

ADMINISTRATIVE PANEL DECISION

Société des Produits Nestlé S.A. v. nestleinr nestleinr
Case No. D2024-2525

1. The Parties

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

The Respondent is nestleinr nestleinr, India.

2. The Domain Name and Registrar

The disputed domain names <indianestle.com>, <nestleinr.com>, and <nestletoindia.com> are registered with CloudFlare, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 20, 2024. On June 20, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 21, 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 ("Data redacted") and contact information in the Complaint. The Center sent an email communication to the Complainant on June 24, 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 June 26, 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 July 1, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 21, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 22, 2024.

The Center appointed Ugur G. Yalçiner as the sole panelist in this matter on July 31, 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 part of Nestlé Group, founded in 1866 by Henri Nestlé and wholly owned by Nestlé S.A. Nestlé Group sells products and services all over the world in various industries, primarily in the food industry, including baby foods, breakfast cereals, chocolate & confectionery, coffee & beverages, bottled water, dairy products, ice cream, prepared foods, food services as well as pet food. It is the world's largest food consumer products company in terms of sales.

The Complainant is the owner of several national and international trademark registrations consisting of the term NESTLÉ, some of which are listed below:

- International trademark registration NESTLÉ with registration No. 400444, registered on July 16, 1973, in classes 1, 5, 29, 30, 31, 32 and 33
- International trademark registration NESTLÉ with registration No. 490322, registered on November 27, 1984, in classes 1, 5, 29, 30, 31, 32 and 33
- European Union trademark registration NESTLE with registration No. 002977569, registered on May 25, 2004, in classes 1-45
- Indian trademark registration NESTLE with registration No. 827402 registered on November 13, 1998, in class 30

The Complainant also owns the domain name <nestle.com>, registered on October 25, 1994 and redirected to "www.nestle.com".

The disputed domain names <indianestle.com> and <nestletoindia.com> were registered on March 9, 2024, the disputed domain name <nestleinr.com> was registered on February 23, 2024. At the time of filing of the Complaint, the disputed domain names resolved to the websites where the landing pages consist of a login form along with the Complainant's trademark and corporate logo. The screenshots of the websites are submitted by the Complainant within the Complaint and also as an Annex-6 to the Complaint. At the time of this Decision, the disputed domain names no longer resolve to any active websites.

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 names. The Complaint includes the following contentions:

(i) Identical or Confusingly Similar

The Complainant contends that all disputed domain names incorporate the Complainant's NESTLE trademark as a whole, the addition of the nondistinctive elements "india", "to", and "inr" does not affect the confusing similarity, on the contrary they increase confusion amongst Internet users, who may believe that the disputed domain names are related to activities carried out by the Complainant or one of its affiliated companies with reference to the Indian market, it is apparent that the disputed domain names are confusingly similar to the prior registered trademarks in which the Complainant has rights pursuant to paragraph 4(a)(i) of the Policy.

(ii) Rights or legitimate interests

The Complainant alleges that it is sufficient for the Complainant to produce prima facie evidence in order to shift the burden of production to the Respondent, the Complainant is not in possession of, nor aware of the

existence of any evidence demonstrating that the Respondent might be commonly known by a name corresponding to the disputed domain names as an individual, business, or other organization, the Complainant has not authorized the registration of the disputed domain names and in the absence of any license or permission from a complainant to use the complainant's trademarks, no bona fide or legitimate use of the disputed domain names could reasonably be claimed, the Respondent has not provided the Complainant with any evidence of use of, or demonstrable preparations to use, the disputed domain names in connection with a bona fide offering of goods or services before or after any notice of the dispute herein.

The Complainant contends that the disputed domain names are redirected to websites publishing the NESTLE trademark and corporate logo and a login form requesting to provide phone number, password and verifications code, just before being redirected to mentioned contents, the websites glimpse for a few seconds the contents that, presumably, appear once logged in, it seems that the websites propose a Ponzi-like scam investment scheme where users are requested to invest money on the promise of advertised returns, such use of the disputed domain names certainly does not amount to a bona fide offering of goods or services or a legitimate noncommercial or fair use.

The Complainant asserts that there cannot be legitimate interest since the Respondent's websites create likelihood of confusion by misappropriating the NESTLE trademark and failing to provide any disclaimer of non-affiliation with the Complainant, the domain names are inherently misleading, since the combination of the NESTLE trademark with the terms "india", "to india" and "inr" is clearly apt to suggest that the disputed domain names may be owned and used by the Complainant or one of its affiliated companies in connection with activities targeting the Indian market, the Respondent did not reply to the cease-and-desist letter and subsequent reminders sent by the Complainant's representative.

(iii) Registration and Use in Bad Faith

The Complainant contends that the Respondent was certainly aware of the Complainant's rights in the famous trademark NESTLE and registered the disputed domain names with the clear intention to target the Complainant's trademark, the Respondent's actual knowledge of the Complainant and its trademark NESTLE at the time of the registration of the domain names is clearly demonstrated by the fact that the Respondent published on its websites NESTLE trademark and corporate logo.

