

## **ADMINISTRATIVE PANEL DECISION**

AB Ph. Nederman & Co v. Shelly Foster

Case No. D2024-3017

### **1. The Parties**

The Complainant is AB Ph. Nederman & Co, Sweden, represented by Abion AB, Sweden.

The Respondent is Shelly Foster, United States of America.

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

The disputed domain name <nedermans.com> is registered with Wild West Domains, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 24, 2024. On July 25, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 25, 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 (Registration Private, Domains by Proxy LLC, DomainsByProxy.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 26, 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 July 29, 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 August 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 25, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 27, 2024.

The Center appointed Andrew Brown K.C. 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.

#### 4. Factual Background

The Complainant is a company headquartered in Helsingborg, Sweden. It is part of the Nederman Group – a global group of companies offering products and solutions in the field of industrial air filtration. The Complainant was founded in 1944. It employs 2,400 people in 25 countries and manufactures products in 13 countries on five continents. Its net sales in 2023 were SEK 6.188 million.

The company owns a number of registered trademarks for the trademark NEDERMAN in multiple countries. The relevant registrations (“the NEDERMAN Trademark”) include:

Country	Number	Mark	Registration Date	Class
Australia	339947	NEDERMAN	November 9, 1979	7
United States of America	1619418	NEDERMAN	October 30, 1990	7 and 11
United States of America	4508526	NEDERMAN	April 8, 2014	7 and 11
European Union	002506400	NEDERMAN	November 23, 2004	7 and 11
European Union	004422119	NEDERMAN	November 6, 2006	6, 7 and 20

The Nederman Group owns numerous domain names covering the trademark NEDERMAN including <nederman.com> and <nedermangroup.com>. The Complainant uses these domain names to resolve to the Nederman Group’s official websites.

The disputed domain name was registered on June 17, 2024. The disputed domain name has been used to generate email addresses and send fraudulent emails. There is no website located at the disputed domain name.

#### 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 confusingly similar to the Complainant’s NEDERMAN Trademark.

The Complainant states that the Respondent has no rights or legitimate interests in the disputed domain name. It further states that it has not licensed or authorized the Respondent to register or use the disputed domain name, nor is the Respondent affiliated to it in any way. The Complainant asserts that the Respondent is not known by the disputed domain name, nor does she own any corresponding registered trademarks.

The Complainant further states that the Respondent has not been using or preparing to use the disputed domain name in connection with any bona fide offering of goods and services, nor is the Respondent making any legitimate non-commercial or fair use of it. The Complainant states that the Respondent is engaged in typosquatting and that the addition of “s” to the Complainant’s NEDERMAN Trademark in the disputed domain name is intended to falsely lead Internet users to believe that the disputed domain name is connected to or authorized by the Complainant and will resolve to official Nederman Group websites.

The Complainant relies on the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 2.5 which states that such use will not be considered fair if it falsely suggests affiliation with the owner of the relevant trademark.

Finally, the Complainant asserts that the disputed domain name has been registered and is being used in bad faith. The Complainant states that the Respondent registered and used the disputed domain name to undertake a phishing scheme and there is evidence that she intercepted an email sent between employees of the Nederman Group. It is claimed that the Respondent's clear intention was and is to create an association and likelihood of deception and confusion with the Complainant's trademark and official 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 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 entirety of the Complainant's NEDERMAN Trademark is reproduced within the disputed domain name with the addition only of "s". The disputed domain name is confusingly similar to the NEDERMAN trademark 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 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 finds that the disputed domain name was registered in bad faith for the following reasons:

(a) The Panel finds that the Complainant's NEDERMAN Trademark has an established reputation. It achieved this level of consumer awareness well before the date of registration of the disputed domain name on June 17, 2024;

(b) More particularly, the Respondent clearly knew of the Complainant's NEDERMAN Trademark when she registered the disputed domain name. As discussed in the next section, this is evidenced by the totality of the circumstances. In particular, the Panel relies on the fact that shortly after registration the Respondent sent a fraudulent email dated June 28, 2024 using the disputed domain name <nedermans.com>. This fraudulent email was designed to make certain employees of the Nederman Group believe that her email was a continuation of earlier correspondence (intercepted by the Respondent) dated May 30, 2024. The Respondent's attempt to impersonate an employee of the Complainant was part of a phishing exercise seeking to divert payment of an invoice to the Respondent. This course of conduct indicates full knowledge of the Complainant and its trademark rights.

The Panel is also satisfied that the Respondent is using the disputed domain name in bad faith for the following reasons:

(a) As just detailed, the Complainant has provided evidence that the disputed domain name has been used to intentionally attract for commercial gain and to deceive persons as part of a phishing scheme and as an instrument of fraud. The Panel is satisfied that Internet users, including employees of the Nederman Group, encountering use of the disputed domain name will be deceived and confused into thinking that the disputed domain name is the Complainant's genuine site (and emails sent from the disputed domain name are genuine) when this is not the case;

(b) The use of a proxy shield by a respondent to shield identity has been regarded by previous panels as demonstrating both bad faith registration and use. In the circumstances of this case, the Panel considers that the use of the Registration Private proxy shield by the Respondent may properly be taken into account as a further relevant factor showing bad faith use.

(c) The Panel is also entitled to draw and does draw an adverse inference from the failure of the Respondent to respond to the Complaint and to the factual allegations made by the Complainant.

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 <nedermans.com> be transferred to the Complainant.

*/Andrew Brown K.C./*

**Andrew Brown K.C.**

Sole Panelist

Date: September 16, 2024