

## **ADMINISTRATIVE PANEL DECISION**

National Federation of State High School Associations v. Niha computer, khaulah, and Sapira Hansen, PT Jaya Raya Makmur

Case No. D2023-0202

### **1. The Parties**

The Complainant is National Federation of State High School Associations, United States of America (“United States”), represented by Nelson Mullins Riley & Scarborough, LLP, United States.

The Respondents are Niha computer, khaulah, Indonesia and Sapira Hansen, PT Jaya Raya Makmur, Indonesia (hereinafter also referred to in singular as the “Respondent”).

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

The disputed domain names <networknfhs.online> and <nfhs-tournament.site> (the “Domain Names”) are registered with Hostinger, UAB (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 16, 2023. On January 17, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On January 18, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on January 24, 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 amended Complaint on January 26, 2023.

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 January 31, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 20, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 21, 2023.

The Center appointed Willem J. H. Leppink as the sole panelist in this matter on March 2, 2023. 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 following facts are undisputed.

The Complainant is an Illinois non-profit corporation which is based in Indianapolis, Indiana, United States. The Complainant's has 51 member state associations. As such, the Complainant serves a total of 19,500 high schools and more than 12 million young people in the United States. The Complainant carries out different services, amongst others, the promotion of amateur sports participation and athletic programs at high schools, as well as the broadcasting of high school sports and performing arts online through its NFHS Network. The NFHS Network was founded in 2013 as a joint venture between the Complainant and over 44 high school state associations. Currently the platform is the leading streaming service for high school sports in the United States.

The Complainant is owner of the United States trademark registration NFHS NETWORK (word mark), with registration No. 6'165456, and with a registration date of September 29, 2020 for services in Class 41 ("Trademark"). In addition to this, the Complainant claims common law trademark rights in NFHS NETWORK for the United States dating back to 2013. For its official website the Complainant registered the domain name <nfhsnetwork.com> on November 26, 2012, which is also being used in connection with the Complainant's email addresses.

The Domain Names were registered on November 23, 2022, and December 15, 2022 respectively. Both Domain Names are associated with emails servers, as well as name servers. The Domain Names both redirected to websites that offer video streaming services for (high school) sporting events. The websites will hereinafter also be referred to in singular as the "Website".

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

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

Insofar as relevant for deciding this matter, the Complainant contends the following.

The Domain Names are each confusingly similar to the Trademark. More specifically, the Domain Name <networknfhs.online> is comprised of the Trademark in its entirety, being the two elements "nfhs" and "network". The Domain Name merely introduces an inversion of the two elements of the Trademark. Furthermore, the Domain Name <nfhs-tournament.site> consists of the element "nfhs", which is the dominant and distinct element of the Trademark, to which the Respondent solely added the descriptive term "tournament", which directly relates to the services provided under the Trademark.

Moreover, the Respondent has no rights nor legitimate interests in the Domain Names, whereas the Respondent is not commonly known by the Domain Names. Furthermore, the Complainant has not authorized, licensed or otherwise permitted the Respondent to use the Trademark or to register a domain name incorporating the Trademark. The Website to which the Domain Names resolve, impersonates the Complainant by clearly portraying the Trademark and offering services that are directly competitive to the Complainant's services. Such use of the Domain Names cannot constitute a *bona fide* offering of goods and services. Nor can such use confer rights or legitimate interests upon the Respondent.

The Domain Names have been registered and used in bad faith. The Respondent registered the Domain Names with prior knowledge of the Trademark and the Complainant's activities. As such, the Respondent

clearly had the Trademark in mind when registering the Domain Names and specifically targeted the Complainant. All the more so, because the Respondent features the Trademark on the Website without the permission of the Complainant. By doing so, the Respondent is essentially impersonating the Complainant and trying to convey to visitors that the Website is owned by, operated by, or affiliated with the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1 Preliminary Matter: Consolidation of Multiple Domain Names**

The present proceeding involves the Complainant bringing a single Complaint relating to two domain names against two respondents. The Complainant has made a request for consolidation and, in accordance with section 4.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), thus bears the *onus* of establishing that such a consolidation is justified.

The Panel is satisfied that such consolidation is justified, based on the evidence brought forward by the Complainant. The Complainant believes that the Domain Names are under common control. Both Domain Names have been registered with the same Registrar within a relatively short period of time. In addition to this, the Domain Names are associated with the same name server. Lastly, the Complainant has also put forward that their company and or the Trademark has recently been targeted with multiple infringing domain name registrations from unknown respondents all located in Indonesia. In this regard, the Panel also considers that the Respondent provided false addresses when registering the Domain Names and has not taken the opportunity to rebut the allegations made by the Complainant.

### **6.2 Substantive Matter**

Pursuant to paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements:

- (i) the Domain Names are 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 Names; and
- (iii) the Domain Names have been registered and are being used in bad faith.

Noting the burden of proof on the Complainant, the Respondent's default (*i.e.*, failure to submit a formal response) would not by itself mean that the Complainant is deemed to have prevailed. The Respondent's default is not necessarily an admission that the Complainant's claims are true. See in this regard [WIPO Overview 3.0](#), section 4.3: "In cases involving wholly unsupported and conclusory allegations advanced by the complainant, or where a good faith defense is apparent (e.g., from the content of the website to which a disputed domain name resolves), panels may find that – despite a respondent's default – a complainant has failed to prove its case. However, in accordance with paragraph 14(b) of the UDRP Rules, panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case e.g., where a particular conclusion is *prima facie* obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent".