The Complainant asserts that the disputed domain names resolve to websites publishing the Complainant's trademark and promoting prima facie fraudulent investment services, without displaying a disclaimer of non-affiliation with the Complainant and such a conduct demonstrates that the only purpose of Respondent was to use the domain names to intentionally attempt to attract, for commercial gain, Internet users to such websites, by creating a likelihood of confusion with the Complainant's trademarks as to the source or affiliation of its websites and taking unfair advantage from the well-known character of the trademarks for the Respondent's own profit.

The Complainant alleges that the Respondent registered the disputed domain names to prevent the Complainant from reflecting its trademark NESTLE in corresponding domain names and has engaged in a pattern of such conduct as it registered three domain names incorporating Complainant's trademark, the Respondent also failed to respond to the Complainant's cease-and-desist letter and subsequent reminders, these further circumstances evidence the Respondent's bad faith.

B. Respondent

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

6. Discussion and Findings

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three elements are present:

(i) the disputed domain names registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names; and

(iii) the disputed domain names have been 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 names. 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 for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. The Panel is satisfied that the Complainant is the owner of the trademarks NESTLE registered around the world.

The disputed domain name incorporates the Complainant's trademark NESTLE, with the additional terms "india", "to india" and "inr", which is the official currency in India. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy referring to [WIPO Overview 3.0](#), section 1.7. In this regard, the Panel considers mere addition of the country name or official currency code does not avoid the confusing similarity with the Complainant's trademarks. (See also [WIPO Overview 3.0](#), section 1.8 and the cases cited therein, finding that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.)

It is an accepted principle that generic Top-Level Domains ("gTLDs"), in this case ".com", are to be typically disregarded in the consideration of the issue of whether a domain name is identical or confusingly similar to a Complainant's trademarks. Disregarding the gTLD ".com", the Panel notes that the disputed domain names are confusingly similar to the Complainant's trademark.

In the light of the above, the Panel finds that the disputed domain names are confusingly similar to the Complainant's registered trademarks and that the requirements in paragraph 4(a)(i) of the Policy are fulfilled.

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 names such as those enumerated in the

Policy or otherwise.

The Panel notes that the Respondent does not have any registered trademarks or trade names and no license or authorization of any other kind has been given to the Respondent by the Complainant to use its registered trademark.

The Panel determined that the disputed domain names do not resolve to any active websites while drafting this decision. However, according to the Complainant's assertion and provided screenshots of the websites, the disputed domain names formerly resolved to the websites where the landing pages consist of a login form along with the Complainant's trademark and corporate logo, without any disclaimer of non-affiliation with the Complainant. Provided screenshots of the websites also demonstrate the tabs namely "recharge", "monthly income", "withdraw", "redeem bonus" etc. and the indication that "Nestle Welfare Gifts" can be obtained by inviting friends to join corresponding projects. The Panel is of the opinion that such use in the websites may be considered as a form of investment fraud. The Respondent's use of the disputed domain names therefore does not support a finding of rights or legitimate interests in the disputed domain name on the part of the Respondent. (See [WIPO Overview 3.0](#), section 2.13.1, "Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent.")

As a result, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names, and the requirements of paragraph 4(a)(ii) of the Policy are therefore fulfilled by the Complainant.

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 is satisfied with the relevant evidence filed by the Complainant showing that it owns trademark rights for NESTLE, which has been registered and used for many years prior to the registration of the disputed domain names and the Panel confirms the Complainant's trademark NESTLE is well known around the world.

The Panel is of the opinion that it is implausible for the Respondent to be unaware of the Complainant and its well known trademark when the disputed domain names were registered, and the Respondent's aim of the registration was to take an unfair advantage of the Complainant's trademark. As the Respondent added the terms "india", "to india" and "inr" before or after the Complainant's well-known trademark NESTLE, that gives an impression that the disputed domain names are owned and used by the Complainant regarding to its business activities in Indian market. Several UDRP panels have held that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4.

The Panel is convinced that the purpose of the Respondent is to attract the Internet users by creating a likelihood of confusion with the Complainant's trademark for potential commercial gain within the meaning of paragraph 4(b)(iv) of the Policy. The Panel finds that the impersonation was the intention of the Respondent upon registration of the disputed domain name, and that the Respondent targeted the Complainant and its trademark; especially by the use of the Complainant's trademark and corporate logo as part of investment fraud on the websites. Panels have held that the use of the domain names for illegal activity (here in the present case, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. The current non-use of the disputed domain names does not prevent a finding of bad faith.

The Complainant alleges that it had sent a cease-and-desist letter to the Respondent on April 16, 2024 and reminders on May 29, and June 5, 2024, before filing the Complaint, but the Respondent has not responded to that letter. Referring to the Panel's consideration in *Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. [D2002-0787](#), and considering the reasons above, the Panel is of the opinion that the failure to reply to the Complainant's letter and to the Complaint further supports in the circumstances of this case the Panel's finding of bad faith.

The Panel also considers that the Respondent by registering three domain names all confusingly similar to the Complainant's mark has engaged in a pattern of abusive registrations which is a further indicator of the Respondent's bad faith.

Having considered all the facts in this case, the Panel finds that the Complainant has sustained its burden of proof in showing that the disputed domain names were registered and being used in bad faith.

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 <indianestle.com>, <nestleinr.com>, and <nestletoindia.com> be transferred to the Complainant.

/Ugur G. Yalçiner/

Ugur G. Yalçiner

Sole Panelist

Date: August 12, 2024