

## **ADMINISTRATIVE PANEL DECISION**

NumFOCUS, Inc. v. Dominik Tomicevic  
Case No. D2024-0491

### **1. The Parties**

The Complainant is NumFOCUS, Inc., United States of America (“United States”), represented by Chestek Legal, United States.

The Respondent is Dominik Tomicevic, Croatia.

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

The disputed domain name <networkx.guide> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 1, 2024. On February 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same date, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf / Memgraph Ltd) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 14, 2024, 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 February 16, 2024.

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 February 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 7, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 13, 2024.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on March 19, 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 based in the United States. Since June 2005, it has been providing a software program or suite under the name "NetworkX". According to the Complainant's website, "NetworkX" is a Python package for the creation, manipulation and study of the structure dynamics and functions of complex networks. (Python being a programming language.)

Amongst other things, the Complainant has been promoting and providing its NetworkX software from its website at "www.networkx.org" since the Complainant registered that domain name in June 2018. The NetworkX program has received some media attention. It is featured on NVIDIA's website in its data science section. It is also ranked 27 on Ubuntu Pit's list of the 30 best Python libraries and packages for beginners.

The disputed domain name was registered on February 26, 2021.

It has resolved to a website which described itself as providing current and useful information about the "NetworkX" Python library. The website included guides, tutorials, and reference materials. The landing page invited the user wanting to learn all about graphs and how to analyse them to sign up for the "Intro to Graph Analytics in Python free course". The website also included links to the "NetworkX Project", the "NetworkX Source Code", "NetworkX Documentation", and "Memgraph for NetworkX Developers".

Initially, the website was simply headed "NetworkX Guide" in the top left hand corner. After complaints from the Complainant through its lawyers, the "NetworkX Guide" heading was replaced by "Memgraph's Guide for NetworkX library" and a stylised "M" device. When that change was made, the website also included (centered across the top) the statement "Memgraph is not associated or affiliated with NetworkX. None of the information presented on this website is provided or approved by NetworkX".

At the time this decision is being prepared, entering the disputed domain name in a browser generates a "File not found (404 error)" message. The website had migrated to "https://memgraph.github.io/networkx-guide/".

According to the website at "www.memgraph.com", "Memgraph is a high performant graph database that is compatible with Neo4j while eliminating Neo4j complexity". Some of the services offered require payment of fees.

#### **5. Discussion and Findings**

No response has been filed. The Complaint and Written Notice have been sent, however, to the Respondent at the electronic and physical coordinates confirmed as correct by the Registrar in accordance with paragraph 2(a) of the Rules. Bearing in mind the duty of the holder of a domain name to provide and keep up to date correct Whols details, therefore, the Panel finds that the Respondent has been given a fair opportunity to present his or its case.

When a respondent has defaulted, paragraph 14(a) of the Rules requires the Panel to proceed to a decision on the Complaint in the absence of exceptional circumstances. Accordingly, paragraph 15(a) of the Rules requires the Panel to decide the dispute on the basis of the statements and documents that have been submitted and any rules and principles of law deemed applicable.

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

- (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.

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

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

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 not claimed ownership of any registered trademarks. Instead, it relies on the reputation it says it has acquired in "NetworkX" through use and promotion of that sign as an unregistered trademark.

The Complaint does not include the usual indicia advanced to establish reputation such as sales revenues, advertising and promotional expenditure or numbers of visitors to its website or downloads of its product. See [WIPO Overview 3.0](#), section 1.3. On the other hand, it points to its length of use and recognition in the media. These include the inclusion of the Complainant's product "NetworkX" on NVIDIA's website and its ranking in Ubuntu Pit's top 30 Python libraries and packages. In addition, the webpage to which the disputed domain name resolved proceeded in the expectation that "NetworkX" functions as a source identifier – albeit not a registered trademark.

Bearing in mind the nature of the "NetworkX" product which appears likely to have a specialised audience and the nature of this requirement as a standing requirement, the Panel finds that the Complainant has established sufficient reputation in "NetworkX" for it to qualify as an unregistered trademark for the purposes of the Policy.

