

## **ADMINISTRATIVE PANEL DECISION**

The NOCO Company v. Super Privacy Service LTD c/o Dynadot / Ejder Bambu

Case No. D2022-1342

### **1. The Parties**

The Complainant is The NOCO Company, United States of America (“United States”), represented by Jones Day, United States.

The Respondent is Super Privacy Service LTD c/o Dynadot, United States / Ejder Bambu, Turkey.

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

The disputed domain name <nocoaria.com> is registered with Dynadot, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 14, 2022. On April 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 15, 2022, 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 the Complainant on April 19, 2022 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 amendment to the Complaint on April 19, 2022.

The Center verified that the Complaint together with the amendment to 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 April 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 18, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 23, 2022.

The Center appointed Dr. Clive N.A. Trotman as the sole panelist in this matter on May 25, 2022. 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, founded in 1914 in Cleveland, Ohio, United States, manufactures certain automotive products, particularly those broadly associated with batteries and high technology battery chargers. Its new NOCO ARIA brand is for fragrances and deodorisers for use in cars.

The Complainant owns a number of trademarks worldwide incorporating the word NOCO standing alone or in combination, of which the following are representative for the purposes of this proceeding:

NOCO, United States Patent and Trademark Office (“USPTO”), principal register, registered July 4, 2017, registration number 5238298, in class 9;

NOCO, USPTO, principal register, registered August 18, 1981, registration number 1165271, in class 8;

NOCO GENIUS, USPTO, principal register, registered October 3, 2017, registration number 5303090, in class 9; and

NOCO BOOST, USPTO, principal register, registered January 4, 2020, registration number 5962831, in class 9.

The Complainant has made the following application to register a trademark:

NOCO ARIA, USPTO, principal register, filed December 29, 2021, serial number 97194543, in classes 3 and 5.

The Complainant also owns the domain name <no.co> through which it operates an interactive website.

The Respondent has not provided any background information and only the contact information provided for the purpose of registration of the disputed domain name is available. The disputed domain name was registered on January 1, 2022, being three days after the Complainant’s application for the trademark NOCO ARIA, and was then offered for sale through the website “www.dan.com” for USD 25,000.

The Complainant filed an Abuse Report with the Registrar on or about March 3, 2022, and completed a Domain Holder Contact Request Form through the Registrar on March 7, 2022. There was no reply from the Respondent.

A complaint made by the Complainant to the host of the website to which the disputed domain name resolves, Amazon Web Services (“AWS”), was forwarded by AWS to the Respondent on or about March 9, 2022. There was no reply from the Respondent.

#### **5. Parties’ Contentions**

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

The Complainant contends that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. The disputed domain name is identical to the trademark for which the Complainant has applied, *i.e.*, NOCO ARIA, and is confusingly similar to the Complainant’s other NOCO trademarks. There is an intention by the Respondent to confuse customers into believing the disputed

domain name is associated with the Complainant.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has no relationship or affiliation with the Respondent and has not granted to it any right to use the Complainant's trademark. There is no evidence the Respondent is commonly known by the disputed domain name or similar and the Respondent has in any case obscured its identity by placing the registration behind a privacy shield.

The Complainant says the Respondent has not used or made demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services or for any legitimate noncommercial or fair use. The Respondent's actions in registering the disputed domain name three days after the Complainant applied for its NOCO ARIA trademark, and then offering the disputed domain name for sale, suggest that the intended purpose of the registration was not for legitimate use.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. The Respondent may be deemed to have known of the Complainant's well-known NOCO trademark at the time of registration of the disputed domain name and the registration is itself therefore an indication of the Respondent's bad faith.

The Complainant says it is implausible in the circumstances that the Respondent was unaware of the Complainant's trademark and that the Respondent's motive is an intention to sell the disputed domain name for a price in excess of the costs of registration.

The Complainant says the Respondent has not replied to the Complainant's efforts to make contact, which should be a contributing factor in the Respondent's bad faith.

The Complainant has referenced a number of previous decisions under the Policy that it considers relevant to the present case.

The Complainant requests the transfer of the disputed domain name.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy states that the Respondent is required to submit to a mandatory administrative proceeding in the event that the Complainant asserts to the applicable dispute-resolution provider, in compliance with the Rules, that:

"(i) your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;

(ii) you have no rights or legitimate interests in respect of the domain name; and

(iii) your domain name has been registered and is being used in bad faith".

The Complainant has made the relevant assertions as required by the Policy. The dispute is properly within the scope of the Policy and the Panel has jurisdiction to decide the dispute.

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

The Complainant has produced evidence satisfactory to the Panel of the Complainant's ownership of registered trademarks comprising NOCO standing alone or in combination.

The disputed domain name may be read as the Complainant's trademark NOCO in combination with the term "aria", comprising in whole the trademark that the Complainant has applied to register, *i.e.*, NOCO ARIA. The generic Top-Level Domain ("gTLD") ".com" need not be taken into consideration in the determination of confusing similarity. As discussed in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") at section 1.1.4, a "pending trademark application would not by itself establish trademark rights within the meaning of UDRP paragraph 4(a)(i)". It is not necessary, however, to consider the element ARIA of the Complainant's trademark application because, in the Panel's finding, the incorporation of the Complainant's trademark NOCO is sufficient in this case to render the disputed domain name confusingly similar to the trademark for the purposes of paragraph 4(a)(i) of the Policy. Accordingly the Panel finds for the Complainant under paragraph 4(a)(i) of the Policy.