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

The Complainant must demonstrate that it has rights in a trademark or service mark and, if so, the Domain Names must be shown to be identical or confusingly similar to that mark.

The Complainant has shown that it has rights in the Trademark.

As set out in the [WIPO Overview 3.0](#), section 1.7, the first element functions primarily as a standing requirement. The threshold test for confusing similarity between the Domain Names and the Trademark involves a relatively straightforward comparison.

In light of the foregoing, the Panel finds that the Domain Names are confusingly similar to the Trademark. The Domain Name <networknfhs.online> consists of the Trademark in its entirety solely introducing an inversion of the two elements of the Trademark, being “nfhs” and “network”. The second Domain Name <nfhs-tournament.site> is comprised of the dominant and distinct element of the Trademark, being “nfhs”, to which the Respondent added a dash and the term “tournament”. As such, the inversion, as well as the addition of the term “tournament”, do not prevent a finding of confusing similarity. The use of the Top-Level Domains (“TLD”) “.online” and “.site” does not lead to any other conclusion. In accordance with section 1.11.1 of the [WIPO Overview 3.0](#), the TLD is in principle disregarded under the first element.

In light of the foregoing, the Panel finds that the Domain Names are confusingly similar to the Trademark.

Therefore, the Panel is satisfied that the first element of the Policy is met.

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

The Panel has carefully considered the factual allegations that have been made by the Complainant and are supported by the submitted evidence.

In particular, the Respondent has failed to offer the Panel any of the types of evidence set forth in paragraph 4(c) of the Policy from which the Panel might conclude that the Respondent has rights or legitimate interests in the Domain Names, such as:

- (i) use or preparation to use the Domain Names or a name corresponding to the Domain Names in connection with a *bona fide* offering of goods or services prior to notice of the dispute; or
- (ii) being commonly known by the Domain Names (as an individual, business or other organization) even if the Respondent has not acquired any trademark or service mark rights; or
- (iii) making legitimate noncommercial or fair use of the Domain Names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent does not seem to be affiliated with the Complainant in any way. There is no evidence that “networknfhs” and “nfhs-tournament” is the Respondent’s name or that the Respondent is commonly known under one of the aforementioned names. There is also no evidence that the Respondent is, or has ever been, a licensee of the Complainant or that the Respondent has ever asked, or has ever been permitted in any way by the Complainant to register or use the Trademark, or to apply for or use any domain name incorporating the Trademark.

Furthermore, the Complainant’s assertions have not been rebutted by the Respondent to indicate whether it has any rights or legitimate interests in the Domain Names. There was also no evidence put forward by the Respondent to indicate that the Respondent was licensed or authorized by the Complainant to use the Trademark.

Further adding to this, the Respondent has failed to put forward any evidence that would support the claim that the Respondent has used or made preparations to use the Domain Names or a name corresponding to the Domain Names in connection with a *bona fide* offering of goods or services. To the contrary, the Respondent uses the Domain Names to operate Websites through which it seems to offer streaming services for sport or high school sports. On the Website to which the Domain Name <nfhs-tournament.site>

resolves the Trademark is also being used. All the more so, the term “tournament” describes the services for which the Trademark is being used.

Certainly lacking a Response, the Panel finds that the Website creates the impression of being a website affiliated to the Complainant. The Website can even be regarded as an impersonation of the Complainant. The use of the Domain Name cannot constitute fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. All the more so, because in any event the Respondent is using the Website to offer streaming services, if genuine, that are in direct competition with the services of the Complainant.

Therefore, the Panel is satisfied that the second element of the Policy is met.

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

The Panel finds that the Domain Names were registered and are being used in bad faith.

The Panel refers to its considerations under section 6.2.B and adds the following.

It is beyond any doubt that the Respondent had prior knowledge of the Complainant and its activities at the time of registering the Domain Names. Moreover, the Respondent must have clearly had the Complainant in mind when registering and using the Domain Names. The Panel takes into account that one of the Websites prominently displays the Trademark. Both Websites seem to offer or purport to offer services that clearly relate to the Complainant and its activities.

As such, the Respondent has registered and is using the Domain Names to intentionally attract Internet users for commercial gain to the Website by creating a likelihood of confusion with the Trademark as to the source, sponsorship, affiliation or endorsement of the Website or the services that are being offered on the Website.

Furthermore, the Panel considers that the Domain Names have been associated with emails servers, as well as name servers. Additionally the Website requires the Internet users to create an account by filling in personal details. All in all, this strongly indicates that the Domain Names are being used for phishing activities. Considering the fact that phishing is considered a *per se* illegitimate activity such behavior is, in accordance with section 3.1.4 of the [WIPO Overview 3.0](#), manifestly considered evidence of bad faith.

A finding of registration and use in bad faith is also supported by the fact that according to the delivery records of the courier delivering the Notification of Complaint and Commencement of Administrative Proceeding, the address of the Respondent as included in the Whois details, was considered to be a “bad address”, which in practice means that the address was non-existent and it can, therefore, be assumed that the Respondent has provided false information when registering the Domain Names.

Finally, although the lack of a formal or substantive response by the Respondent as such cannot by itself lead to the conclusion that there is registration and use in bad faith, the cumulative circumstances as outlined in the Decision are sufficient for the Panel to find that the registration and use of the Domain Names by the Respondent is in bad faith.

Therefore, the Panel is satisfied that the third element of the Policy is met.

## 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, <networknfhs.online> and <nfhs-tournament.site>, be transferred to the Complainant.

*/Willem J. H. Leppink/*

**Willem J. H. Leppink**

Sole Panelist

Date: March 15, 2023