

ADMINISTRATIVE PANEL DECISION

Advance Magazine Publishers Inc. v. Privacy service provided by Withheld for Privacy ehf / Herman Leman, Contact Privacy Inc. Customer 7151571251 / House of Dreams Shop LLC, Alexandr Shishkin, Whois Privacy Protection Foundation / Yanis B., Welcome Formation, Vogue Meta, Mrs Bilkish / Air Ticket Bangladesh, Souleymen Bardai
Case No. D2022-2046

1. The Parties

The Complainant is Advance Magazine Publishers Inc., United States of America (“United States”), represented by Stobbs IP Limited, United Kingdom.

The Respondents are Privacy service provided by Withheld for Privacy ehf / Herman Leman, Contact Privacy Inc. Customer 7151571251 / House of Dreams Shop LLC, Alexandr Shishkin, Whois Privacy Protection Foundation / Yanis B., Welcome Formation, Vogue Meta, Mrs Bilkish / Air Ticket Bangladesh, Souleymen Bardai, Bangladesh.

2. The Domain Names and Registrars

The disputed domain names <metavogue.art> and <themetavoguenft.com> are registered with NameCheap, Inc. (the “Registrar 1”).

The disputed domain name <metavogue-art.com> is registered with Hosting Concepts B.V. d/b/a Registrar.eu.(the “Registrar 2”).

The disputed domain name <metavogue-nft.art> is registered with Registrar of Domain Names REG.RU LLC Registrar.eu.(the “Registrar 3”).

The disputed domain name <metavogue-nft.com> is registered with Google LLC (the “Registrar 4”).

The disputed domain name <metavogue-nft.live> is registered with Hostinger, UAB (the “Registrar 5”).

The disputed domain name <meta-vogue-nft.com> is registered with Registrar PDR LTD. D/B/A PUBLICDOMAINREGISTRY.COM (the “Registrar 6”).

Hereinafter, the disputed domain names will be collectively referred to as the “Domain Names”, while Registrar 1, 2, 3, 4, 5 and 6 will be collectively referred to as the “Registrars”.

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on June 6, 2022. On June 7, 2022, the Center transmitted by email to the Registrars requests for registrar verification in connection with the Domain Names. On June 7, 2022 and June 8, 2022, the Registrars transmitted by email to the Center their verification responses disclosing registrants and contact information for the Domain Names which differed from the named Respondents and contact information in the Complaint. The Center sent an email communication to the Complainant on June 15, 2022, providing the registrants and contact information disclosed by the Registrars, and inviting the Complainant to submit an amendment to the Complaint.

On June 15, 2022, the Center sent an email communication to the Parties in both English and Russian regarding the language of the proceeding. The Complainant confirmed its request that English be the language of the proceeding on June 16, 2022. The Respondents did not comment on the language of the proceeding.

On June 21, 2022, the Center sent an email communication to the Complainant informing that the Center had not received a reply to the Center’s email communication dated June 15, 2022 regarding the multiple underlying registrants. The Complainant was requested to send any amendment to the Complaint by June 23, 2022. The Complainant filed an amended Complaint on June 22, 2022.

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 Respondents of the Complaint, and the proceedings commenced on June 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 12, 2022. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on July 14, 2022.

The Center appointed Piotr Nowaczyk as the sole panelist in this matter on August 1, 2022. 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 Complainant is a magazine publisher. Through its unincorporated division, The Condé Nast Publications Inc. (“Condé Nast”), the Complainant publishes Vogue – a fashion and style magazine for women. Vogue is published in various territories, such as the United States, the United Kingdom, India, France, Germany, Spain, Brazil, Italy, Greece, Portugal, the Russian Federation, the Republic of Korea, Taiwan, China, Thailand, Japan, Australia, Latin America, China and Türkiye..

The Complainant’s licensee, Nervora, publishes Vogue Arabia, which partnered with popular Metaverse solution platform Decentraland as a part of the first large-scale virtual fashion week in the Metaverse. Prior to its launch on March 24, 2022, the event was widely publicized online. The Complainant’s official channels firstly advertised the event on February 1, 2022.

The Complainant is the owner of numerous VOGUE trademark registrations, including:

- the European Union Trademark Registration VOGUE No. 003736097 registered on January 18, 2007;
- the United Kingdom Trademark Registration VOGUE No. 2025065 registered on September 20, 1996;

The Complainant's primary domain name incorporating its VOGUE trademark is <vogue.com>.

The Respondents registered the Domain Names on the following dates:

- the disputed domain name <themetavoguenft.com> was registered on February 16, 2022;
- the disputed domain name <metavogue.art> was registered on February 14, 2022;
- the disputed domain name <metavogue-nft.com> was registered on January 12, 2022;
- the disputed domain name <metavogue-nft.art> was registered on February 12, 2022;
- the disputed domain name <metavogue-art.com> was registered on February 13, 2022;
- the disputed domain name <metavogue-nft.live> was registered on February 15, 2022;
- the disputed domain name <meta-vogue-nft.com> was registered on February 13, 2022.

