

ADMINISTRATIVE PANEL DECISION

Nokian Tyres plc v. Podrea Valeria
Case No. DMD2023-0002

1. The Parties

The Complainant is Nokian Tyres plc, Finland, represented by Roschier (Brands), Attorneys Ltd., Finland.

The Respondent is Podrea Valeria, Republic of Moldova.

2. The Domain Name and Registry

The disputed domain name <nokian.md> is registered with Information Technology and Cyber Security Service (the "Registry").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 24, 2023. On November 24 and 30, 2023, the Center transmitted by email to the Registry a request for registrar verification in connection with the disputed domain name. On December 1, 2023, 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 (autoshina) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 5 and 11, 2023, 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 amendment to the Complaint on December 15, 2023.

On December 5, 2023, the Center informed the parties in Romanian and English, that the language of the registration agreement for the disputed domain name is Romanian. On December 7, 2023, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the 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 the Respondent of the Complaint, and the proceedings commenced on December 18, 2023. In accordance with the Rules,

paragraph 5, the due date for Response was January 7, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 12, 2024.

The Center appointed Mihaela Maravela as the sole panelist in this matter on January 18, 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

According to information in the Complaint, the Complainant is a Finnish premium tire manufacturer founded in 1988, which is listed on the Nasdaq Helsinki Stock Exchange. The Complainant's products from its diverse portfolio are sold in approximately 60 countries. The Complainant's net sales in 2022 were EUR 1,78 billion and it employs approximately 4,500 professionals around the world.

The Complainant is the holder of a number of trademarks for NOKIAN TYRES, including the European Union trademark No. 007594237 for NOKIAN TYRES, registered on December 17, 2009 for classes 12, 35 and 37 and the International trademark No. 1001768 for NOKIAN TYRES registered on December 11, 2008 for classes 12, 35 and 37. Also, the Complainant is the owner of several domain name registrations containing NOKIAN TYRES or NOKIAN, including, *inter alia*, <nokiantyres.md> (registered on November 25, 2013), <nokian.com> (registered on May 17, 1997) or <nokian.fi> (registered on March 23, 2005).

The disputed domain name was registered on May 18, 2021, and according to evidence with the Complaint, resolved to a website displaying the Complainant's registered NOKIAN TYRES trademark. It also included links to another website where the Complainant's branded goods were offered for sale alongside competing goods. The disputed domain name does not currently resolve to an active website.

5. Parties' Contentions

A. Complainant

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

Notably, the Complainant contends that the disputed domain name is confusingly similar to the Complainant's trademark NOKIAN TYRES as the disputed domain name consists of the distinctive part of the Complainant's trademark, namely "nokian". Lack of the descriptive part of the trademark, namely "tyres", in the disputed domain name does not distinguish the disputed domain name from the Complainant's trademark.

As regards the second element, the Complainant argues that it has not licensed its trademark NOKIAN TYRES or otherwise permitted the Respondent to register the disputed domain name. There is no relationship between the Complainant and the Respondent. The website at the disputed domain name is used to direct consumers to the website "www.autoshina.md" where tires of the Complainant's competitors, as well as other products related to cars, are sold alongside with the Complainant's tires. There is no indication on the website at the disputed domain name that there is no relationship between the Complainant and the Respondent. Further, the Respondent has not replied to the cease-and desist letter sent by the Complainant.

With respect to the third element, the Complainant argues that the disputed domain name leads to a website which is used to market the Complainant's products. The website contains several trademarks of the Complainant. The website also contains several links/hyperlinks to the "www.autoshina.md" website on which many different brands of tires, including the Complainant's tires, are sold. In addition, the website also contains links/hyperlinks to the Complainant's official Facebook and YouTube profiles, as well as embedded

videos from the Complainant's YouTube profile. The Complainant contends that the Respondent has been aware of the Complainant's trademarks as they have included them in the disputed domain name and on the website at the disputed domain name and that the Respondent is thereby seeking to deceive Internet users by passing off as the Complainant while marketing the Complainant's products on the website at the disputed domain name and directing consumers to the "www.autoshina.md" website and selling the Complainant's products there alongside with the products of the Complainant's competitors. The Respondent has not included any disclaimers on their website that would help Internet users to realize that the Complainant is not affiliated with the disputed domain name and the website.

