

ADMINISTRATIVE PANEL DECISION

netgo group GmbH v. Alan Rust
Case No. D2024-2882

1. The Parties

The Complainant is netgo group GmbH, Germany, represented by Becker Intellectual Property, Germany.

The Respondent is Alan Rust, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <netgo.website> is registered with Hostinger Operations, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 15, 2024. On July 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 17, 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 Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 19, 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 July 19, 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 July 24, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 13, 2024. The Respondent did not submit any formal response. The Respondent sent an email communication to the Center on August 9, 2024. The Center sent an email regarding possible settlement on August 9, 2024, but the Complainant did not request suspension before the due date. Accordingly, the Center notified the commencement of panel appointment process on August 20, 2024.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on August 21, 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 the parent company of a German information technology services group, established in 2002, headquartered in Berlin, and organized as a limited liability company under German law. The Complaint attaches evidence of media and industry recognition of the Complainant by 2023 as one of the top German “IT system houses”, ranking among those IT service providers with an annual turnover between EUR 250 million and 1 billion.

The Complainant operates a German-language website at “www.netgo.de” advertising its cloud, IT security, software, and other information technology services, with links to its social media accounts on Facebook, LinkedIn, X, Instagram, and YouTube.

The Complainant holds relevant trademark registrations including the following:

Mark	Jurisdiction	Registration Number	Registration Date	Goods or Services
NETGO (word and design)	European Union	017674953	August 7, 2018	IC 9, 35, 37, and 42: software and documentation, computer support, repair, and installation services, consulting, hosting, software implementation and training services, etc.
NETGO (word)	European Union	018040914	August 22, 2019	IC 9, 35, 36, 37, 38, 41, and 42: information technology media and recorded content, business assistance, computer support and installation services, financing and leasing, leased computer access, telecom services, consulting and training services, etc.
NETGO (word)	United Kingdom	00918040914	August 22, 2019	IC 9, 35, 36, 37, 38, 41, and 42: information technology media and recorded content, business assistance, leased computer access, computer support and installation services, financing and leasing, telecom services, IT consulting and training services, etc.
NETGO (word)	Germany	302023111547	November 24, 2023	IC 2, 9, 16, 35, 36, 37, 38, 39, 41, and 45: toner, computer hardware and software, information technology media, computer support and installation services, financing and leasing, telecom services, IT consulting and training services, etc.

The Registrar reports that the disputed domain name was created on December 14, 2023, and was registered in the name of a domain privacy service. After receiving notice of the Complaint in this proceeding, the Registrar identified the underlying registrant as the Respondent Alan Rust, showing no organization, a postal address in the United Kingdom, and a Gmail contact email address.

At the time of this Decision, the disputed domain name is not associated with an active website. However, screenshots from July 2024 furnished with the Complaint (and others available from the Internet Archive's Wayback Machine on other dates in 2024) show that the disputed domain name resolved to a landing page advertising an Internet-based television streaming app offered by CatchON TV. The CatchON TV website at "www.catchontv.com" is aimed at an international audience and indicates that it is operated by a company based in Malta. As noted below, the correspondence received by the Center on behalf of the Respondent refers to "catchontv" (using an email address appearing on the website formerly associated with the disputed domain name) and an apparent plan to use the disputed domain name for "a tv streaming service". Another contact email address given in the registration details for the disputed domain name as provided by the Registrar uses the name "tellymovie". The Panel notes that some Internet search engines cache search results for the disputed domain name linking it to "www.tellymovie.com", ostensibly another television streaming website. That website is now blocked by some search engines due to suspected malware.

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 disputed domain name is identical to its registered word mark NETGO and confusingly similar to its word and design mark NETGO, for which the Respondent has no permission or other rights or legitimate interests to use. The Respondent is not known by a corresponding name and has not been using the disputed domain name in connection with a bona fide offering of goods or services or for a legitimate non-commercial fair use. The Complainant found no corresponding mark in a trademark search under the Respondent's name.

