

## ADMINISTRATIVE PANEL DECISION

Société des Produits Nestlé S.A. v. Name Redacted  
Case No. DMD2024-0001

### 1. The Parties

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

The Respondent is Name Redacted. <sup>1</sup>

### 2. The Domain Name and Registrar

The disputed domain name <nepesso.md> is registered with Information Technology and Cyber Security Service (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 12, 2024. On July 15, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 19, 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 (Not Available) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 23, 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 July 26, 2024.

On July 23, 2024, the Center informed the Parties in Romanian and English, that the language of the registration agreement for the disputed domain name is Romanian. On July 26, 2024, the Complainant submitted the Complaint translated into Romanian. The Respondent did not submit any comment on the Complainant’s submission.

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<sup>1</sup>The Respondent appears to have used the name of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted the Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

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 July 30, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 19, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 21, 2024. The Respondent then sent two email communications to the Center on August 21, 2024, and on August 23, 2024.

The Center appointed Beatrice Onica Jarka as the sole panelist in this matter on September 4, 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 Société des Produits Nestlé S.A. (SPN), which is part of Nestlé Group, founded in 1866 by Henri Nestlé.

Complainant sells products and services all over the world in various industries, primarily in the food industry, including baby foods, breakfast cereals, chocolate & confectionery, coffee & beverages, bottled water, dairy products, ice cream, prepared foods, food services as well as pet food.

Complainant is the owner of over 600 trademark registrations worldwide for NESPRESSO and variations thereof, including the following:

- International Trademark Registration No. 777873 for NESPRESSO (word mark), designating also Moldova, of March 14, 2002, in classes 07, 09, 11, 21, 30, and 38;
- International Trademark Registration No. 1054554 for NESPRESSO (figurative mark) of September 13, 2010, in classes 09, 11, 16, 21, 29, 30, 35, 37, 39, 40, 41, 42, and 43, designating, amongst other, Moldova;
- International Trademark Registration No. 640683 for NESPRESSO (word mark) of June 27, 1995, designating also Moldova, in classes 35, 37, 39, 41, and 42;
- European Union Trademark Registration No. 2793792 for NESPRESSO (word mark), of July 13, 2006, in classes 7, 9, 11, 21, 30, 35, 37, 39, 41, and 43.
- International Trademark Registration No. 1122907 for N (figurative mark), of June 18, 2012, designating also Moldova, in classes 07, 11, 16, 21, 29, 30, 35, 37, 39, 40, 41, 42, and 43.

Complainant is also the owner of many additional trademark registrations consisting of or including NESPRESSO.

Respondent is an individual from Republic of Moldova.

Respondent registered the disputed domain name on December 17, 2023, without Complainant's authorization. The disputed domain name has been used by Respondent for a website using the NESPRESSO and N figurative trademarks, NESPRESSO product visuals and promoting the sale of NESPRESSO products in Moldova, which can be ordered by contacting via Whatsapp the phone number featured on the website.

## 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:

in terms of confusing similarity,

- the disputed domain name is confusingly similar to the trademark NESPRESSO in which the Complainant has rights.
- the disputed domain name is a clear misspelling of the NESPRESSO trademark. The only difference between the disputed domain name and the trademark is that the letter "r" in the mark has been deleted in the disputed domain name. This minor change is not sufficient to avoid a finding of confusing similarity.
- the addition of the country code Top-Level-Domain("ccTLD") ".md". Many prior decisions found that the addition of a Top-Level Domain is merely instrumental to the use of Internet and shall thus be disregarded in the assessment of identity or confusing similarity.

