

ADMINISTRATIVE PANEL DECISION

Société des Produits Nestlé S.A. v. Otar Tsulaia
Case No. DGE2024-0004

1. The Parties

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

The Respondent is Otar Tsulaia, Georgia.

2. The Domain Name and Registry

The disputed domain name <nestle.ge> (the “Domain Name”) is registered with Caucasus Online LLC (the .GE Registry).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 22, 2024. On July 23, 2024, the Center transmitted by email to the .GE Registry a request for registry verification in connection with the Domain Name. On July 25, 2024, the .GE Registry transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the .GE Domain Name Dispute Resolution Policy (the .GE Policy), the Rules for .GE Domain Name Dispute Resolution Policy (the .GE Rules), and the WIPO Supplemental Rules for .GE Domain Name Dispute Resolution Policy (the Supplemental Rules).

In accordance with the .GE Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on July 26, 2024. In accordance with the .GE Rules, paragraph 5, the due date for Response was August 15, 2024. The Respondent sent an email communication to the Center on July 26, 2024.

The Center appointed Ian Lowe as the sole panelist in this matter on August 28, 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 .GE Rules, paragraph 7.

4. Factual Background

The Complainant is a Swiss corporation, part of the Nestlé Group, founded in 1866 by Henri Nestlé. Nestlé Group sells products and services all over the world in various industries, primarily in the food industry, including baby foods, breakfast cereals, chocolate and confectionery, coffee and beverages, bottled water, dairy products, ice cream, prepared foods, and food services as well as pet food.

Nestlé markets its products worldwide in 188 countries, has about 270,000 employees worldwide and operates more than 340 production centres in 76 countries.

The Complainant is the proprietor of many trademark registrations worldwide for NESTLÉ and NESTLE, including International trademark No. 1664732 NESTLÉ registered on March 15, 2022, designating a number of jurisdictions including Georgia; Georgia trademark No. 1846 NESTLÉ (figurative mark) registered on March 25, 1996; and European Union trademark No. 002977569 NESTLE registered on May 25, 2004.

The Domain Name was registered on December 22, 2023. It resolves to a Namespace parking page.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is identical to its NESTLE trademark, that the Respondent has no rights or legitimate interests in respect of the Domain Name, and that the Respondent registered or is using the Domain Name in bad faith within the meaning of the .GE Policy.

B. Respondent

The Respondent did not reply to the Complainant's contentions. In its email to the Center on July 26, 2024, the Respondent indicated that it was ready to participate in the proceedings and would submit its Response within the specified time frame, but failed to do so.

In the pre-proceedings correspondence with the Complainant's representatives following a cease-and-desist letter, the Respondent stated a willingness to transfer the Domain Name to the Complainant, but required payment of a substantial sum to compensate for the costs incurred by the Respondent in developing a charitable project for which the Domain Name was intended. The Respondent claimed not to have been aware of the Complainant's trademark rights in NESTLE at the time of registration of the Domain Name.

As evidence of the investment made by the Respondent, he adduced copies of two invoices. One was dated March 15, 2024, apparently issued by L.E., but also addressed to L.E., for the sum of USD 4,500 for "NestMegule Full Website Development". The second invoice dated March 3, 2024 (as translated from the Georgian language) did not state the name of the person issuing the invoice but was for USD1,500 and addressed to L.S. for "Logo/brand book".

6. Discussion and Findings

For this Complaint to succeed in relation to the Domain Name the Complainant must prove that:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered or is being used in bad faith.

A. Identical or Confusingly Similar

Ignoring the country code Top-Level Domain “.ge”, the Domain Name is identical to the Complainant’s NESTLE trademark (the “Mark”).

Accordingly, the Panel finds that the first element required under the .GE Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the .GE 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 proceedings under the .GE Policy is on the complainant, panels have recognized that proving that 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. Accordingly, 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 of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 2.1.¹

The Respondent has made no use of the Domain Name and has not therefore used it for a bona fide offering of goods or services. There is no question of the Respondent being known by the Domain Name.

Having reviewed the available evidence, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the 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 Domain Name such as those enumerated in the .GE Policy or otherwise.

In the pre-action correspondence, the Respondent claimed to have registered the Domain Name for a charitable project (that is named in one of the invoices as “NestMegule Full Website Development”). However, in that correspondence and throughout the current proceedings the Respondent did not put forward any evidence as to the nature of that project, or how it might have required or justified the use of the Domain Name that is identical to the Complainant’s mark. The copy invoices provided were contradictory and, in the Panel’s opinion, did not support the Respondent’s claims as to relevant preparatory work. Even if someone could argue “NestMegule” could somehow be contracted into “nestle”, the Panel notes that there is no reasonable explanation for such election or contraction.

In addition, the Panel notes that the nature of the Domain Name (identical to the Complainant’s trademark) carries a high risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

Accordingly, the Panel finds the second element of the .GE Policy has been established.

¹As the criteria under the .GE Policy are similar to the criteria under the Uniform Domain Name Dispute Resolution Policy (UDRP), the Panel considers that the principles which have been developed under the UDRP (notably including the [WIPO Overview 3.0](#)) may be applied where appropriate under the .GE Policy (except to the extent of relevant differences between the policies, such as the absence of a conjunctive requirement for bad faith).

C. Registered or Used in Bad Faith

In the light of the notoriety of the Complainant's NESTLE name and trademark, the Panel considers it inconceivable that the Respondent was unaware of the Complainant's NESTLE trademark and did not have the Complainant and its rights in the Mark in mind, when it registered the Domain Name.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available evidence, the Panel finds the non-use of the Domain Name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists 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, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put".

In this case, the Complainant's mark is distinctive, with no dictionary meaning, and it is in fact well known, being the Domain Name identical to the mark which creates a risk of confusion or association with the Complainant; the Respondent has failed to respond to the Complaint and when given an opportunity to do so in pre-action correspondence also failed to provide any persuasive evidence of actual or contemplated good-faith use. In this regard, the equivocal invoices put forward by the Respondent are not sufficient to alter the Panel's finding. Further, the Panel finds it difficult to conceive of any good faith use to which the Respondent could put the Domain Name.

Based on the available evidence, the Panel finds that the Complainant has established the third element of the .GE Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the .GE Policy and 15 of the .GE Rules, the Panel orders that the Domain Name <nestle.ge> be transferred to the Complainant.

/Ian Lowe/

Ian Lowe

Sole Panelist

Date: September 18, 2024