

## ADMINISTRATIVE PANEL DECISION

Société des Produits Nestlé S.A. v. Airton Senna, Felipe Claudio, joao vitor Brito

Case No. D2024-4205

### 1. The Parties

Complainant is Société des Produits Nestlé S.A., Switzerland, represented by Studio Barbero S.p.A., Italy.

Respondents are Airton Senna, Felipe Claudio, and joao vitor Brito, Brazil.

### 2. The Domain Names and Registrar

The disputed domain names <lojaanestle.com>, <lojadanestlebrasil.com>, <lojadanestlebr.com>, <lojadanestle.com>, <lojanestlebrasil.com>, <lojanestlebr.com>, <lojanestle.com>, <lojinhadanestlebrasil.com>, <lojinhadanestlebr.com>, <lojinhaneestlebr.com>, <lojinhaneestle.com>, and <nestlebr.com> are registered with Squarespace Domains II LLC (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 names. On October 11, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names that differed from the named Respondent (“Redacted for Privacy”) and contact information in the Complaint.

The Center sent an email communication to Complainant on October 17, 2024 with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, requesting Complainant to either file separate complaints for the disputed domain names associated with different underlying registrants or, alternatively, demonstrate that the underlying registrants are in fact the same entity and/or that all domain names are under common control. Complainant filed an amendment to the Complaint on October 21, 2024.

On October 17, 2024, the Center informed the parties in Portuguese and English that the language of the registration agreement for the disputed domain names is Portuguese. On October 18, 2024, Complainant requested English to be the language of the proceeding. Respondents did not submit any comment on Complainant’s submission.

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 Respondents of the Complaint, and the proceedings commenced on October 23, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 12, 2024. Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on November 13, 2024.

The Center appointed Jeffrey D. Steinhardt as sole panelist in this matter on November 19, 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 a member of the Nestlé Group, which sells products and services globally, mainly in the food industry, including baby foods, cereals, beverages, and confectionary. Nestlé Group globally employs hundreds of thousands of people. Nestlé Brasil Ltda. counts itself among Complainant’s many international affiliates.

Complainant and its affiliated companies own numerous registrations globally for the well-known NESTLÉ trademark including, for example, International Trademark Registration No. 400444 (semi-figurative mark) of July 16, 1973, in classes 1, 5, 29, 30, 31, 32, and 33; International Trademark Registration No. 479337 (word mark) of August 12, 1983, in classes 1, 5, 29, 30, 31, 32, and 33; Brazilian Trademark Registration No. 007547285 (figurative mark) of December 14, 1982, in class 30; Brazilian Trademark Registration No. 007547757 (word mark) of March 2, 1982, in class 30.

Complainant also owns domain names for numerous websites that it maintains, and Nestlé Brasil Ltda. also maintains a commercial website at “www.nestle.com.br”.

The disputed domain names were registered between August 1 and September 9, 2024, as follows: <nestlebr.com> August 3, 2024; <lojanestlebrasil.com> August 9, 2024; <lojadanestlebrasil.com> August 14, 2024; <lojadanestlebr.com> August 19, 2024; <lojinhanebrasil.com> and <lojinhanebrasil.com> August 22, 2024; <lojinhanebrasil.com> August 26, 2024; <lojinhanebrasil.com> August 29, 2024; <lojanestle.com> August 2, 2024; <lojadanestle.com> August 1, 2024; <lojanestlebr.com> August 7, 2024; and <lojaanestle.com> September 9, 2024.

None of the 12 disputed domain names currently resolve to an active web page. However, annexes to the Complaint show that eight of the 12 disputed domain names (<lojaanestle.com>, <lojadanestlebrasil.com>, <lojadanestlebr.com>, <lojanestlebrasil.com>, <lojinhanebrasil.com>, <lojinhanebrasil.com>, <lojinhanebrasil.com>, and <nestlebr.com>) resolved in August 2024 to Portuguese-language websites stating that they were official NESTLÉ websites and offering for sale discounted baby formula products (in some cases with “upcoming” expiration dates in October 2024). Other archives available to the Panel<sup>1</sup> show that two of the other disputed domain names, <lojanestle.com> and <lojanestlebr.com>, on August 2, 2024, and on August 7 and 8, respectively, resolved to commercial websites undergoing development without product photographs but with structure and headings similar or identical to the other eight websites. Most of the websites also display contact information that in reality relates to Complainant’s Brazilian subsidiary.

