

ADMINISTRATIVE PANEL DECISION

Nimiq Labs Ltd v. Yonatan Ben Shimon, 1XHUB Ltd
Case No. D2024-2772

1. The Parties

The Complainant is Nimiq Labs Ltd, United Kingdom, represented by Mathys & Squire LLP, United Kingdom.

The Respondent is Yonatan Ben Shimon, 1XHUB Ltd, Israel, represented by Meitar Law Offices, Israel.

2. The Domain Name and Registrar

The disputed domain name <nim.network> is registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 8, 2024. On July 11, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 11, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 12, 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 August 5, 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 August 9, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 29, 2024. The Response was filed with the Center on August 29, 2024.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on September 11, 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.

On September 13, 2024, the Panel issued Administrative Panel Order No 1 requesting the Complainant to clarify its choice of mutual jurisdiction under paragraph 3(b)(xii) of the Rules. In view of apparently conflicting statements made in the Amended Complaint, the Panel Order also requested the Complainant to clarify which entity was making the Complaint and, if a change of entity name was relied on, to provide evidence of the change of name. The Panel Order also made provision for the Respondent to submit any comments in response to any new information arising from the Complainant's further submission.

On September 17, 2024, the Complainant filed a further submission in response to the Panel Order.

No further response was received from the Respondent.

4. Factual Background

From information published by the United Kingdom Companies House, the Complainant was incorporated in the United Kingdom on September 5, 2018, under the name Inuit International Operations Ltd. On September 13, 2023, the Complainant changed its name to Nimiq Labs Ltd.

According to the Complaint, the Complainant is a non-profit open-source project company. It specializes "in decentralized payment systems building on unique blockchain crypto currency. [Its] blockchain eco-system is for payments designed to make crypto currency easy to use for everyone, without compromising decentralization".

It appears that the Complainant provides a cryptocurrency known as "Nimiq" and uses the "ticker" NIM for this currency. Although it was incorporated in September 2018, the Complaint claims the Complainant has been providing the Nimiq cryptocurrency since 2017.

The Complainant owns a number of registered trademarks:

- (a) Swiss Registered Trademark No 724050, NIM, which was filed on January 27, 2018, and entered on the Register on November 20, 2018;
- (b) United Kingdom Registered Trademark No UK00801449104, NIM, which was filed on July 27, 2018, and entered on the Register on October 29, 2020.

These trademarks are registered in respect of a range of goods and services in International Classes 9, 35, 36, and 42. The Complaint also includes evidence that the Complainant owns:

- (c) International Registration No 1449104, NIM, which was registered on July 27, 2018, designating the European Union and the United States of America. The designation in the European Union has proceeded to registration. However, the designation in the United States of America is still a pending application; and
- (d) European Union Trademark Application No 019031964, NIM – Native Internet Money, which was filed on May 24, 2024, and has not yet been registered; and
- (e) German Trademark Application No 30 2024 110 010.5, NIM, which was filed on May 24, 2024.

The disputed domain name was registered on February 17, 2024.

When the Complaint was filed, the Complainant stated the disputed domain name did not resolve to an active website. The Complaint includes evidence, however, that "NIM Network" has a social media account related to "Accelerating AI Gaming". This social media (X) account stated the Respondent's account "joined" in February 2024 and had 66.8 thousand followers. The Complaint also includes evidence that the Respondent's social media account posted an announcement on May 23, 2024, stating "\$NIM Listing, Live

Today on Poloniex". (The Panel understands Poloniex is an online exchange where some 400 cryptocurrencies can be bought and sold.)

The Response claims that it has spent the past two years developing a platform to focus on the development and distribution of AI consumer and gaming applications. In support of that, the Response provides some evidence that a sub-domain, "www.claim.nim.network" was being used before the Complaint was filed as a means for eligible recipients to claim "airdropped" tokens – NIM tokens for use (presumably) in the Respondent's AI gaming chain. The Response claims that, as a result, more than three million users have been exposed to the Domain and provides evidence supporting the Respondent's claim that almost 600,000 users have "engaged" with the Domain.

The Response also claims that the Respondent has launched its first AI game on the platform, "Titans". In addition, the Respondent states it also launched and hosts on its domain NIM Explorer, which allows users to access information and key metrics about interactions they make on the Respondent's platform. This is supported by a graph showing "NIM Market Values". Fourth, the Respondent states it uses the disputed domain name for email accounts.

The Respondent also points to a number of other services it has rolled out under different domain names as, it says, it has not been able to create new sub-domains since the disputed domain name was blocked on the filing of the Complaint.

At the time this decision, the disputed domain name resolves to a website which proclaims that the Respondent's platform empowers "movements worldwide to harness the potential of crypto for meaningful impact". It was not possible for the Panel to access the sub-domain as (consistently with the Respondent's claims) access appears to be limited to authorised users only.

5. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of a disputed domain name, the Complainant must demonstrate each of the following:

- (i) the disputed domain name 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 name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

Before turning to substantive matters, the Panel notes that the Response acknowledges the Respondent is the official acquirer of the disputed domain name but the day to day management and operational use of the disputed domain name are undertaken by Matchbox Dao, which is said to be the entity operating the NIM Network. The Panel proceeds on the basis that the Response is provided on behalf of both.

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

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 proven ownership of at least the trademarks for NIM registered in Switzerland, the United Kingdom, and the European Union identified in section 4 above.

The Complainant also claims that it has developed a substantial and valuable reputation and goodwill in its trademark. As the Respondent points out, however, the Complainant has not provided evidence to support that claim other than the bare assertion the Complainant has been using its crypto token (or “ticker”) since 2017. This falls well short of what is required to establish a reputation or goodwill which will support a claim in passing off or for unfair competitions. See e.g. [WIPO Overview 3.0](#), section 1.3.

In undertaking the comparison of the disputed domain name to the Complainant’s trademark, it is permissible in the present circumstances to disregard the generic Top-Level Domain (“gTLD”) component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.1.

Disregarding the “.network” gTLD, the disputed domain name consists of the Complainant’s registered trademark alone.

The Respondent advances a number of arguments denying that the disputed domain name is confusingly similar to the Complainant’s trademark based on other uses of NIM in various fields of activity. These arguments, however, misunderstand the nature of the inquiry under the Policy.

At this stage, the inquiry simply requires a visual and aural comparison of the disputed domain name to the proven trademark(s). This test is narrower than and thus different to the question of “likelihood of confusion” under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties, the date they were acquired and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. See e.g. [WIPO Overview 3.0](#), section 1.7.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is identical with the Complainant’s trademark and the requirement under the first limb of the Policy is satisfied.

B. Registered and Used in Bad Faith

In the circumstances of this case, it is appropriate next to consider the third requirement under the Policy.

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see e.g. *Group One Holdings Pte Ltd v. Steven Hafto* WIPO Case No. [D2017-0183](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

The Complainant relies on the alleged passive holding of the disputed domain name to infer bad faith and the use of the name “NIM Network” to promote cryptocurrency and blockchain projects causing confusion with the Complainant’s own offerings.

Apart from anything else, the allegation of passive holding does not appear to be sustained on the facts as it appears that the Respondent was in fact using the disputed domain name at least through a sub-domain before the Complaint was filed.

Secondly, the Respondent contends that the Complainant and the Respondent operate in very different fields. The Respondent points out that the Complaint describes the Complainant as providing services “enabling users to carry out commercial transactions by electronic means via a global computer network”.

According to the Respondent, therefore, the Complainant's platform is a standalone peer-to-peer ledger designed for general day-to-day transactions. In contrast, the Respondent characterises its platform as a specialised gaming arcade built on top of a larger blockchain with a focus on AI-powered games.

Thirdly, the Respondent points out that there are other uses of NIM. First, NIM is a "well-known" mathematical game with ancient origins. The article in the *Encyclopaedia Britannica* referenced by the Respondent supports this claim. It also appears that a version of this game was recreated as one of the earliest artificial intelligence games in the 1950s and 1960s.¹ Thirdly, NVIDIA uses NIM as a brand for a range of AI services. Fourthly, "Nimble" uses NIM as the token for its AI cryptocurrency.

It appears that some of the services offered by the Respondent through or, but for the filing of the Complaint, which would have been offered through, the disputed domain name could potentially infringe the Complainant's registered trademarks in those jurisdictions where it is registered. For example, the Respondent appears to offer exchange operations and services for the issuing and redemption of electronic vouchers and electronic value units (tokens). And there is no basis to infer that the Respondent's services are offered only in jurisdictions where the Complainant does not hold trademark registrations.

On the other hand, the Respondent has provided some evidence supporting its claim that its platform was being developed as an AI gaming platform before notice of the dispute. It is far from clear that such services offered by the Respondent are or would be infringing. Some of the Respondent's conduct after the Complaint, however, may question the extent to which the Respondent's platform is, or is just, a gaming platform. A further consideration is that it appears that there may be third parties – the users of the Respondent's platform – who may have invested or developed substantial value which could be lost if the Respondent lost the disputed domain name.

In these circumstances, the Panel finds that the Complainant has not discharged its onus of establishing the Respondent registered the disputed domain name to take advantage of the Complainant's trademark. The record in this case is too limited and cryptic to justify a conclusion that the Respondent has set out to capitalise on the Complainant's reputation and goodwill in its trademark or otherwise disrupt the Complainant's business.

Accordingly, the Complainant has not established the third requirement under the Policy and the Complaint must fail.

C. Rights or Legitimate Interests

As the Complaint must fail, no good purpose would be served by considering the issues arising under this requirement of the Policy.

6. Decision

For the foregoing reasons, the Complaint is denied.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: October 5, 2024

¹ Citing an article published in 2015 by GQ magazine.