The disputed domain name <metavogue-nft.com> is used to attract Internet users to the website offering luxury fashion avatars. The rest of the Domain Names currently resolve to inactive websites. However, according to the screenshots attached to the Complainant, the disputed domain names <metavogue.art>, <metavogue-nft.art>, <metavogue-art.com>, <metavogue-nft.live>, <meta-vogue-nft.com>, <themetavoguenft.com> were previously used to attract Internet users to the websites offering luxury fashion avatars for sale.

As of the date of this Decision, as well as at the time of drafting the Complaint, the disputed domain name <metavogue-nft.com> resolved to the website offering luxury fashion avatars.

As of the date of this Decision, as well as at the time of drafting the Complaint, the disputed domain names <metavogue.art>, <metavogue-nft.art>, <metavogue-art.com>, <metavogue-nft.live>, <meta-vogue-nft.com>, <themetavoguenft.com> resolved to inactive websites. However, according to the screenshots attached to the Complainant, those domain names resolved previously to the websites offering luxury fashion avatars for sale.

5. Parties' Contentions

A. Complainant

The Complainant requests that the Domain Names be transferred to the Complainant. According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the Domain Names are confusingly similar to the VOGUE trademark registrations of the Complainant.

Second, the Complainant argues that the Respondents have neither rights nor legitimate interests in the Domain Names.

Third, the Complainant submits that the Domain Names were registered and are being used in bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy places a burden on the Complainant to prove the presence of three separate elements, which can be summarized as follows:

- (i) the Domain Names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondents have no rights or legitimate interests in the Domain Names; and
- (iii) the Domain Names have been registered and are being used in bad faith.

The requested remedy may only be granted if the above criteria are met.

At the outset, the Panel notes that the applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”. See section 4.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

A. Consolidation of the Respondents

The Complainant has submitted the amended Complaint against multiple Respondents.

Paragraph 3(c) of the Rules provides that the complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder. Moreover, pursuant to section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario.

In the present case, the Panel accepts that various commonalities between the Domain Names provide sufficient evidence that the Domain Names are owned and/or controlled by a common individual/entity.

Firstly, the Panel notes the proximity in the dates of registration of the Domain Names which mostly cover the period from February 13 to February 16, 2022. Only one disputed domain name <metavogue-nft.com> was registered earlier, *i.e.* on January 12, 2022.

Secondly, the Panel acknowledges identical and/or highly similar content hosted (either currently or historically) at the websites connected to the Domain Names.

Finally, the Panel notes the similarity of the content of the Domain Names. Each of the Domain Names includes the term “meta” alongside the Complainant’s VOGUE trademark.

Accordingly, the Panel finds that the Domain Names are subject to common control for the purposes of these proceedings. The Respondents have not denied these assertions, thus the Panel permits the consolidation of the proceedings and refers to all the registrants of the Domain Names as the “Respondents”.

B. Language of the Proceeding

The language of the Registration Agreement for the disputed domain name <metavogue-nft.art> is Russian. Paragraph 11(a) of the Rules provides that “unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding”. The Panel may also order that any documents submitted in a language other than that of the proceeding be translated.

As noted by previous UDRP panels, paragraph 11 of the Rules must be applied in accordance with the overriding requirements of paragraphs 10(b) and 10(c) of the Rules that the parties are treated equally, that each party is given a fair opportunity to present its case, and that the proceeding takes place with due expedition (see, *e.g.*, *General Electric Company v. Edison Electric Corp. a/k/a Edison Electric Corp. General*

Energy, Edison GE, Edison-GE and EEEGE.COM, WIPO Case No. [D2006-0334](#)).

The Complainant has submitted a request that the language of the proceeding be English.

The Complainant contends, *inter alia*, that it is unable to communicate in Russian and translation of the Complaint would unfairly disadvantage and burden the Complainant and delay the proceedings. Furthermore, the Complainant notes that the disputed domain name <metavogue-nft.art> includes Latin characters as opposed to Cyrillic characters which supports the fact that the Respondent understands, or at the very least, is competent in the English language. Lastly, the Complainant submits that translating the Complaint into Russian would lead to undue delay and substantial expenses incurred by the Complainant.

The Panel agrees that substantial additional expense and delay would likely be incurred if the Complaint had to be translated into Russian. Moreover, the Panel notes that the Respondents did not comment on the language of the proceeding, even though they were notified in English and Russian regarding the language of the proceeding.

Thus, taking these circumstances into account, the Panel finds that it is appropriate to exercise its discretion and allow the proceeding to be conducted in English.

C. Identical or Confusingly Similar

The first element that the Complainant must establish is that the Domain Names are identical or confusingly similar to the Complainant's trademark in which it has rights.

The Complainant holds valid VOGUE trademark registrations, which precede the registration of the Domain Names.

The Domain Names incorporate the Complainant's VOGUE trademark in its entirety. As numerous UDRP panels have held, incorporating a trademark in its entirety is sufficient to establish that a domain name is identical or confusingly similar to a registered trademark (see *PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS Computer Industry (a/k/a EMS)*, WIPO Case No. [D2003-0696](#)).

