

## **ADMINISTRATIVE PANEL DECISION**

NOVAGOLD Resources Inc. v. Akan Edet

Case No. DCO2022-0101

### **1. The Parties**

Complainant is NOVAGOLD Resources Inc., Canada, represented by Cassels Brock & Blackwell, LLP, Canada.

Respondent is Akan Edet, Nigeria.

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

The disputed domain name <nova-gold.co> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 16, 2022. On November 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 and contact information in the Complaint. The Center sent an email communication to Complainant on November 18, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on November 23, 2022.

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 Respondent of the Complaint, and the proceedings commenced on November 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 19, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on January 3, 2023.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on January 10, 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**

Complainant is a company organized under the laws of Canada which explores, develops, and secures investments in major mining properties.

Complainant has provided evidence that it is the registered owner of the following trademarks relating to its company name and brand NOVAGOLD:

- word mark NOVAGOLD, Canadian Intellectual Property Office (CIPO), registration number: TMA868037, registration date: December 30, 2013, status: active;
- word mark NOVAGOLD, United States Patent and Trademark Office (USPTO), registration number: 4,574,621, registration date: July 29, 2014, status: active.

Moreover, Complainant has demonstrated to own since 2005 the domain name <novagold.com>, which resolves to Complainant's official website at "www.novagold.com", used to promote Complainant's services in the mining industry.

Respondent, according to the disclosed Whois information for the disputed domain name, is a resident of Nigeria who registered the disputed domain name on April 16, 2022. By the time of rendering this decision, the disputed domain name resolves to a website announcing: "This Account has been suspended." Complainant, however, has demonstrated that at some point before the filing of the Complaint, the disputed domain name resolved to a website at "www.nova-gold.co", which was set up in a manner similar to Complainant's official website at "www.novagold.com", prominently displayed Complainant's NOVAGOLD trademark and purported to offer investments e.g. in the mining industry as does Complainant, thereby obviously seeking to deceive Internet users into disclosing personal and financial information, most likely as part of a phishing scheme.

Complainant requests that the disputed domain name be transferred to Complainant.

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

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

Complainant contends to have used its NOVAGOLD trademark in both Canada and the United States of America as early as March 1987, and to have started using its official website at "www.novagold.com" as early as June 2007, in order to communicate with prospective and existing clients and investors about their mining operations and the related investment opportunities. Consequently, Complainant's NOVAGOLD trademark nowadays has built up considerable reputation and goodwill in both countries and around the world through intensive use.

Complainant submits that the disputed domain name is confusingly similar to its NOVAGOLD trademark, as it fully incorporates the latter, with the addition of the dash between the elements "nova" and "gold". Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) Respondent is not a licensee of, or otherwise affiliated with, Complainant who has not given Respondent permission to use its NOVAGOLD trademark in any manner, including in the disputed domain name, (2) the infringing website under the disputed domain name bore many hallmarks of a phishing scheme or other sham business, designed to deceive visitors into believing that such website is

associated with Complainant and requesting personal and confidential information to purportedly invest in various investment plans, and (3) the infringing website published a falsified corporate certificate, and was using a fake address and phone number in association with its purported business, further underscoring that the disputed domain was being used by a sham business. Finally, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith since (1) Complainant's NOVAGOLD trademark is well-known which is why the mere registration of the disputed domain name that fully incorporates said trademark by Respondent, who was not a licensee of, or otherwise affiliated with Complainant, is demonstrating bad faith registration and use of said domain name, and (2) the registration and use of a domain name for *per se* illegitimate activities such as impersonation or passing off is manifestly considered evidence of bad faith.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) that Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

Respondent's default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondent's failure to submit a Response as it considers appropriate.

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

The Panel concludes that the disputed domain name , <nova-gold.co>, is at least confusingly similar to the NOVAGOLD trademark in which Complainant has rights.

The disputed domain name incorporates the NOVAGOLD trademark in its entirety, with the only difference being a hyphen added in between the terms "nova" and "gold". Numerous UDRP panels have recognized that where a domain name incorporates a trademark in its entirety, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that trademark (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7). Moreover, it has been held in many UDRP decisions and has become a consensus view among UDRP panels, that a domain name which consists of a misspelling of the complainant's trademark (*i.e.* a typo-squatting) is still considered to be confusingly similar to the relevant trademark for purposes of the first element under the UDRP ([WIPO Overview 3.0](#), section 1.9). Accordingly, the insertion of a hyphen in between the terms "nova" and "gold" does not dispel the confusing similarity arising from the incorporation of Complainant's entire NOVAGOLD trademark in the disputed domain name. Finally, UDRP panels also agree that the applicable Top-Level Domain ("TLD") in a domain name is generally viewed as a standard registration requirement and as such is disregarded under the first element test (see [WIPO Overview 3.0](#), section 1.11). Accordingly, the existence of the country-code TLD ".co" is not in contrast to find confusing similarity.

