

## **ADMINISTRATIVE PANEL DECISION**

Nelson Mullins Riley & Scarborough LLP v. Andrew James  
Case No. D2024-3912

### **1. The Parties**

The Complainant is Nelson Mullins Riley & Scarborough LLP, United States of America (“United States”), self-represented.

The Respondent is Andrew James, United States.

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

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 24, 2024. On September 25, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 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 (Redacted for Privacy / Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 3, 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 October 4, 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 October 7, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 27, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 28, 2024.

The Center appointed Ik-Hyun Seo as the sole panelist in this matter on November 1, 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 law firm, founded in 1897 and now with more than 1,000 professionals in 37 offices. Since its founding, the Complainant has used NELSON MULLINS RILEY & SCARBOROUGH and NELSON MULLINS as marks indicating its business, and owns the following trademark registration in the United States:

- NELSON MULLINS: Trademark Registration Number 3754391 registered on March 2, 2010
- NM NELSON MULLINS: Trademark Registration Number 5361314 registered on December 19, 2017

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

The disputed domain name was registered on August 12, 2024 and does not resolve to any website with content. The disputed domain name has been used for a phishing scam.

#### **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 NELSON MULLINS mark because the disputed domain name consists of an obvious misspelling of the NELSON MULLINS mark wherein the Respondent has added an additional letter "s" to the end of the mark, and the disputed domain name wholly incorporates the NELSON MULLIN mark.

The Complainant also 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 also contends that the disputed domain name was used to contact one of the Complainant's clients while impersonating an attorney from the Complainant firm, requesting payment on an invoice to a different account, the one belonging to the Respondent. The Complainant contends that such use of a domain name for illegal activity does confer rights or legitimate interests on the Respondent.

Finally, the Complainant contends that the disputed domain name was registered and used in bad faith. The Complainant contends that as the Respondent registered the confusingly similar domain name which was subsequently used in furtherance of a phishing scam, the registration and use of the disputed domain name was in bad faith. The Complainant also contends that there can be no doubt that the Respondent knew of and intentionally chose to register the disputed domain name with bad faith especially given the Respondent's impersonation of an employee of the Complainant.

##### **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 entirety of the mark is reproduced within the disputed domain name, and the only difference is the additional letter "s" at the end of the disputed domain name. 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 in terms of an additional, repeated letter, which 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.

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 sent emails to the Complainant's client posing as an employee of the Complainant and requested redirection of payments in an apparent attempt to carry out a fraudulent scheme. Panels have held that the use of a domain name for illegal activity - here, claimed phishing and impersonation/passing off - 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, there is evidence of the Respondent's use of the disputed domain name to send fraudulent emails impersonating an attorney from the Complainant law firm to a third party in what appears to be a scheme to defraud the third party and/or the Complainant financially. Based on such use, it is clear that the Respondent targeted the Complainant in registering the disputed domain name, and in cleverly adding just one letter to the end of the Complainant's mark to make the disputed domain name appear as confusingly similar to the Complainant's mark as possible.

Panels have held that the use of a domain name for illegal activity - here, claimed phishing and impersonation/passing off - 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 <nelsonmullinss.com> be transferred to the Complainant.

*/Ik-Hyun Seo/*

**Ik-Hyun Seo**

Sole Panelist

Date: November 12, 2024