The Complainant infers that the Respondent selected the disputed domain name "to take unfair advantage" of the Complainant's NETGO mark, as the Complainant similarly offers apps and online videos for webinars, and the Respondent's service was named "CatchOn TV", not NETGO. Thus, the Complainant argues that this is an example of bad faith misdirection of Internet users for commercial gain, exploiting the Complainant's trademark with a confusingly similar domain name that was suspiciously registered less than three weeks after the Complainant's most recent trademark registration was published. The Complainant finds further support for its inference of bad faith in the Respondent's use of a domain privacy service to register the disputed domain name. The Complainant argues, finally, that it is unlikely that the Respondent was unaware of the Complainant's mark, given the Complainant's wide and recent recognition and trademark publication, and cites section 3.2.3 of the [WIPO Overview 3.0](#) referring to the "willful blindness" of respondents in such circumstances.

B. Respondent

The Respondent did not submit a formal Response. After notifying the Complaint, the Center received the following email message using the name "catchontv":

"Netgo.website is a tv streaming service and bears absolutely no relationship to your client nor can it be confused. Hell will freeze over before I pay a thousand dollars this whole episode of yours smells of a scam.

Please desist from sending these scam type emails. Further Netgo.website was using and [sic] official domain name registration. And was never used so could not have possibly affected [sic] your clients [sic]

business. Also you have banned it so lets [sic] call it a day. I will delete all future mails from your organisation

Regards John Smith executive director”.

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that a complainant must demonstrate each of the following:

- (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) and the respondent has no rights or legitimate interests in respect of the domain name;
- (iii) and the domain name has been registered and is being used in bad faith.

Under paragraph 15(a) of the Rules, “[a] Panel shall decide a 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”.

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 (here, the registered NETGO word mark and the registered NETGO composite word and design mark) for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the NETGO word mark and the textual element of the NETGO composite word and design mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the former and confusingly similar to the latter for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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 Respondent does not have a corresponding name, and the business advertised on the website formerly associated with the disputed domain name has a different name, CatchON TV. The Respondent has not come forward to assert any rights or legitimate interests in the disputed domain name other than to observe, in its email to the Center, that the disputed domain name was properly registered. But registrars do not invent domain names or certify that they are not infringing the rights of others under applicable laws or the UDRP. The registration agreement places that responsibility on the registrant. The Respondent does not offer a plausible, legitimate reason for selecting the disputed domain name, identical to the Complainant's mark, and taking advantage of another party's established mark cannot be deemed a use in connection with a "bona fide" commercial offering for purposes of the Policy, paragraph 3(c)(ii).

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, while not filing a formal Response, sent an email to the Center suggesting that it "never used" the disputed domain name but that "Netgo.website is a tv streaming service" that cannot be confused with the Complainant. This statement does not deny prior awareness of the Complainant or its identical mark. It is indeed likely that the Respondent was aware of the mark, as the Complainant is a prominent IT company and its website appears on the first page of Internet search results on the term "netgo". "Netgo" is not a dictionary word, and the Respondent's service is not called "Netgo". There is no evident reason to use that name in the disputed domain name other than to exploit the reputation of the Complainant in the information technology industry, and the Respondent has not offered any alternative reason. Moreover, the choice of the Top Level Domain (TLD) ".website" for the disputed domain name is particularly likely to engender confusion because the Complainant's IT services include website development and support and Internet-based offerings. See [WIPO Overview 3.0](#), section 3.2.1 (choosing a term or TLD consistent with the Complainant's area of business activity or natural zone of expansion may be an additional factor in considering bad faith).

Moreover, the Respondent's statement that the disputed domain name has not been used is false, as it was used until recently for a website advertising a commercial video streaming service called CatchON TV, with which the Respondent appears to be associated. This begs the question why would one using CatchON TV as a brand/service register a "netgo" domain name. Therefore, the Panel finds on this record that the Respondent's registration and use of the disputed domain name accords with the example of bad faith mentioned in the Policy, paragraph 4(b)(iv), intentionally attempting to attract Internet users for commercial gain by creating a likelihood of confusion with the Complainant's mark.

The Panel concludes 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 <netgo.website> be transferred to the Complainant.

/W. Scott Blackmer/

W. Scott Blackmer

Sole Panelist

Date: September 4, 2024