

## **ADMINISTRATIVE PANEL DECISION**

Ile-De-France Mobilités v. Sanae Sugimoto

Case No. D2023-4156

### **1. The Parties**

The Complainant is Ile-De-France Mobilités, France, represented by De Gaulle Fleurance & Associés, France.

The Respondent is Sanae Sugimoto, France.

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

The disputed domain name <info-navigo.info> is registered with HOSTINGER Operations, UAB (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 5, 2023. On October 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 6, 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 (Privacy service provided by Privacy Protect, LLC (PrivacyProtect.org)), and contact information in the Complaint. The Center sent an email communication to the Complainant on October 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 amended Complaint on October 13, 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 October 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 12, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 22, 2023.

The Center appointed Fabrice Bircker as the sole panelist in this matter on November 30, 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 Complainant, Ile-de-France Mobilités, is a *sui generis* public administrative establishment in charge with organizing and operating the public transportation services in Paris, France and its suburbs.

Among its subscription offers, the Complainant has been proposing since 2001 a transport pass known as Navigo. For more than 10 years, more than 10 million Navigo passes are sold annually to Parisians, commuters and tourists who travel using the network of bus, train, tram and metro lines of the greater Paris region.

This transport pass is notably protected through the following trademark owned by the Complainant:

NAVIGO, French trademark registration No. 3334053 filed on January 10, 2005 and registered on June 17, 2005, duly renewed, and covering goods and services of classes 6, 7, 9, 16, 18, 25, 28, 35, 36, 37, 38, 39, 41 42, 43, and 45.

The disputed domain name, <info-navigo.info>, was registered on June 9, 2023.

At the time of filing the Complaint and of drafting this Decision, it does not resolve to any active website.

However, it results from uncontested elements of the record that:

- on June, 14, 2023, a third party contacted the Complainant to draw its attention on the existence of the disputed domain name and on the website to which it was resolving, as the latter was reproducing the page of the Complainant's website where its clients can create an account to manage their subscription or, if they already have such an account, where they have to type their credentials and password to access therein,
- then, this third party spontaneously requested the host service provider of the website to which the disputed domain name directed, to deactivate said website.

Very little is known about the Respondent, except that she is apparently located in Paris, France, based on the information disclosed by the Registrar.

#### **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 it has strong rights in the NAVIGO trademark, which can be considered as well-known in France, in particular because of the number of passengers using a Navigo pass and its longstanding use.

Then the Complainant puts forward that the disputed domain name is confusingly similar to its NAVIGO trademark, because it reproduces the latter, and the added elements do not prevent it from being recognizable.

Besides, the Complainant argues that the Respondent has no rights or legitimate interests in respect with the disputed domain name, in substance because:

- the Respondent does not hold any relevant rights on the disputed domain name,
- the Complainant has never authorized the Respondent to register and to use the disputed domain name,
- the Respondent's used the disputed domain name in connection with a copycat website of the Complainant's one intended to fraudulently obtain personal data of the Complainant's clients, what is not a *bona fide* use of the disputed domain name.

At last, the Complainant contends that the disputed domain name has been registered and is being used in bad faith, notably because:

- the strong reputation and the renown of the Complainant's trademark make impossible for the Respondent not to be aware that the registration and use of the disputed domain would infringe the Complainant's prior rights, all the more that the Respondent is located in Paris, France where the NAVIGO trademark is intensively used,
- the composition of the disputed domain name, in as far as it associates the NAVIGO trademark with "info", conveys the idea that the related website displays information on the Navigo travel pass,
- these last years, the Complainant has communicated extensively on the NAVIGO trademark through national campaigns for partial or total compensation or reimbursement to the holders of the Navigo pass, to compensate the situation due to the Covid-19, or to the strikes in 2020 or in 2023 for example. As a consequence, the Respondent could not ignore the existence of the trademark NAVIGO at the time of registration of the disputed domain name,
- before its deactivation, the disputed domain name was resolving to a website reproducing the page of the Complainant's website where its clients can create an account to manage their subscription or, if they already have such an account, where they have to type their credentials and password to access therein. This not only establishes the knowledge of the Complainant's rights by the Respondent, but also that the disputed domain name has been used to impersonate the Complainant,
- the deactivation of the disputed domain name does not prevent a finding of bad faith use on the ground of the passive holding doctrine, notably because i) it reproduces a well-known trademark, ii) it has been registered anonymously, iii) it is confusingly similar to the Complainant's domain name, and iv) it creates the illusion of an official service provided by the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

Pursuant to paragraph 4(a) of the Policy, for obtaining the transfer of the disputed domain name, the Complainant must establish each of the following three elements:

- i. the disputed domain name is 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 disputed domain name; and
- iii. the disputed domain name has been registered and is being used in bad faith.

