

## **ADMINISTRATIVE PANEL DECISION**

**Nu Skin International, Inc v. Registration Private, Domains By Proxy, LLC /  
Ngo Thuy**  
Case No. D2022-2362

### **1. The Parties**

The Complainant is Nu Skin International, Inc, United States of America (“United States”), represented by Pham & Associates, Viet Nam.

The Respondent is Registration Private, Domains By Proxy, LLC, United States / Ngo Thuy, Viet Nam.

### **2. The Domain Name and Registrar**

The disputed domain name <nuskin88.com> (hereafter referred to as the “Disputed Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 21, 2022. On June 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On June 30, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on July 1, 2022 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 4, 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 Respondent of the Complaint, and the proceedings commenced on July 5, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 25, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 28, 2022.

The Center appointed Flip Jan Claude Petillion as the sole panelist in this matter on August 2, 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, Nu Skin International, Inc., is a global integrated beauty and wellness company. The Complainant holds various trade marks consisting of or including the sign NU SKIN, such as the following:

- NU SKIN, Vietnamese trade mark registered under No. 40018304000 on September 23, 1995 in class 3;
- NU SKIN, Indian trade mark registered under No. 695898 on January 29, 1996 in class 16.

The Disputed Domain Name was registered on September 16, 2018 and resolves to a website which appears to sell products of the Complainant.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant considers the Disputed Domain Name to be confusingly similar to a trade mark in which it claims to have rights.

The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Complainant claims it has established its right to the distinctive NU SKIN trade mark long before the Respondent registered the Disputed Domain Name. According to the Complainant, the Respondent has no relationship or affiliation with the Complainant, nor has the Respondent been authorized by the Complainant to use the Complainant's trade mark under any form. Also, according to the Complainant, there is no evidence showing that the Respondent is widely known by the Disputed Domain Name or that the Disputed Domain Name is used legally for noncommercial purposes.

Finally, the Complainant claims that the Disputed Domain Name was registered and is being used in bad faith. According to the Complainant, the fact that the Respondent sells products bearing the Complainant's trade mark shows that the Respondent was fully aware of the existence and prominence of the Complainant's trade mark. The Complainant contends that the Respondent registered and uses the Disputed Domain Name to intentionally attract visitors for commercial gain by creating confusion with the Complainant's trade mark.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out his case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer the Disputed

Domain Name. As the UDRP proceedings are administrative, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

(i) the Disputed Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and

(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.

The Panel will therefore deal with each of these requirements.

### **A. Identical or Confusingly Similar**

To prove this element, the Complainant must first establish that there is a trade mark or service mark in which it has rights. The Complainant has clearly established that there are trade marks in which it has rights. The Complainant's NU SKIN trade marks have been registered and used in connection to the Complainant's cosmetic products business.

The Panel observes that the Disputed Domain Name incorporates the Complainant's NU SKIN trade mark in its entirety, simply adding the number "88".

Where the relevant trade mark 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 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Additionally, it is well established that generic Top-Level Domains ("gTLDs"), here ".com", may be disregarded when considering whether a disputed domain name is confusingly similar to a trade mark in which a complainant has rights.

In light of the above, the Panel considers the Disputed Domain Name to be confusingly similar to the Complainant's NU SKIN mark.

### **B. Rights or Legitimate Interests**

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* showing that the Respondent has no rights or legitimate interests in the Disputed Domain Name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

The Panel observes that the Respondent does not appear to be commonly known by the Disputed Domain Name and that the Respondent does not seem to have acquired trade mark or service mark rights (there being no Response or evidence of any such rights). According to the information provided by the Registrar, the Respondent is named "Ngo Thuy". There are no indications that a connection between the Complainant and the Respondent exists or existed.

Where a domain name consists of a trade mark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trade mark owner (see section 2.5.1 of the [WIPO Overview 3.0](#)). The Disputed Domain Name incorporates the Complainant's NU SKIN trade mark in its entirety and simply adds the number "88",

which has no particular meaning. As the Complainant's NU SKIN trade mark is the dominant element of the Disputed Domain Name and given the circumstances as further explained below, the Panel finds that the Disputed Domain Name carries a risk of implied affiliation with the Complainant and cannot constitute fair use.

Beyond looking at the domain name(s) and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, such as the content of the website linked to the disputed domain name and the absence of a response, support a fair use or not (see sections 2.5.2 and 2.5.3 of the [WIPO Overview 3.0](#)).

The Complainant provides evidence showing that the Disputed Domain Name refers to a website purporting to sell the Complainant's products at discounted prices, mentioning that it is an official distributor of the Complainant. In view of the Complainant's explicit denial of any relationship with the Respondent, the Panel finds that the above elements are indications of illegal activity using the Disputed Domain Name. UDRP panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods, phishing, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent (see section 2.13 of the [WIPO Overview 3.0](#)).

The Respondent had the opportunity to demonstrate rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the *prima facie* case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the Disputed Domain Name. In light of the above, the Complainant succeeds on the second element of the Policy.

### **C. Registered and Used in Bad Faith**

The Complainant must prove on the balance of probabilities both that the Disputed Domain Name has been registered and is being used in bad faith (see section 4.2 of the [WIPO Overview 3.0](#) and, for example, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) and *Control Techniques Limited v. Lektronix Ltd*, WIPO Case No. [D2006-1052](#)).

Paragraph 4(b) of the Policy provides a non-exhaustive list of factors, any one of which may demonstrate bad faith. Among these factors demonstrating bad faith registration and use is the use of a domain name to intentionally attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

In the present case, the Panel finds it inconceivable that the Respondent was unaware of the Complainant and its rights in the NU SKIN mark when it registered the Disputed Domain Name. Some of the Complainant's NU SKIN marks, including at least one which is registered in the country where the Respondent resides, predate the registration of the Disputed Domain Name by more than 20 years. The Disputed Domain Name includes the Complainant's distinctive mark in its entirety. More importantly, the website linked to the Disputed Domain Name purports to sell products of the Complainant, falsely claiming that it is an official distributor of the Complainant. The Panel finds that the Respondent's awareness of the Complainant's trade mark rights at the time of registration suggests bad faith.

By redirecting Internet users to a website offering for sale products bearing the Complainant's marks, the Respondent intentionally aimed to attract Internet users to visit this website for commercial gain, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location and of the products advertised on the website (see *Simyo GmbH v. Domain Privacy Service FBO Registrant / Ramazan Kayan*, WIPO Case No. [D2014-2227](#)). In the Panel's view, the absence of relationship between the Complainant and the Respondent, as well as significantly discounted prices, suggests that this website is used to sell counterfeit goods, which is manifestly considered

evidence of bad faith (see section 3.1.4 of the [WIPO Overview 3.0](#)).

By failing to respond to the Complaint, the Respondent did not take any initiative to contest the foregoing. Pursuant to paragraph 14 of the Rules, the Panel may draw the conclusions it considers appropriate.

Therefore, the Panel finds that, on the balance of probabilities, it is sufficiently shown that the Disputed Domain Name has been registered and is being used in bad faith. In light of the above, the Complainant also succeeds on the third and last 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 <nuskin88.com> be transferred to the Complainant.

*/Flip Jan Claude Petillion/*

**Flip Jan Claude Petillion**

Sole Panelist

Date: August 16, 2022