

ADMINISTRATIVE PANEL DECISION

Société des Produits Nestlé S.A., Pfizer Inc., and Wyeth LLC v. Zakaria Bathi,
Vivortis Limited
Case No. D2024-4203

1. The Parties

The Complainants are Société des Produits Nestlé S.A., Switzerland (the “first Complainant”), Pfizer Inc., United States of America (the “second Complainant”), and Wyeth LLC, Switzerland, (the “third Complainant”) represented by Studio Barbero S.p.A., Italy.

The Respondent is Zakaria Bathi, Vivortis Limited, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <wyeth-nutrition.com> is registered with IONOS SE (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 11, 2024. On October 11, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 17, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. On October 17, 2024, the Center confirmed the Respondent information to the Complainants.

The Center verified that 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 October 18, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 7, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 8, 2024.

The Center appointed Kateryna Oliinyk as the sole panelist in this matter on November 14, 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 first Complainant pertains to the Nestlé Group, which acquired the WYETH NUTRITION division in 2012 and has operated it ever since. This division is currently promoted online through its primary website, "www.wyethnutrition.com". The first Complainant is the licensee of the WYETH trademark and such license includes the right to defend the trademark against third parties.

The second Complainant is the parent company of the third Complainant and the registrant of the domain name <wyethnutrition.com>.

The third Complainant is the registered holder of the WYETH and WYETH NUTRITION trademarks. Prior to 2009, the third Complainant was a subsidiary of the Wyeth company which was founded as a pharmaceutical company in Pennsylvania in 1860 by the brothers John and Frank Wyeth. Over the years, it became a globally recognized leader in pharmaceuticals, vaccines, and biotechnology products for human and animal health care. The third Complainant was acquired by the second Complainant in 2009, and the third Complainant is now a wholly owned subsidiary of the second Complainant.

The Complainants collectively have rights on the WYETH trademark, which are owned by the third Complainant and protected through registrations in many countries of the world, including the following:

- European Union Trademark Registration No. 002848414 for WYETH, registered on June 16, 2004, for goods in International Classes 5 and 10;
- United States of America Trademark Registration No. 1023099 for WYETH, registered on October 21, 1975, for goods in International Class 5;
- United Kingdom Trademark Registration No. UK00002223259 for WYETH, registered on July 28, 2000, for goods in International Class 16;
- United Kingdom Trademark Registration No. UK00902848414 for WYETH, registered on June 16, 2004, for goods in International Classes 5 and 10; and
- Philippines Trademark Registration No. 21031 for WYETH NUTRITION, registered on September 13, 2019, for goods in International Class 29.

For the last 160 years, the Complainants collectively have been dedicated to developing medicines, drugs, and vaccines that have become extremely popular worldwide.

The website under the domain name <wyethnutrition.com>, which was created on March 30, 2000, is the main web portal used by the second Complainant to provide information on, and promote, the WYETH NUTRITION division and the related activities and products. Amongst the products commercialized under the WYETH NUTRITION trademark, there is S26 Gold formula milk. The S-26 and S-26 GOLD trademarks are registered trademarks owned by the first Complainant.

The disputed domain name, registered on June 10, 2023, was used to host a website that prominently displayed the WYETH and WYETH NUTRITION trademarks. The website featured information about WYETH NUTRITION formula milk and milk powder supplements, along with unauthorized reproductions of the second Complainant's product visuals. It also invited users to request product samples by submitting their personal information through an online form. Additionally, the website provided details about the second Complainant's subsidiary, Wyeth Nutritionals Ireland Limited, including contact information and a telephone number with an Australian (+61) prefix.

The Complainants sent several cease-and-desist letters to the Respondent and the Registrar, but the Complainants have never received any response from the Respondent. In response to the cease-and-desist letter sent by the Complainants October 2, 2023, the Registrar of the disputed domain name which also acted as the hosting provider put the disputed domain name in the “clientHold” status and suspended the services provided for the disputed domain name.

At the time of this administrative proceeding the disputed domain name resolves to an inactive website.

5. Parties’ Contentions

A. Complainants

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the disputed domain name to the second Complainant.

Identical or Confusingly Similar

The Complainants contend that the disputed domain name and the WYETH trademark are confusingly similar.

According to the Complainants’ contentions, the disputed domain name incorporates the Complainants’ WYETH trademark in full, followed by the generic term “nutrition”, and then by the generic Top-Level Domain (“gTLD”) “.com”.

The Complainants further assert that the term “nutrition” used in the disputed domain name increases confusion amongst Internet users, who may believe that the disputed domain name is owned and operated by the Complainants to promote the WYETH NUTRITION business and WYETH NUTRITION division.

The Complainants further contend that the disputed domain name is also confusingly similar to the trademark WYETH NUTRITION owned by the third Complainant, as it reproduces the trademark in its entirety with the mere addition of a hyphen, which is not a distinguishing feature.

No Rights or Legitimate Interests

The Complainants contend that the Respondent has no rights or legitimate interests in the disputed domain name.

According to the Complainants’ contentions, the Respondent has not used the disputed domain name in connection with a bona fide offering of goods or services, and has not been authorized, licensed, or otherwise permitted by the Complainant to register the disputed domain name.

The disputed domain name creates a likelihood of confusion amongst the public, because the disputed domain name falsely creates the impression that it is linked to the Complainants.

The Complainants further state that the Respondent did not use any disclaimer on the website behind the disputed domain name whatsoever, falsely creating the impression that the Respondent is economically connected with the Complainant.