In undertaking the comparison between the disputed domain name and the Complainant's trademark, it is permissible in the present circumstances to disregard the generic Top Level Domain ("gTLD") component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

Disregarding the ".guide" gTLD, therefore, the disputed domain name is identical to the Complainant's trademark. Accordingly, the Panel finds that the requirement under the first limb of the Policy is satisfied.

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

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a bona fide offering of goods or services; or

- (ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or
- (iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

While 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 often impossible 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. 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.

The Respondent registered the disputed domain name well after the Complainant began using its trademark.

The Complainant states that it has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it.

In addition, the disputed domain name is not derived from the Respondent’s name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain name could be derived. From the available record, the Respondent does not appear to hold any trademarks for the disputed domain name.

In reliance of [WIPO Overview 3.0](#), section 2.14.1, the Complainant contends that, reading the disputed domain name as a whole, it can be seen that the Respondent is purporting to offer a “NetworkX Guide” and thereby divert consumers from the Complainant’s own website and offerings. Pointing to the links to the Memgraph website, the Complainant contends further that the Respondent is engaging in this conduct for commercial gain.

While the Complainant contends that the Respondent’s website purported to provide a guide to the Complainant’s software, the Complaint does not include any evidence that the materials on the website were not guides, tutorials, or reference materials relating to the Complainant’s software. (That is, apart from the links to the Memgraph website.)

Even in such a case, however, the nature of the disputed domain name gives rise to a very high risk of implied affiliation because the second level component is identical to the Complainant’s trademark. Disregarding the TLD, there is nothing in the disputed domain name which indicates that the holder is not affiliated or associated with the trademark owner. The TLD itself, “.guide”, does not dispel, or even reduce, that risk of impersonation.

Until the Complainant engaged in correspondence with the Respondent, there was no disclaimer on the Respondent’s website or other means clearly and prominently disclosing the true nature of the Respondent’s (lack of) relationship with the Complainant. Two disclaimers were introduced after that correspondence. They were not the most prominent features on the website but they were noticeable (if one was looking for them). Against this, it must be recognised that the disputed domain name copies the Complainant’s trademark in its entirety. This impersonation of the Complainant does not qualify as a right or legitimate interest under the Policy. As explained in *Palmetto State Armory, LLC v. Privacy service provided by Withheld for Privacy ehf / Joseph Stone*, WIPO Case No. [D2022-1028](#):

“Here, though, Respondent registered a domain name that copied, in its entirety, Complainant’s trademark. As such, the Disputed Domain Name impersonates Complainant, which misleadingly diverts consumers to Respondent’s website on the false premise that the website is run by, sponsored by, associated with, or approved by Complainant. That is not legitimate if ‘the public would perceive the disputed domain name as being affiliated with or authorized by a complainant.’ *Everytown for Gun Safety Action Fund, Inc. v. Contact Privacy Inc. Customer 1249561463 / Steve Coffman*, WIPO Case No. [D2022-0473](#) (citing *Dover Downs Gaming & Entertainment, Inc. v. Domains by Proxy, LLC / Harold Carter Jr., Purlin Pal LLC*, WIPO Case No. [D2019-0633](#) (‘Dover Downs’)). See generally [WIPO Overview 3.0](#), Section 2.6.2.”

The Panel also notes that the confusion as to source may have been compounded by the fact that the bottom of the website includes the Memgraph logo and name with the statement “Copyright © 2022 NetworkX Guide, Powered by Memgraph,” and that the product name itself changed to “Memgraph’s Guide for NetworkX library.”

The links to the Respondent’s own, or Memgraph’s, services – at least some of which require payment – arguably compound the situation.

Accordingly, the Panel finds the Complainant has established the second requirement under the Policy also.

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

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: See e.g., *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd*, WIPO Case No. [D2010-0470](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

In the present case, the Respondent was plainly aware of the Complainant’s trademark and was seeking to use the disputed domain name to take advantage of its significance as the Complainant’s trademark.

Doing so while misleadingly impersonating the Complainant does not qualify as good faith under the Policy as discussed in Section 5B above. Accordingly, the Panel finds that the Respondent both registered and used the disputed domain name in bad faith under the Policy.

Accordingly, the Complainant has established all three requirements under the Policy.

## **6. 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 <networkx.guide> be transferred to the Complainant.

*/Warwick A. Rothnie/*

**Warwick A. Rothnie**

Sole Panelist

Date: April 8, 2024