The addition of such terms as "meta", "themeta", or "nft" in the Domain Names does not prevent a finding of confusing similarity between the Domain Names and the Complainants' trademark. UDRP panels have consistently held that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms, whether descriptive, geographical, pejorative, meaningless, or otherwise, would not prevent a finding of confusing similarity under the first element. See section 1.8, [WIPO Overview 3.0](#).

The generic Top-Level Domains ("gTLDs") ".com", ".art", ".live" in the Domain Names are viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See section 1.11.1, [WIPO Overview 3.0](#).

Given the above, the Panel finds that the Domain Names are confusingly similar to the Complainant's trademark. Thus, the Complainant has proved the requirements under paragraph 4(a)(i) of the Policy.

D. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondents have no rights or legitimate interests in the Domain Names.

The respondent may establish a right or legitimate interest in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

(i) that it has used or made preparations to use the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services prior to the dispute; or

(ii) that it is commonly known by the domain name, even if it has not acquired any trademark rights; or

(iii) that it intends to make a legitimate, noncommercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark.

Although given the opportunity, the Respondents have not submitted any evidence indicating that any of the circumstances foreseen in paragraph 4(c) of the Policy are present in this case.

On the contrary, it results from the evidence in the record that the Complainant's VOGUE trademark registrations predate the Respondents' registrations of the Domain Names. There is no evidence in the case file that the Complainant has licensed or otherwise permitted the Respondents to use the VOGUE trademark or to register the Domain Names incorporating this trademark. There is also no evidence to suggest that the Respondents have been commonly known by the Domain Names.

Moreover, it results from the evidence in the record that the Respondents do not make use of the Domain Names in connection with a *bona fide* offering of goods or services, as well as they do not make a legitimate, noncommercial or fair use of the Domain Names without intent for commercial gain.

On the contrary, the disputed domain name <metavogue-nft.com> is used to attract Internet users to the website offering luxury fashion avatars. The rest of the Domain Names currently resolve to inactive websites. However, according to the screenshots attached to the Complainant, the disputed domain names <metavogue.art>, <metavogue-nft.art>, <metavogue-art.com>, <metavogue-nft.live>, <meta-vogue-nft.com>, <themetavoguenft.com> were previously used to attract Internet users to the websites offering luxury fashion avatars for sale.

Moreover, the Complainant has proved that searches on the Domain Names using specialist threat profiling software reveal that they contain evidence of phishing, based on existing indicators relating to malware and spam activity at the Domain Names. Such use of the Domain Names does not constitute a *bona fide* offering of goods and services, as well as does not qualify as a legitimate, noncommercial or fair use without intent for commercial gain.

Given the above, the Respondents have failed to invoke any circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in respect of the Domain Names. Thus, there is no evidence in the case file that refutes the Complainant's *prima facie* case. The Panel concludes that the Complainant has also proved the requirement under paragraph 4(a)(ii) of the Policy.

E. Registered and Used in Bad Faith

The third requirement the Complainant must prove is that the Domain Names have been registered and are being used in bad faith.

Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. See section 3.1, [WIPO Overview 3.0](#).

Under paragraph 4(b) of the Policy, evidence of bad faith registration and use includes without limitation:

(i) circumstances indicating the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the owner of a trademark or to a competitor of the trademark owner, for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name; or

(ii) circumstances indicating that the domain name were registered in order to prevent the owner of a trademark from reflecting the mark in a corresponding domain name, provided it is a pattern of such conduct; or

(iii) circumstances indicating that the domain name was registered primarily for the purpose of disrupting the business of a competitor; or

(iv) circumstances indicating that the domain name has intentionally been used in an attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with a trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on a website or location.

As indicated above, the Complainant's rights in the VOGUE trademark predate the registration of the Domain Names. This Panel finds that the Respondents were or should have been aware of the Complainant's trademark at the time of registration of the Domain Names, as it has been proven to the Panel's satisfaction that the Complainant's VOGUE trademark is well known and unique to the Complainant. Thus, the Respondents could not likely reasonably ignore the reputation of products and services under this trademark. In sum, the Respondents in all likelihood registered the Domain Names with the expectation of taking advantage of the reputation of the Complainant's VOGUE trademark.

Moreover, the Complainant presented evidence that the Domain Names are used or were previously used in bad faith by the Respondents to attract Internet users to the websites offering luxury fashion avatars for sale. Thus, this Panel finds that the Respondents use the Domain Names in an attempt to attract, for commercial gain, Internet users to the websites by creating a likelihood of confusion with the VOGUE trademark as to the source, sponsorship, affiliation, or endorsement of the websites or the activity carried out through the websites by the Respondents.

For the reasons discussed above, the Panel finds that the Complainant has proved the requirements under paragraph 4(a)(iii) 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 Domain Names <metavogue.art>, <metavogue-art.com>, <metavogue-nft.art>, <meta-vogue-nft.com>, <metavogue-nft.com>, <metavogue-nft.live>, <themetavoguenft.com> be transferred to the Complainant.

/Piotr Nowaczyk/

Piotr Nowaczyk

Sole Panelist

Date: August 15, 2022