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

The Complainant has stated a *prima facie* case to the effect that the Respondent has no rights or legitimate interests in the disputed domain name because there is no relationship or affiliation between the Complainant and the Respondent, and the Respondent has not been granted any right or permission to use the Complainant's trademark.

Paragraph 4(c) of the Policy provides for the Respondent to contest the Complainant's *prima facie* case under paragraph 4(a)(ii) of the Policy and to establish rights or legitimate interests in a disputed domain name by demonstrating, without limitation:

- "(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue".

The Respondent has not responded formally and has not asserted rights or legitimate interests in the disputed domain name with reference to paragraphs 4(c)(i), (ii) or (iii) of the Policy or otherwise.

There is no evidence of use or demonstrable preparations for use of the disputed domain name in connection with a *bona fide* offering of goods or services or for any legitimate noncommercial or fair use. According to the screen capture evidence, the disputed domain name has only been offered for sale, which since it is confusingly similar to the Complainant's well-known registered trademark, does not in this case qualify as a *bona fide* offering of goods or services. There is no evidence the Respondent has been commonly known by the disputed domain name or a similar name.

The Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name and finds for the Complainant under paragraph 4(a)(ii) of the Policy.

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

The Complainant must prove under paragraph 4(a)(iii) of the Policy that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy lists four alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location”.

The provisions of paragraph 4(b) of the Policy are without limitation and bad faith may be found alternatively by the Panel.

The Panel has examined the evidence of the circumstances of the registration and use of the disputed domain name. According to the screen capture evidence, the website to which the disputed domain name has resolved is in the nature of a parking page provided by the hosting service at “www.dan.com”, which states, among other things, “The domain name nocoaria.com is for sale!” with a price of USD 25,000. According to the evidence, the disputed domain name was registered by the Respondent on January 1, 2022, almost immediately following the filing of the Complainant’s application for the trademark NOCO ARIA at the USPTO on December 29, 2021.

Section 3.8 of the [WIPO Overview 3.0](#) specifically addresses the question of bad faith in the registration of a disputed domain name before a complainant has acquired the relevant trademark rights – here the applied-for NOCO ARIA mark, as distinct from the establishment of sufficient trademark rights to satisfy paragraph 4(a)(i) of the Policy as discussed above. The [WIPO Overview 3.0](#), at section 3.8.2, headed “Domain names registered in anticipation of trademark rights”, reads in part:

“[...] in certain limited circumstances where the facts of the case establish that the respondent’s intent in registering the domain name was to unfairly capitalize on the complainant’s nascent (typically as yet unregistered) trademark rights, panels have been prepared to find that the respondent has acted in bad faith.

Such scenarios include registration of a domain name [...] (iv) following the complainant’s filing of a trademark application”.

On the totality of the evidence, it may reasonably be concluded that the disputed domain name was registered as a direct consequence of the Complainant’s filing of its application to register the trademark NOCO ARIA. The Respondent is found to have registered the disputed domain name with specifically the Complainant in mind for the primary purpose of a speculative profitable sale to the Complainant or to a competitor of the Complainant, which need not be any identifiable direct commercial or business competitor (*Mission KwaSizabantu v. Benjamin Rost*, WIPO Case No. [D2000-0279](#)). The disputed domain name is found to have been registered in bad faith.

By its being offered for sale for USD 25,000 the disputed domain name is found to have been used in bad faith for the same purpose. Accordingly the Panel finds the disputed domain name to have been registered and used in bad faith within the meaning of paragraphs 4(b)(i) and 4(a)(iii) of the Policy.

The Panel notes that, irrespective of the consensus discussed at section 3.8 of the [WIPO Overview 3.0](#) as summarised above, which would be particularly applicable if the Complainant’s sole claim to a trademark

were the unregistered trademark NOCO ARIA, in this instance the disputed domain name featured the Complainant's trademark NOCO, for which, alone or in combination, the Complainant holds several trademark registrations. The same finding of registration and use in bad faith may therefore be reached on the basis that the disputed domain name features prominently the trademark NOCO and, on the evidence and on the balance of probabilities, was registered and is being used for the primary purpose of its profitable sale to the Complainant or to a competitor of the Complainant.

The use of a privacy service may in many circumstances be legitimate. In the present case, having regard to all the evidence, the use of a privacy service to conceal the Respondent's true or purported contact details is found to have been more probably than not a device intended to impede the service of communications addressed to the Respondent. The Respondent's failure to reply to communications from the Complainant is found to be compounding factor in the registration and use of the disputed domain name bad faith (*Ebay Inc. v. Ebay4sex.com and Tony Caranci*, WIPO Case No. [D2000-1632](#)).

## 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 <nocoaria.com> be transferred to the Complainant.

*/Dr. Clive N.A. Trotman/*

**Dr. Clive N.A. Trotman**

Sole Panelist

Date: June 8, 2022