

ADMINISTRATIVE PANEL DECISION

Nitro AG v. guirong yu
Case No. D2023-4920

1. The Parties

The Complainant is Nitro AG, Switzerland, represented by Troller Hitz Troller, Rechtsanwälte, Switzerland.

The Respondent is guirong yu, China.

2. The Domain Name and Registrar

The disputed domain name <nitro-sale.com> is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 27, 2023. On November 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 28, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 December 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 28, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 3, 2024.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on January 15, 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

The Complainant is a privately owned Swiss company that develops, designs and produces snowboards and related products such as clothing.

The Complainant's official website is available at the domain name <nitrosnowboards.com>. The Complainant is the owner of the following, amongst other, trademark registrations:

- International trademark registration No. 670747 for the word mark NITRO, registered on March 18, 1997, successively renewed, in class 25; and
- International trademark registration No. 1318907 for the word mark NITRO, registered on July 26, 2016, in classes 18 and 28.

The disputed domain name was registered on September 9, 2022 and presently resolves to an active online shop purportedly offering the Complainant's products at discounted prices.

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: i) its NITRO trademark is well-known in the snowboarding segment, as Rookie Road ("the Sports Encyclopedia of the Internet") includes it amongst the "top 10 snowboard brands"; ii) the disputed domain name reproduces in its entirety the Complainant's trademark with the mere addition of the term "sale" which does not prevent a finding of confusing similarity; iii) the Respondent is using the disputed domain name in connection with an online shop that purportedly offers the Complainant's products at extremely low prices; thus iv) being clearly aware of the Complainant's rights and seeking to unduly profit from the Complainant's reputation and trademarks.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth three requirements, which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

(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.

The Complainant must prove in this administrative proceeding that each of the aforesaid three elements is present in order to obtain the transfer of the disputed domain name.

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

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 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. Although the addition of other term ("-sale") may bear on assessment of the second and third elements, the Panel finds the addition of such term 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.

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.

The Respondent, in not responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed domain name. This entitles the Panel to draw any such inferences as it considers appropriate pursuant to paragraph 14(b) of the Rules.

As seen above, the composition of the disputed domain name, wholly incorporating the Complainant's well-known trademark together with a term that refers to the Complainant's business carries a risk of implied affiliation, which is reinforced by the use made of the disputed domain name in connection with an online website purportedly offering for sale the Complainant's products at extremely low prices. See section 2.5.1, [WIPO Overview 3.0](#).

Also, the lack of evidence on record showing that the Respondent has been commonly known by the disputed domain name, is a further indication that the Respondent lacks rights or legitimate interests in the disputed domain name.

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.

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.

This case presents the following circumstances which indicate under the balance of probabilities bad faith registration and use of the disputed domain name:

- a) the composition of the disputed domain name reproducing the Complainant's well-known trademark and name (previous UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4);
- b) the use made of the disputed domain name purportedly offering the Complainant's products and attempting to pass off as the Complainant;
- c) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the disputed domain name; and
- d) the indication of what appear to be false contact details, the Center not being able to deliver communications to the Respondent by courier.

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 <nitro-sale.com> be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: January 29, 2024