in terms of lack of rights and legitimate interests,

- the Respondent is not a licensee, authorized agent of the Complainant or in any other way authorized to use the Complainant's trademark NESPRESSO.
- the Complainant is not in possession of, nor aware of the existence of any evidence demonstrating that the Respondent is not commonly known by a name corresponding to the disputed domain name as an individual, business, or other organization.
- the Respondent has not provided the Complainant with any evidence of use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services before or after any notice of the dispute herein.
- the disputed domain name is redirected to a commercial website publishing the Complainant's trademarks and product visuals and promoting the sale of NESPRESSO products in Moldova, publishing a phone number to contact via Whatsapp to place orders. Moreover, no disclaimer of non-affiliation with the Complainant is provided nor any information about the real website administrator.
- the offer for sale of NESPRESSO products on the Respondent's website indicates that no fair use could be possibly invoked in the present case by the Respondent, since it has undoubtedly failed to accurately and prominently disclose its (lack of) relationship with the trademark holder, thus generating a clear likelihood of confusion amongst Internet users.
- the Respondent has failed to provide an accurate and prominent disclaimer as to the lack of affiliation with the Complainant and, indeed, the publication of the Complainant's trademarks, the layout, images and text displayed on the website appear to be designed to reinforce the impression that such website is operated by the Complainant.
- the disputed domain name, being almost identical to the Complainant's well-known trademark NESPRESSO, is inherently misleading, as users reading the disputed domain name quickly may not perceive the absence of one letter "r" in the disputed domain name and could believe that it is owned by Complainant or one of its affiliated entities in Moldova.
- the Respondent did not reply to the cease-and-desist letter sent by the authorized representative of the Complainant.

in terms of bad faith registration and use,

- since the trademark NESPRESSO is irrefutably well-known, the Respondent could not have been unaware of its existence when it registered the disputed domain name, with which it is confusingly similar and this represents misappropriation of a well-known trademark as domain name. Such misappropriation constitutes bad faith registration for the purposes of the Policy, as also recognized in section 3.1.4 of the

WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)),

- the disputed domain name is used in connection with a website featuring the Complainant’s trademarks and images of NESPRESSO products, which can be apparently ordered by contacting a telephone number provided on the website via Whatsapp.
- no additional contact details of the website administrator nor any disclaimer of non-affiliation with Complainant are provided. Such use of the disputed domain name - almost identical to the trademark NESPRESSO - clearly demonstrates that the only purpose of the Respondent was and is to use the disputed domain name to intentionally attempt to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant’s trademark as to the source or affiliation of its website and taking unfair advantage from the well-known character of the Complainant’s trademarks for the Respondent’s own profit.
- the Respondent has been intentionally attempting to attract Internet users to its website for commercial gain, by creating a likelihood of confusion with the Complainant’s trademark as to the source, sponsorship, affiliation, or endorsement of its website.
- Additionally in evidence of bad faith, the Respondent failed to reply to the Complainant’s cease and desist letter.

## **B. Respondent**

The Respondent did not reply to the Complainant’s contentions, although it was procedurally summoned.

Two email communications were received from the email address disclosed by the Registrar as belonging to the nominal Respondent, by which the sender denied any connection with the disputed domain name.

## **6. Discussion and Findings**

### **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 initially filed in English and the Amended Complaint was filed in Romanian. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that:

- Although, the language of WIPO domain name dispute proceedings is typically the language of the relevant domain registration agreement, the Panel has the authority to conduct proceedings in a language other than that of the registration agreement when fairness requires.
- In situations where for instance (a) the Complainant would be disadvantaged by proceeding in the language of the registration agreement; (b) the Complainant would be prejudiced by undue expense, delay, or complication; or (c) the Respondent is able to communicate in the Complainant’s language, but the Complainant is unable to communicate in the Respondent’s, the Panel may accept the Complainant’s choice of language to ensure fairness and efficiency.
- Noting the aim of conducting the proceedings with due expedition, paragraph 10 of the UDRP Rules vests a panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case.
- Against this background, panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios include (i) evidence showing that the respondent can understand the language of the complaint, (ii) the language/script of the domain name particularly where the same as that of the complainant’s mark, (iii) any content on the webpage under the disputed domain name, (iv) prior cases involving the respondent in a particular language, (v) prior

correspondence between the parties, (vi) potential unfairness or unwarranted delay in ordering the complainant to translate the complaint, (vii) evidence of other respondent controlled domain names registered, used, or corresponding to a particular language, (viii) in cases involving multiple domain names, the use of a particular language agreement for some (but not all) of the disputed domain names, (ix) currencies accepted on the webpage under the disputed domain name, or (x) other indicia tending to show that it would not be unfair to proceed in a language other than that of the registration agreement”.

- In this case, the Complainant is not seeking to establish any advantage over the Respondent. Rather, the Complainant communicates in English and would be prejudiced should it be required to translate the the Complaint and participate in these proceedings in Romanian.
- Requiring the Complainant to translate the Complaint and all documents into Romanian would cause delay in contravention to Paragraph 10(c) of the Rules.
- The Complainant is not in possession of any evidence demonstrating that Respondent cannot communicate in English.
- The Complainant attempted to resolve this dispute by sending to the Respondent a cease-and-desist letter, via the WhatsApp chat, in English, requesting the Respondent’s cooperation to resolve the dispute without burdening this Panel but no reply was received from the Respondent to request translations or clarification as to the language adopted in such correspondence.

