

ADMINISTRATIVE PANEL DECISION

Nature's Way Products, LLC v. andrus bennett
Case No. D2023-4329

1. The Parties

The Complainant is Nature's Way Products, LLC, United States of America ("U.S."), represented by Andrus Intellectual Property Law, LLP, U.S.

The Respondent is andrus bennett, U.S.

2. The Domain Name and Registrar

The disputed domain name <getnatureswayketo.com> (the "Disputed Domain Name") is registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on October 18, 2023. On October 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 19, 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 (MAC Ventures LLC Registrant: MAC Ventures LLC Registrant of GETNATURESWAYKETO.COM) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 20, 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 23, 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 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 13, 2023. The Respondent sent informal email communications to the Center on October 31, 2023, and November 14, 2023. The Center notified the commencement of Panel appointment process on November 14, 2023.

The Center appointed Douglas M. Isenberg as the sole panelist in this matter on November 23, 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 states that it was founded in 1969, is “one of the most recognized and leading consumer dietary supplement brands and is a pioneer and innovator in health products for over 50 years,” and “has grown and evolved to encompass more than 1,000 Nature’s Way® branded supplements and related products.” The Complainant states, and provides evidence to support, that it is the owner of a number of trademark registrations, including the following (the “NATURE’S WAY Trademark”):

- U.S. Reg. No. 1356165 for NATURE’S WAY (registered August 27, 1985)
- U.S. Reg. No. 1400087 for NATURE’S WAY & Design (registered July 8, 1986)
- U.S. Reg. No. 2741805 for NATURE’S WAY & Design (registered July 29, 2003)

The Disputed Domain Name was created on October 6, 2022. The Complainant states that the Disputed Domain Name is used in connection with a website “to advertise identical goods” as those associated with the NATURE’S WAY Trademark, and screenshots provided by the Complainant show a website using the Disputed Domain Name offering “an advanced Keto+ACV Gummies supplement” under the “Get Nature’s Way wellness brand.”

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.

Among other things, the Complainant contends that:

- The Disputed Domain Name is confusingly similar to the NATURE’S WAY Trademark because the Disputed Domain Name “incorporates the entirety of the Complainant’s NATURE’S WAY trademark in a confusingly similar manner to sell identical goods protected under the NATURE’S WAY registrations.”
- The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because the “Complainant has not authorized, licensed, or permitted Respondent to register or use the disputed domain name or to use its NATURE’S WAY trademarks,” the “Respondent intends to tradeoff [sic] Complainant’s long established use of the <getnatureswayketo.com> domain in the hope of obtaining diverted sales,” the “Complainant is not aware that Respondent owns any trade marks, ‘patents’, or products related to the disputed domain name,” the “Respondent has not been commonly known by the disputed domain name,” and the “Complainant is aware of instances of actual confusion resulting from the “www.getnatureswayketo.com” website, including receiving multiple calls from consumers having a charge on their card for about \$9 from ‘Get Nature’s Way’.”
- The Disputed Domain Name was registered and is being used in bad faith because, “In light of the fact the disputed domain name includes the identical to Complainant’s NATURE’S WAY trademark and that Complainant has used its <naturesway.com> domain since 1995 to advertise identical goods, it is inconceivable that Respondent was not aware of Complainant and of its rights in the NATURE’S WAY trademark at the time Respondent obtained the disputed domain name.”

B. Respondent

The Respondent did not reply to the Complainant's contentions but sent informal emails to the Center on October 31, 2023, and November 14, 2023, stating, in part: "it was never my intention to infringe upon any copyright laws or regulations. I was unaware that the URL I was using might be in violation of any such rules. I understand the importance of intellectual property rights and respect the creative work and ownership that is associated with it. Upon receiving your notification, I immediately ceased using the URL in question and have taken steps to investigate the matter further to ensure compliance with copyright laws."

6. Discussion and Findings

Pursuant to the Policy, the Complainant is required to prove the presence of each of the following three elements to obtain the relief it has requested, with respect to the Disputed Domain Name: (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (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. Policy, paragraph 4(a).

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.

Based on the available record, 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.

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 the 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.

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.

In the present case, the Panel notes that the Respondent has registered and used the Disputed Domain Name in connection with a website that offers goods similar to those associated with the NATURE'S WAY Trademark. The Panel finds that this constitutes bad faith under paragraph 4(b)(iv) of the Policy because it shows that the Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark.

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 <getnatureswayketo.com> be transferred to the Complainant.

/Douglas M. Isenberg/

Douglas M. Isenberg

Sole Panelist

Date: November 27, 2023