Therefore, Complainant has established the first element under the Policy set forth by paragraph 4(a)(i).

## B. Rights or Legitimate Interests

The Panel is further convinced on the basis of Complainant's undisputed contentions that Respondent has not made use of the disputed domain name in connection with a *bona fide* offering of goods or services, nor has Respondent been commonly known by the disputed domain name, nor can it be found that Respondent has made a legitimate noncommercial or fair use thereof without intent for commercial gain.

Respondent apparently has neither been granted a license nor has it been otherwise authorized by Complainant to use its NOVAGOLD trademark, either as a domain name or in any other way. Also, there is no reason to believe that Respondent's name somehow corresponds with the disputed domain name and Respondent does not appear to have any trademark rights associated with the terms "nova" and/or "gold" on its own. To the contrary, Respondent, at some point before the filing of the Complaint, was running a website under the disputed domain name at "www.nova-gold.co", which was set up in a manner similar to Complainant's official website at "www.novagold.com", prominently displayed Complainant's NOVAGOLD trademark and purported to offer investments *e.g.*, in the mining industry as does Complainant, thereby seeking to deceive Internet users into disclosing personal and financial information, most likely as part of a phishing scheme. Such making use of the disputed domain name neither qualifies as *bona fide* nor as legitimate noncommercial or fair within the meaning of the Policy. Moreover, the nature of the disputed domain name (characterized *e.g.* by including Complainant's entire NOVAGOLD trademark in a typo-squatted manner due a hyphen in between the terms "nova" and "gold") is inherently misleading and carries a risk of an implied affiliation as it effectively suggests sponsorship or endorsement by Complainant which is not the case (see [WIPO Overview 3.0](#), section 2.5.1).

Accordingly, Complainant has established a *prima facie* case that Respondent has no rights or legitimate interests in respect of in the disputed domain name. Now, the burden of production shifts to Respondent to come forward with appropriate allegations or evidence demonstrating such rights or legitimate interests (see [WIPO Overview 3.0](#), section 2.1). Given that Respondent has defaulted, Respondent has not met that burden.

The Panel, therefore, finds that Complainant has also satisfied paragraph 4(a)(ii) and, thus, the second element of the Policy.

## C. Registered and Used in Bad Faith

The Panel finally holds that the disputed domain name was registered and is being used by Respondent in bad faith.

The circumstances to this case leave no serious doubts that Respondent was fully aware of Complainant's rights in the NOVAGOLD trademark when registering the disputed domain name and that the latter is clearly directed thereto. Moreover, using the disputed domain name, which is at least confusingly similar to, if not nearly identical with Complainant's NOVAGOLD trademark, to run a website at "www.nova-gold.co", set up in a manner similar to Complainant's official website at "www.novagold.com", prominently displaying Complainant's NOVAGOLD trademark and purporting to offer investments *e.g.*, in the mining industry as does Complainant, thereby seeking to deceive Internet users into disclosing personal and financial information, most likely as part of a phishing scheme, is a clear indication that Respondent intentionally attempted to attract, for commercial gain, Internet users to its own website by creating a likelihood of confusion with Complainant's NOVAGOLD trademark as to the source, sponsorship, affiliation or endorsement of Respondent's website. Such circumstances are evidence of registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

In this context, it also carries weight in the eyes of the Panel that the delivery of the Written Notice on the Notification of Complaint dated November 29, 2022, at the address provided for by Respondent in the Whois information for the disputed domain name was rejected. This fact at least throws a light on Respondent's behavior which supports the Panel's bad faith finding.

Therefore, the Panel concludes that Complainant has also satisfied the third element under the Policy set forth by paragraph 4(a)(iii).

## **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 <nova-gold.co> be transferred to Complainant.

*/Stephanie G. Hartung/*

**Stephanie G. Hartung**

Sole Panelist

Date: January 24, 2023