B. Respondent

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

6. Discussion and Findings

6.1. Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Romanian. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that the Complainant does not understand Romanian, and the commission of a translator would add substantial costs to the Complainant and cause delay in the commencement of proceedings. Also, as per the Complainant, the website at the disputed domain name was used to redirect to another website that had a chat box with text in English, Romanian and Russian indicating that the Respondent understands English.

The Respondent did not make any specific submissions with respect to the language of the proceeding.

The above satisfies the Panel that the Respondent would not be disadvantaged if the language of the proceeding is English, and that using the English language in this proceeding would be fair and efficient. Therefore, in exercise of its powers under paragraph 11 of the Rules, the Panel decides that the language of this administrative proceeding will be English. In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2. Substantive issues

No response has been received from the Respondent in this case. Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules. The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. [WIPO Overview 3.0](#), section 4.2.

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights, (ii) the 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 the Complainant's trademark and the disputed domain name. [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 dominant part of the mark, "nokian", 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.

It is the settled view of panels applying the Policy that the country-code Top-Level Domain ("ccTLD") (here ".md") should be disregarded under the first element test.

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.

Rather, according to the unrebutted evidence provided by the Complainant, the website at the disputed domain name was purportedly used for selling products under the Complainant's NOKIAN TYRES trademark. The Complainant contends that it has never licensed or otherwise permitted the Respondent to use the trademark NOKIAN TYRES. The website at the disputed domain name displays no disclaimer as to the lack of any relationship with the Complainant. Irrespective of whether the goods offered for sale are genuine or not, the Respondent's use of the disputed domain name in the above circumstances is not in connection with a *bona fide* offering of goods or services as contemplated by the first circumstance of paragraph 4(c) of the Policy. The Respondent has used the Complainant's trademark on the website to which the disputed domain name resolves to appear to be a website authorized by the Complainant in an act of passing off, which cannot be *bona fide* use.

On the date of this Decision, the disputed domain name does not resolve to an active website. The Panel finds that holding a domain name passively, without making any use of it, also does not confer any rights or legitimate interests in the disputed domain name on the Respondent.

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.

The disputed domain name was registered many years after the Complainant had obtained registration of its NOKIAN TYRES trademarks. The disputed domain name incorporates the dominant part of the Complainant's trademark in addition to the ccTLD ".md". The website at the disputed domain name displayed the Complainant's trademark. Under these circumstances, the Panel considers that the Respondent has registered the disputed domain name with knowledge of the Complainant and its trademark.

As regards the use of the disputed domain name, paragraph 4(b)(iv) of the Policy has direct bearing to the present case: (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to his website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the said website location or of a product or service on that website location.

The conduct of the Respondent falls under the above provisions. The disputed domain name is confusingly similar to the NOKIAN TYRES trademark of the Complainant. The website to which the disputed domain name resolved, directed users to a website displaying the Complainant's trademark. Also, products purporting to be under NOKIAN TYRES trademark are apparently sold and no disclaimer is included regarding the lack of a relationship between the Respondent and the Complainant. The Internet users will likely be confused as to the source of the products sold on such website. Moreover, the website at the disputed domain name contains links to another website purporting to sell the Complainant's products alongside the products of the Complainant's competitors.

In addition, the Respondent has not formally participated in these proceedings and has failed to rebut the Complainant's contentions or provide any evidence of actual or contemplated good-faith use. In the Panel's view, the circumstances of the case represent evidence of registration and use in bad faith of the disputed domain name. The Respondent failed to bring evidence to the contrary. The Respondent's bad faith is reinforced by the Respondent's use of an incomplete address to which the Written Notice could not be delivered by courier.

Although while drafting the decision, the disputed domain name was inactive, considering the circumstances of this case, the Panel finds that such current non-use of the disputed domain name does not prevent a finding of bad faith under the doctrine of passive holding (see section 3.3 of the [WIPO Overview 3.0](#)).

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 <nokian.md> be transferred to the Complainant.

/Mihaela Maravela

Mihaela Maravela

Sole Panelist

Date: January 31, 2024