

ADMINISTRATIVE PANEL DECISION

National Council of State Boards of Nursing, Inc. v. David Monroe
Case No. D2024-3399

1. The Parties

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

Respondent is David Monroe, United States.

2. The Domain Name and Registrar

The disputed domain name <buyncleronline.org> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 19, 2024. On August 20, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 20, 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 (REDACTED FOR PRIVACY, Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on August 22, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on August 26, 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 Respondent of the Complaint, and the proceedings commenced on August 30, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 19, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on September 23, 2024.

The Center appointed Frederick M. Abbott as the sole panelist in this matter on October 4, 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

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 50 states of the United States, the District of Columbia, and four United States territories. Complainant was established in 1978. Since at least October of 1985, Complainant has been conducting nationwide licensure exams under the NCLEX mark. Since at least July 15, 1997, Complainant has used the trademark NCLEX to identify its goods and services in the United States related to nursing licensure exams. Complainant also has used a variety of NCLEX-formative trademarks. Complainant operates a website at “www.nclex.com” at which it provides nursing licensure examination preparation materials and support.

Complainant is the owner of registrations for the word trademark NCLEX on the Principal Register of the United States Patent and Trademark Office (USPTO), including registration number 2,078,246, registration dated July 15, 1997, in International Class (IC) 41, covering, inter alia, educational services relating to nursing licensure and examination; and registration number 2,078,247, registration dated July 15, 1997, in IC 16, covering instructional materials for nursing licensure and examination. Complainant is the owner of registration for the word trademark NCLEX-RN on the Principal Register of the USPTO, registration number 2,046,886, registration dated March 25, 1997, in IC 16, covering instructional material related to nursing licensure and exam examination. Complainant is the owner of additional trademark registrations in the United States and in other jurisdictions for NCLEX and NCLEX-formative trademarks.

According to the Registrar’s verification, Respondent is registrant of the disputed domain name. According to the WhoIs record, the disputed domain name was initially registered on May 8, 2024. There is no indication on the record of this proceeding that any party other than Respondent has owned or controlled the disputed domain name since its initial creation date.

Respondent has used the disputed domain name to direct Internet users to a website that is a virtually identical clone of Complainant’s website with the notable distinction that Respondent’s website purports to offer for sale the certification required for licensure of registered and practical nurses without undertaking the required examination. To quote from Respondent’s website:

“If you want to become a nurse, the NCLEX is an important exam that you must take before you are allowed to begin practicing. What exactly is required to take the NCLEX? Can you take the NCLEX without a nursing degree? Read on to find out more.

There are two NCLEX exam types, the NCLEX-RN (registered nurse) and the NCLEX-PN (practical nurse). To take the NCLEX-RN, you will need an associate’s or bachelor’s degree in nursing. For the NCLEX-PN, you will need a degree in licensed practical nursing or licensed vocational nursing.

In some cases, if you have a degree in a related health science field and wish to get your master’s degree in nursing, you can take a special program to prepare you for your master’s degree. After this program, you’ll be eligible for the NCLEX.

We enable you Buy NCLEX Certificate online without exam. Get NCLEX-PN or NC LEX-RN certificate from anywhere in the world!!”

Respondent’s website includes a contact form, a “contact us” button to speak with a live agent, and a WhatsApp contact number.

Neither Complainant nor the nursing licensure authorities that rely upon the NCLEX examinations to establish the qualification of nurses “sell” certifications without examination.

There is no indication in the record of this proceeding of any relationship, commercial or otherwise, between Complainant and Respondent.

5. Parties’ Contentions

A. Complainant

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

Notably, Complainant contends that it owns rights in the trademark NCLEX and various NCLEX-formative trademarks, and that the disputed domain name is identical or confusingly similar to those trademarks.

Complainant argues that Respondent lacks rights or legitimate interests in the disputed domain name because: (1) Respondent has not been authorized to use Complainant’s trademark in the disputed domain name or otherwise; (2) Respondent is not making a fair use of the disputed domain name; (3) Respondent is not making a bona fide use of the disputed domain name; and (4) Respondent is using the disputed domain name to misleadingly divert Internet users for commercial gain.

Complainant alleges that Respondent registered and is using the disputed domain name in bad faith because: (1) Respondent for commercial gain is intentionally creating a likelihood of confusion for Internet users regarding Respondent’s purported association with Complainant; (2) Respondent was manifestly aware of Complainant and its trademarks when it registered the disputed domain name; and (3) Complainant is the sole authorized source for NCLEX examination services, and is in no way associated with Respondent.

Complainant requests the Panel to direct the Registrar to transfer the disputed domain name to Complainant.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

The Center formally notified the Complaint to Respondent at the email and physical addresses provided in its record of registration. Courier delivery to the physical address provided by Respondent was successful. There is no indication of difficulty in completing email transmission of notice to Respondent. The Center took those steps prescribed by the Policy and the Rules to provide notice to Respondent, and those steps are presumed to satisfy notice requirements.

Paragraph 4(a) of the Policy sets forth three elements that must be established by a complainant to merit a finding that a respondent has engaged in abusive domain name registration and use and to obtain relief. These elements are that:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights;

(ii) 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.

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 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.

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. ¹

The entirety of the mark is reproduced 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.

Although the addition of other terms, here "buy" and "online", may bear on assessment of the second and third elements, the Panel finds the addition of such terms 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 Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on Complainant, panels have recognized that proving 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 Respondent. As such, where Complainant, as here, makes out a prima facie case that Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on Complainant). If Respondent, as here, fails to come forward with such relevant evidence, Complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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.

Respondent has registered and used the disputed domain name to direct Internet users to a website that is a virtual clone of Complainant's website, including Complainant's trademark, without authority, modifying Complainant's website to offer for sale certification of completing an examination required for licensure as a registered or practical nurse without the need to prepare for or take the aforesaid examination. The website is designed to take unfair advantage of Internet users, including nursing students, as well as Complainant. Such deliberate action by Respondent for commercial gain does not constitute fair use, nor a bona fide offering of goods or services. Respondent's actions do not otherwise evidence rights or legitimate interests in the disputed domain name.

¹For purposes of its confusing similarity analysis, the Panel considers only the NCLEX trademark of Complainant. Reference to Complainant's NCLEX-formative marks is not necessary under the circumstances of this proceeding.

Panels have held that the use of a domain name for illegal activity, here claimed impersonation of Complainant and attempt to defraud Internet users by offering for sale counterfeit certifications, can never confer rights or legitimate interests on 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 Respondent was manifestly aware of Complainant and its trademark rights when it registered and used the disputed domain name because Respondent used Complainant's trademark on Respondent's virtual clone replica of Complainant's website. Respondent targeted Complainant's trademark and nonprofit services.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Respondent for commercial gain registered and is using Complainant's trademark in the disputed domain name to create Internet user confusion regarding Complainant acting as source, sponsor, affiliate, or endorser of Respondent's website. Respondent has deliberately set out to defraud Internet users through the offering for sale of counterfeit certifications to be used for the purposes of securing nursing licensure. Respondent has not attempted to justify its fraudulent conduct. Respondent's activities evidence abusive registration and use of the disputed domain name within the meaning of paragraph 4(b)(iv) of the Policy.

Panels have held that the use of a domain name for illegal activity, here claimed impersonation of Complainant and attempt to defraud Internet users by offering for sale counterfeit certifications, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel finds that 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 <buynclexonline.org> be transferred to Complainant.

/Frederick M. Abbott/

Frederick M. Abbott

Sole Panelist

Date: October 14, 2024