

ADMINISTRATIVE PANEL DECISION

National Council of State Boards of Nursing, Inc. v. Onome Pachelise
Case No. D2024-2554

1. The Parties

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

The Respondent is Onome Pachelise, United States.

2. The Domain Name and Registrar

The disputed domain name <nnclex.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 24, 2024. On June 24, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 25, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 4, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 24, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 30, 2024.

The Center appointed Kathryn Lee as the sole panelist in this matter on August 20, 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 an independent not-for-profit organization through which nursing regulatory bodies act and counsel together on matters of common interest and concern affecting public health, safety, and welfare, including the development of nursing licensure examinations, in the United States and its territories. The Complainant was established in 1978 and has used the NCLEX mark as the name of nationwide licensure exams since around October 1985. Since around July 1997, the Complainant has used the NCLEX mark in connection with goods and services related to nurse licensure exams, including educational materials and workshops for nursing licensure and nursing examinations. The Complainant owns a number of trademark registrations for the NCLEX mark in the United States, including trademark registration numbers 2078246, 2078247, and 2078244, all registered on July 15, 1997. The Complainant also owns a number of trademark registrations for the NCLEX mark outside the United States, including in Canada (trademark registration number TMA958268, registered on December 16, 2016), Switzerland (trademark registration number 733203, registered on July 4, 2019), and the United Kingdom (trademark registration number 3374613, registered on May 3, 2019).

The Respondent appears to be an individual with an address in Tennessee, United States.

The disputed domain name was registered on January 22, 2024, and resolves to a website for an entity called "Next Generation NCLEX" which advertises services in connection with NCLEX exams.

5. Parties' Contentions

A. Complainant

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

Notably, the Complainant contends that the disputed domain name is confusingly similar to the NCLEX mark in which the Complainant has rights, as it consists of the NCLEX trademark with the prefix letter "n" simply added to the beginning. The Complainant also contends that the disputed domain name is an intentional misspelling of the Complainant's NCLEX mark.

Next, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name and confirms that it has not authorized or licensed rights to the Respondent in any respect. The Complainant contends the Respondent is using the disputed domain name to run a business called "Next Generation NCLEX" offering the very services that the Complainant offers under its NCLEX mark, namely, exam preparation services, exam preparation materials, and licensing services for the Complainant's NCLEX examinations. The Complainant also contends that the Respondent's services are offered with the deliberate purpose of attracting consumers who mistakenly believe that the website is associated with the Complainant, and that the Respondent makes a number of false and misleading statements on the website, such as "Obtain an Authentic RN or PN license without even seating for the NCLEX Exams again. This is a back door process to help students pass their NCLEX Exams without stress", "With Us, You Are Guaranteed Success In your Nclex Nurse Examination For Free. This is where you can get nclex RN or Pn exam questions online for free", and "We upgrade Scores for Candidates that have failed. We change their failed to pass without them taking the test again. Obtain a license without even seating for the NCLEX Exams. This is possible because we do everything directly at the Database level." In this regard, the Complainant contends that the Respondent does not have the authority to license anyone as a nurse, that there is no "back door process" for becoming licensed as a nurse, and that the Respondent cannot access the Complainant's database or systems or change or upgrade scores for the NCLEX exams.

Finally, the Complainant contends that the disputed domain name was registered and used in bad faith. The Complainant contends that the Respondent's use of the disputed domain name shows that the Respondent registered the disputed domain name primarily for the purpose of disrupting the Complainant's business, that

the disputed domain name was registered in order to prevent the Complainant, owner of the NCLEX trademark, from reflecting the mark in a corresponding domain name, and that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website at the disputed domain name by creating a likelihood of confusion with the Complainant's NCLEX mark as to the source, sponsorship, affiliation or endorsement of the Respondent's website or of the services offered through the Respondent's website.

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 disputed domain name consists of the Complainant's NCLEX mark with the letter "n" simply added to the beginning. 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.

In addition, this could be considered a case of typosquatting as the disputed domain name only differs from the NCLEX mark in an additional letter "n", and the repeated consonant does not change its appearance or pronunciation. Previous UDRP panels have concluded that a domain name that consists of an intentional misspelling of a trademark is considered similar to the relevant trademark for the purposes of the first element. See [WIPO Overview 3.0](#), section 1.9.

Although the addition of other terms – here, the letter "n" – 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.

The Respondent uses the disputed domain name to advertise a business which claims that it can provide the actual questions and answers that appear on the NCLEX exams, offer a “back door process” for becoming a licensed nurse without sitting for the NCLEX exams, and even change or “upgrade” the scores for NCLEX exams. Such claims would appear to be false, as the Complainant has confirmed that it does not release questions for its exams or allow “upgrading” and that it has no relationship with the Respondent for the Respondent to be able to accomplish what it is claiming. The Respondent has not submitted any response to these contentions, and the Panel can only conclude that by making such false and misleading claims, the Respondent attempted to coerce Internet users visiting the disputed domain name to sign up for its services for the purpose of perpetuating fraud. Panels have held that the use of a domain name for illegal activity – here, claimed fraud – can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

In the present case, the Panel notes that the Respondent registered the disputed domain name which is confusingly similar to the Complainant’s famous NCLEX mark and used the disputed domain name to advertise its fraudulent services to those taking the NCLEX exams – the very exams that the Complainant administers.

Given the Respondent’s manner of use of the disputed domain name, it is clear that the Respondent was aware of and targeted the Complainant when registering the disputed domain name. The composition of the disputed domain name itself is inherently misleading and reflects the Respondent’s intent to mislead Internet users expecting to find the Complainant.

Further, the Respondent used the disputed domain name to make false promises and even used the Complainant’s registered trademark NCSBN Leading Regulatory Excellence and Logo in prominent locations at the top and bottom of the webpages to suggest that the Respondent has some sort of relationship with or is in some way associated with the Complainant. In this way, the Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant’s mark, which represents use in bad faith.

In addition, panels have held that the use of a domain name for illegal activity – here, claimed fraud – constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent’s registration and use of the disputed domain name constitutes bad faith under 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 <nnclx.org> be transferred to the Complainant.

/Kathryn Lee/

Kathryn Lee

Sole Panelist

Date: September 3, 2024