Besides, paragraph 15(a) of the Rules provides that "[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

Paragraphs 10(b) and 10(d) of the Rules also provide that “[i]n all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case” and that “[t]he Panel shall determine the admissibility, relevance, materiality and weight of the evidence”.

Besides, the Respondent’s failure to reply to the Complainant’s contentions does not automatically result in a decision in favor of the Complainant, although the Panel is entitled to draw appropriate inferences therefrom, in accordance with paragraph 14(b) of the Rules (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“[WIPO Overview 3.0](#)”), section 4.3).

Taking the foregoing provisions into consideration the Panel finds as follows.

### **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.

Based on the available record (Annex G of the Complaint), the Panel finds 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 Panel finds the entirety of the mark 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.

Indeed, although the addition of other terms [here, “info” and a hyphen] may bear on assessment of the second and third elements, the Panel finds the addition of such term and element does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, 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 any potential rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Indeed, the Complainant contends that it has not given its consent for the Respondent to use its NAVIGO trademark in a domain name registration or in any other manner.

In addition, there is nothing in the record of the case likely to indicate that the Respondent may be commonly known by the disputed domain name.

Besides, the disputed domain name is currently not used.

At last, before being deactivated, it resolved to a website mimicking the Complainant's one, and more specially the page where its clients can create an account to manage their subscription or, if they already have such an account, where they have to type their credentials and password to access therein. Given the context of this matter (in particular, the silence of the Respondent and the absence of authorization granted by the Complainant to the Respondent to use its trademark), the only reasonable explanation for such a use is that the Respondent intended to collect personal data of the Complainant's clients.

Panels have held that the use of a domain name for illegal activity (e.g., phishing, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Based on the available record, 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.

First of all, it is more than hardly conceivable that a Respondent located in Paris, France may not be aware of the NAVIGO trademark given its longstanding and extensive use in the field of the public transportation in the greater Paris region, all the more that the distinctiveness and the well-known feature of the Complainant's trademark have already been recognized by other panels (*Ile-de-France Mobilités v. Wahib Simou*, WIPO Case No. [D2021-0238](#) or *Ile-de-France Mobilités v. Dusty Ollivier*, WIPO Case No. [D2020-0882](#)).

In addition, the Respondent used the disputed domain name to resolve to an unauthorized website mimicking the page of the Complainant's website where its clients can create an account to manage their subscription or, if they already have such an account, where they have to type their credentials and password to access therein.

As a consequence, the Panel finds that the present case falls within the scope of paragraph 4(b)(iv) of the Policy, namely: "by using the disputed domain name, [the Respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the Respondent's] 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 Respondent's] website or location or of a product or service on [the Respondent's] website or location."

Besides, the only reasonable explanation for the use of the disputed domain name in relation with a copycat website of the Complainant's one, is that the Respondent intended to fraudulently collect personal data of the Complainant's clients.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

The disputed domain name was used to pose as the Complainant with the aim of obtaining the personal information of unsuspecting Internet users who access the disputed domain name, under the mistaken impression that the disputed domain name is operated by the Complainant. This constitutes bad faith use under the Policy. Panels have held that the use of a domain name for illegal activity [here, phishing,

unauthorized account access/hacking, impersonation/passing off)) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

At last, the fact that the disputed domain name is currently inactive does not prevent a bad faith finding.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding.

Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3.

Having reviewed the available record, the Panel notes (i) the distinctiveness and the reputation of the Complainant's trademark, (ii) the composition of the disputed domain name in as far the association of the Complainant's trademark with the term "info" suggests that said disputed domain name is used in association with a website providing information about said trademark, (iii) the failure of the Respondent to submit a response, (iv) the fact that the Respondent's concealed its identity, and (v) the previous use of the disputed domain name in relation with a website mimicking the Complainant's one, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Based on the available record, 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 <info-navigo.info> be transferred to the Complainant.

*/Fabrice Bircker/*

**Fabrice Bircker**

Sole Panelist

Date: December 14, 2023