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<sup>1</sup> The panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.8.

It appears that the remaining disputed domain names <lojadanestle.com> (registered by Respondent Felipe Claudio) and <lojinhaneagle.com> (registered by Respondent Airton Senna) and meaning in English “shop/ small shop of Nestlé”) may never have routed to active webpages; however, Felipe Claudio is also listed as registrant for another disputed domain name that previously resolved to an unfinished website with the same structure, sequence and materials as those described above.

## **5. Parties’ Contentions**

### **A. Complainant**

Complainant avers that it is part of the Nestlé Group, which was founded in 1866, and that Complainant is the registered owner of the majority of the marks of the Nestlé Group. Complainant also avers that Nestlé began producing milk products in Brazil about 100 years ago; today, with operations in 15 market segments and 31 industrial units in several regions, employing more than 20,000 people in Brazil.

Among other allegations, Complainant avers that Respondent provided the name and company information of Complainant’s affiliated company in Brazil on some of the websites to which the disputed domain names resolved in an effort to impersonate members of the Nestlé Group and to induce users to believe that the websites were genuine websites of Complainant. Complainant avers that the nominally separate Respondents “Airton Senna”, “Felipe Claudio”, and “joao vitor Brito” are not employees, licensees, affiliated persons, or authorized agents of Complainant. Complainant also avers that it conducted a trademark search and that none of those named individuals have any rights in marks or pending applications for marks that include the NESTLÉ mark.

Annexing copies of the correspondence, Complainant avers that it sent numerous cease and desist letters and takedown notices to which Respondents did not reply.

In detailed allegations, Complainant contends that it has satisfied each of the elements required under the Policy for transfer of the disputed domain names.

### **B. Respondents**

Respondents did not reply to Complainant’s contentions.

## **6. Discussion and Findings**

### **Procedural Issues**

#### **1. Language of Proceeding**

The Registration Agreements are in Portuguese, which, under paragraph 11 (a) of the Rules, would usually mean that UDRP proceedings should be conducted in Portuguese. Complainant requests that proceedings instead be conducted in English. Paragraph 11(a) of the Rules also provides that the Panel has authority to determine whether to conduct proceedings in a language other than the language of the Registration Agreement, taking account of the circumstances.

Complainant alludes to the added hardship, delay, and expense that Portuguese-language (rather than English-language) proceedings would create for Complainant. Complainant also contends that several things suggest that Respondents possess facility in English. Among these are the facts that most of the websites to which the disputed domain names resolve have at times included some headings in English and that the websites offer, and have actually resulted in shipment of products to international destinations (such as Italy), establishing that Respondents are capable in English.

Respondents were sent separate notifications by the Center in Portuguese and in English of Complainant's request for English-language proceedings. Respondents were also sent notifications in Portuguese and English of the Complaint. Respondents have refrained from responding to both the Complaint and to Complainant's request for English-language proceedings.

Under the circumstances, and in light of the requirement of Paragraph 10(c) of the Rules that the Panel ensure that proceedings take place with due expedition, the Panel finds that English-language proceedings are appropriate and grants Complainant's language request.

## **2. Consolidation: Multiple Domain Name Registrants and Multiple Domain Names**

The amended Complaint was filed against three nominally different domain name registrants, however, Complainant alleges that the domain name registrants are under common control. Complainant also notes one registrant name, Airton Senna, is similar to that of a famous Brazilian race car driver who passed away 30 years ago and is likely a fictitious name.

Complainant requests that all 12 disputed domain names and the three nominally different registrants be consolidated for disposition in a single UDRP proceeding pursuant to paragraph 10(e) of the Rules.

Despite having been notified in the Complaint of the request for consolidation, none of the three nominally different disputed domain name registrants commented on Complainant's request.

As elaborated below, the Panel is granting Complainant's consolidation request.

Paragraph 3(c) of the Rules provides that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder. In addressing the request for consolidation, the Panel considers whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview, section 4.11.2.

With respect to common control, the Panel notes that the disputed domain names were registered during a brief period between August 1 and September 9, 2024. Ten of the 12 disputed domain names have at various times resolved to websites containing identical or very similar content, reproducing Complainant's registered trademarks and images of Complainant's products, with no disclaimers to suggest that they are not authorized by Complainant. In fact, eight of the 12 websites have also falsely represented that they are official websites of Complainant on their respective homepages. Moreover, 11 of the disputed domain names combine Complainant's trademark with the Portuguese words "loja" or "lojinha," meaning in English "shop" or "little shop."

