ritchie**

Sole Panelist

Date: August 22, 2024