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 [WIPO Overview 3.0](#)”, section 4.5.1.

Pursuant to paragraph 11 of the UDRP Rules, unless otherwise agreed by the parties, the default language of the proceeding is the language of the registration agreement, subject to the authority of the panel to determine otherwise. 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.

#### **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 undoubtedly rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

By comparing the disputed domain name with the Complainant’s trademark, the Panel finds the disputed domain name to be confusingly similar to the trademark NESPRESSO in which the Complainant has rights. The disputed domain name is a clear misspelling of the NESPRESSO trademark. The only difference between the disputed domain name and the trademark is that the letter “r” in the mark has been deleted. This minor change does not avoid a finding of confusing similarity and appears to be in the opinion of the Panel an indication of a typosquatting case in the sense of section 1.9 of the [WIPO Overview 3.0](#).

Moreover, the addition of the ccTLD “.md”, is merely instrumental to the use of Internet and shall thus be disregarded in the assessment of identity or confusing similarity. See section 1.11 of the [WIPO Overview 3.0](#).

Accordingly, 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. Moreover, given the emails received from the alleged Respondent, it appears that the information used for the registration of the disputed domain name was fraudulently obtained, which would not confer upon the Respondent rights or legitimate interests.

The Panel notes that from the available record, it clearly results that:

- the Respondent is not a licensee, authorized agent of the Complainant or in any other way authorized to use the Complainant’s trademark NESPRESSO.
- the Complainant is not in possession of, nor aware of the existence of any evidence demonstrating that the Respondent is commonly known by a name corresponding to the disputed domain name as an individual, business, or other organization.

Moreover, the Panel further notes that the Respondent has not provided the Complainant with any evidence of use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services before or after any notice of the dispute herein. As far as the Panel observes, the disputed domain name is redirected to a commercial website publishing the Complainant’s trademarks and product visuals and promoting the sale of NESPRESSO products in Moldova, publishing a phone number to contact via Whatsapp to place orders. The commercial website to which the disputed domain name resolves provides no disclaimer of non-affiliation with the Complainant, nor any information about the real website administrator. Therefore, the Panel considers that the offer for sale of NESPRESSO products on the Respondent’s website does not represent fair use of the disputed domain name in the sense of section 2.8.1 of the [WIPO Overview 3.0](#)

Additionally considering the circumstance that the Respondent did not reply to the cease-and-desist letter sent by the authorized representative of the Complainant, 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, the Panel notes that the Respondent registered the disputed domain name well aware of the well-known trademark NESPRESSO, given the typosquatting nature of the composition of the disputed domain name, which constitutes bad faith registration for the purposes of the Policy, in the sense of section 3.1.4. and 3.2.2. of the [WIPO Overview 3.0](#).

Further, the Panel notes that the disputed domain name is used in connection with a website featuring the Complainant’s trademarks and images of NESPRESSO products, which can be apparently ordered by contacting a telephone number provided on the website via Whatsapp, with neither additional contact details

of the website administrator or any disclaimer of non-affiliation with the Complainant provided. Such use of the disputed domain name - almost identical to the trademark NESPRESSO - clearly demonstrates that the only purpose of the Respondent was and is to use the disputed domain name to intentionally attempt to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with Complainant's trademark as to the source or affiliation of its website and taking unfair advantage from the well-known character of the Complainant's trademarks for the Respondent's own profit, in the sense of section 3.1.4. and 3.2.2. of the [WIPO Overview 3.0](#).

Additionally in considering evidence of bad faith, the Panel considers that the Respondent's failure to reply to the Complainant's cease-and-desist letter is further indication of bad faith registration and use.

Lastly, considering also the two email communications sent to the Center on August 21, 2024, and on August 23, 2024, from the alleged nominal Respondent, by which he denied any connection with the disputed domain name, the Panel gives consideration to a potential identity theft and finds that this supports also bad faith use and registration of the disputed domain name, in the sense of section 3.4. of the [WIPO Overview 3.0](#).

Accordingly, 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 <nESPRESSO.md> be transferred to the Complainant.

*/Dr. Beatrice Onica Jarka/*

**Dr. Beatrice Onica Jarka**

Sole Panelist

Date: September 18, 2024