These similarities strongly suggest that Respondents are either acting in concert or are in fact one and the same person. Another factor supporting the Panel's conclusion that the disputed domain names are under common control is the use of the same registrar and the use of Gmail for all of Respondents' contact email addresses with character strings that include the numbers "179."<sup>2</sup>

With respect to fairness and equity, the Panel sees no reason that consolidation of the disputes would be unfair or inequitable to any party.

Accordingly, the Panel rules that it is appropriate to consolidate the disputes respecting these three nominally different disputed domain name registrants (referred to below as "Respondent") in this single proceeding. Similarly, the Panel rules that it is appropriate to consolidate the 12 different disputed domain names in this single proceeding.

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<sup>2</sup>Respondents' registered contact email addresses, omitting proper names, are: <[name redacted]179@gmail.com>; <[name redacted]179@gmail.com>, and <[name redacted]1799@gmail.com>.

## **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.

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 Panel finds that the mark is recognizable and fully reproduced within each of the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds that the first element of paragraph 4(a) 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.

Complainant alleges that Respondent is not commonly known by the disputed domain names and has no authorization to use Complainant's marks. The Panel accepts these undisputed allegations. Complainant also contends that Respondent has no legitimate interest in the disputed domain names and is not making bona fide use, irrespective of the nature of the NESTLÉ-labeled goods apparently sold through Respondent's websites, since the websites do not identify Respondent's lack of a relationship to the Nestlé Group and do not otherwise meet the applicable criteria for legitimate or bona fide use. See [WIPO Overview 3.0](#), section 2.8.1.

Having reviewed the available record, the Panel finds that Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain names. 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 names such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegitimate activity (here, claimed impersonation/passing off or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel finds that the second element of Policy paragraph 4(a) 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 evidence shows that Respondent registered numerous disputed domain names that: fully include the long-established and well-known NESTLÉ mark; reproduced Complainant's mark on Respondent's websites without authorization; falsely used on Respondent's websites associated with the disputed domain names the contact information for Complainant's Brazilian affiliate; and impersonated Complainant's companies.

The Panel agrees with Complainant's contention that, under these circumstances, "[t]he misappropriation of a well-known trademark as a domain name by itself constitutes bad faith registration for the purposes of the Policy." See, e.g., *Aktiebolaget Electrolux v. Domain ID Shield Service Co., LTD / Dorian Cosentino, Planeta Servidor*, WIPO Case No. [D2010-1277](#); *Société des Produits Nestlé SA v. Kayvan Sadeghi*, WIPO Case No. [DIR2007-0002](#), and [WIPO Overview 3.0](#), section 3.1.4.

It is clear to the Panel that Respondent registered and used the disputed domain names as part of a scheme to "intentionally attempt[...] to attract, for commercial gain, Internet users by creating a likelihood of confusion with [...] complainant's mark." Policy paragraph 4(b)(iv)(describing evidence of registration and use in bad faith). The Panel is also inclined to agree with Complainant's contention that Respondent has engaged in a pattern of conduct of abusively registering multiple domain names that include Complainant's well-known marks, which is also under these circumstances evidence of bad faith under Policy paragraph 4(b)(2).

While 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, other circumstances may also 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.

Panels have held that the use of a domain name for illegitimate activity (here, alleged impersonation/passing off or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds that Respondent's registration and use of the disputed domain names constitutes bad faith under the Policy.

Respondent's listing of apparently fictitious names, in violation of the Registration Agreement, and refraining from responding to Complainant's cease and desist letters and the Complaint in this proceeding are additional evidence of bad faith.

The Panel finds that Complainant has established the third element of paragraph 4(a) 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 names <lojaanestle.com>, <lojadanestlebrasil.com>, <lojadanestlebr.com>, <lojadanestle.com>, <lojanestlebrasil.com>, <lojanestlebr.com>, <lojanestle.com>, <lojinhadanestlebrasil.com>, <lojinhadanestlebr.com>, <lojinhaneestlebr.com>, <lojinhaneestle.com>, and <nestlebr.com> be transferred to Complainant.

*/Jeffrey D. Steinhardt/*

**Jeffrey D. Steinhardt**

Sole Panelist

Date: December 3, 2024