The Complainants further claim that the current passive holding of a domain name, particularly following prior infringing uses, does not qualify as legitimate noncommercial or fair use. Moreover, the disputed domain name, incorporating the well-known WYETH NUTRITION trademark in its entirety, is inherently misleading, falsely implying an affiliation with the Complainants.

Registered and Used in Bad Faith

The Complainants submit that the Respondent registered and is using the disputed domain name in bad faith.

The Complainants submit that the Respondent must have been aware of the Complainants' WYETH trademark when it registered the disputed domain name.

The Complainants assert that the mere fact of registration of the disputed domain name that is confusingly similar or identical to a famous trademark by an entity that has no relationship to that mark is itself evidence of bad faith registration and use.

The Complainants contend that the disputed domain name is used with the view of attracting Internet users for commercial gain by creating a likelihood of confusion with the Complainants' trademark.

The Complainants further claim that the circumstances of the case also indicate that the current passive holding of the disputed domain name shall not prevent a finding of bad faith use.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

6.1. Consolidation of Multiple Complainants

Neither the Policy nor the Rules expressly provide for the consolidation of multiple complainants, and generally read in singular terms of a "complainant" when referring to proceedings under the Policy. See, e.g., *MLB Advanced Media, The Phillies, Padres LP v. OreNet, Inc.*, WIPO Case No. [D2009-0985](#).

Nonetheless, previous UDRP panels have concluded that consolidation of multiple complainants in a single complaint is permissible. In assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look at whether (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation. See section 4.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Moreover, it is well accepted that a trademark owner's affiliate such as a subsidiary of a parent or of a holding company, or an exclusive trademark licensee, is considered to have rights in a trademark under the UDRP for purposes of standing to file a complaint. See section 1.4.1, [WIPO Overview 3.0](#). In the present case the Panel finds that as the Complainants are affiliated companies it is both equitable and procedurally efficient to allow the Complainants to proceed with the single consolidated Complaint.

6.2. Substantive Matter

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: "[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."

Paragraph 4(a) of the Policy directs that the Complainants must prove each of the following:

i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainants have rights;

- ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- iii) that the disputed domain name has been registered and is being used in bad faith.

Considering that the Respondent did not reply to the Complainants' contentions, in order to determine whether the Complainants have met their burden as stated in paragraph 4(a) of the Policy, the Panel bases its decision on the statements and documents submitted and in accordance with the Policy and the Rules.

Under paragraph 14(b) of the Rules, where a Party does not comply with any provision of the Rules, the Panel "shall draw such inferences therefrom as it considers appropriate".

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 Complainants have 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 disputed domain name comprises the WYETH trademark with the addition of "-nutrition".

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.

Although the addition of other terms here, "nutrition", may bear on assessment of the second and third elements, the Panel finds the addition of such term 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.

With respect to the WYETH NUTRITION trademark, the disputed domain name is nearly identical save for the separating hyphen, which can be ignored for purposes of the confusing similarity test. Accordingly, the disputed domain name is confusingly similar to the mark for 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.

According to the evidence submitted, the disputed domain name was used to host a website that prominently displayed the WYETH and WYETH NUTRITION trademarks. The website featured information about WYETH NUTRITION formula milk and milk powder supplements, along with unauthorized reproductions of the second Complainant's product visuals. It also invited users to request product samples by submitting their personal information through an online form. Additionally, the website provided details about the second Complainant's subsidiary, Wyeth Nutritionals Ireland Limited, including contact information and a telephone number with an Australian (+61) prefix.

Respectively, as the Complainants demonstrated, the disputed domain name used to host the website to impersonate the Complainants and attempt to mislead Internet users into thinking that it originates from the Complainants. Such use demonstrates neither a bona fide offering of goods or services nor a legitimate interest of the Respondent.

The Panel also notes that the disputed domain name no longer resolves to an active website, but the only reason for that is the suspension of the services from the side of the Registrar. Thus, the Respondent is likewise unlikely using the disputed domain name to provide a bona fide offering of goods and services for legitimate noncommercial or fair use.

Panels have held that the use of a domain name for illegitimate activity here, claimed 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.

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.

Regarding the bad faith registration of the disputed domain name, the Panel concludes that the reputation of the Complainants' WYETH trademark in the field of nutrition is well-established. It is evident that the Respondent was likely aware of the Complainants and their trademarks when deliberately registering the disputed domain name, particularly given that the website associated with the disputed domain name imitated the Complainants' official website.

Panels have held that the use of a domain name for illegitimate activity here, claimed impersonation/passing off, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Respectively, as regards the previous use of the disputed domain name, the Panel finds that the Respondent's attempt to pass off as the Complainants, with the purpose of intentionally attempting to create a likelihood of confusion with the Complainants' trademark as to the disputed domain name's source, sponsorship, affiliation or endorsement, consists of bad faith use of the disputed domain name.

The Panel further notes that at the point of issuance of this Decision the website associated with the disputed domain name is "passively held".

Panels have also found that the non-use of a domain would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the current non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panels will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3.

The particular circumstances of this case that the Panel has considered are:

- i) the degree of distinctiveness and reputation of the Complainants' WYETH and WYETH NUTRITION trademarks;
- ii) the failure of the Respondent to submit a response to the Complaint and earlier to any of the cease-and-desist letters sent by the Complainant prior to initiation of this administrative proceeding, and to provide any evidence of actual or contemplated good-faith use;
- iii) the implausibility of any good faith use to which the disputed domain name may be put by the Respondent given its composition and the prior impersonating use.

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 <wyeth-nutrition.com> be transferred to the second Complainant.

/Kateryna Oliinyk/

Kateryna Oliinyk

Sole Panelist

Date: December 2, 2024