

ADMINISTRATIVE PANEL DECISION

National Federation of State High School Associations v. Angga Nuryuana,
ngolor

Case No. D2022-1973

1. The Parties

The Complainant is National Federation of State High School Associations, United States of America (“United States”), represented by Nelson Mullins Riley & Scarborough, L.L.P., United States.

The Respondent is Angga Nuryuana, ngolor¹, Indonesia.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 31, 2022. On June 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 1, 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 June 13, 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 amended Complaint on June 13, 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 the Respondent of the Complaint, and the proceedings commenced on July 5, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 25, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 5, 2022.

¹ At the time of the filing of the Complaint, the Respondent’s identity was masked by a privacy service.

The Center appointed Taras Kyslyy as the sole panelist in this matter on August 10, 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, based in Indianapolis, Indiana, United States, is an advocate for high school athletics as well as fine and performing arts programs in the United States. The Complainant consists of 51 member state associations, serving 19,500 high schools and more than 12 million young people in the United States. The Complainant showcases high school sports and performing arts online through the NFHS Network. The NFHS Network is streaming Live and On Demand high school sports and is a joint venture between the Complainant, 44+ high school state athletic/activities associations, and PlayOn! Sports. Since the creation of the Complainant's joint venture in 2013, the Complainant has extensively and continuously used the NFHS NETWORK trademark in connection with the marketing, advertising, promotion, and provision of the Complainant's Live and On Demand high school sports streaming services.

To protect its rights in the NFHS NETWORK trademark, the Complainant obtained the United States Registration No. 6165456 for the NFHS NETWORK trademark, registered on September 20, 2020, for services in Class 41.

Additionally, the Complainant registered the <nfhnetwork.com> domain name for use in connection with the advertising for and provision of the NFHS NETWORK streaming services and has continuously done so since the domain name was registered on November 26, 2012.

The disputed domain name was registered on February 19, 2021, and resolved to a webpage purporting to contain a directory of links to live results and streaming video of high school sporting events related to the services of the Complainant or its direct competitors. At the time of the decision the disputed domain name does not resolve to any active webpage.

5. Parties' Contentions

A. Complainant

The disputed domain name is identical to the Complainant's trademark. The disputed domain name is comprised solely of the Complainant's trademark.

The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not commonly known by the distinctive NFHS NETWORK name. The Complainant has not authorized the Respondent to use the Complainant's trademark nor is the Respondent a licensee of the Complainant's trademark. The Respondent cannot assert that it has been using the disputed domain name, prior to any notice of the present dispute, in connection with a *bona fide* offering of goods or services or that it has made demonstrable preparation to do so. The disputed domain name was used to resolve to the website purporting to contain a directory of links to live results and streaming video of high school sporting events. Such use in connection with the disputed domain name, which is identical to the Complainant's trademark and offers links to either directly competitive streaming services or unauthorized access to the Complainant's streaming services, cannot provide the Respondent with any rights or legitimate interests in the disputed domain name. The Respondent is not making a *bona fide* offering of goods or services in connection with the disputed domain name because the Respondent's current use thereof appears intended only to drive traffic to the website based on the creation of initial interest confusion with the Complainant's trademark so as to capitalize on the goodwill and notoriety associated with the trademark. The Respondent cannot claim that it is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers. In addition, the disputed domain name identical to the Complainant's trademark carries a high risk of implied affiliation.

The disputed domain name was registered and is being used in bad faith. The Respondent registered disputed domain name identical to the Complainant's well-known trademark, which confirms the bad faith. The Respondent's knowledge of the Complainant's trademark can be inferred from the fact that the disputed domain name is identical to the trademark and that simple Google searches for NFHS and NFHS NETWORK would have alerted the Respondent to the Complainant's prior existing rights in its trademark. The Respondent has no rights or legitimate interest in the disputed domain name that would justify the Respondent's choice to register the disputed domain name other than to conclude that it was selected with an intent to create confusion in order to trade off the goodwill and reputation of the Complainant's trademark or otherwise create a false association with the Complainant, which is registration in bad faith. The Respondent intentionally attempted to attract, for commercial gain, the Complainant's customers to its website and created a likelihood of confusion with the Complainant's trademark as to the source of its website. The Respondent's intention to create initial interest confusion is confirmed by the fact that the disputed domain name is identical to the Complainant's trademark and virtually identical to the Complainant's own <nfhnetwork.com> domain name, and was registered in a generic Top-Level Domain ("gTLD") directly related to the Complainant's services, and the disputed domain name resolved to the website that purportedly provided a directory of links to live streaming of high school sports events, which links would either be for competitors of the Complainant or for unauthorized access to the Complainant's services.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

According to section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the "[WIPO Overview 3.0](#)") the applicable gTLD in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. Thus, the Panel disregards the gTLD ".live" for the purposes of the confusing similarity test.

According to section 1.7 of the [WIPO Overview 3.0](#) in cases where a domain name incorporates the entirety of a trademark the domain name will normally be considered identical or confusingly similar to that mark for purposes of UDRP standing. The Panel finds that in the present case the disputed domain name consists solely of the Complainant's trademark.

Considering the above the Panel finds the disputed domain name is identical to the Complainant's trademark, therefore, the Complainant has established its case under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant has established *prima facie* that the Respondent has no rights or legitimate interests in the disputed domain name.

Furthermore, the Respondent provided no evidence that it holds rights or legitimate interests in the disputed domain name.

The available evidence confirm that the Respondent is not commonly known by the disputed domain name, which could demonstrate its rights or legitimate interests (see, e.g., *World Natural Bodybuilding Federation, Inc. v. Daniel Jones, TheDotCafe*, WIPO Case No. [D2008-0642](#)).

The Complainant did not license or otherwise agree for use of its prior registered trademarks by the Respondent, thus no actual or contemplated *bona fide* or legitimate use of the disputed domain name could be reasonably claimed (see, e.g., *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#)).

The Respondent's use of the identical disputed domain name on a website offering access to the services of the Complainant's direct competitors is neither a *bona fide* offering of goods or services, nor a legitimate non-commercial or fair use pursuant to the Policy (see, e.g., *Option One Mortgage Corporation v. Option One Lending*, WIPO Case No. [D2004-1052](#)).

Noting the high risk of implied affiliation between the disputed domain name and the identical well-known trademark of the Complainant, the Panel finds that there is no plausible fair use to which the disputed domain name could be put that would not have the effect of being somehow connected to the Complainant (see, e.g., *Instagram, LLC v. Super Privacy Service LTD c/o Dynadot / Zayed*, WIPO Case No. [D2019-2897](#)).

Considering the above, the Panel finds the Respondent does not have rights or legitimate interests in the disputed domain name. Therefore, the Complainant has established its case under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Respondent's use of the disputed domain name to purport to provide access to the Complainant's services shows that at the time of the registration of the disputed domain name the Respondent clearly knew and targeted the Complainant's prior registered and famous trademark, which confirms the bad faith (see, e.g., *The Gap, Inc. v. Deng Youqian*, WIPO Case No. [D2009-0113](#)).

According to section 3.1.4 of the [WIPO Overview 3.0](#) 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. The Panel is convinced that the Complainant's trademark is well established through long and widespread use and the Complainant has acquired a significant reputation and level of goodwill in its trademark both in the United States and internationally. Thus, the Panel finds that the disputed domain name identical to the Complainant's trademark was registered in bad faith.

According to paragraph 4(b)(iv) of the Policy the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith: by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online 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. Using the disputed domain name to host a website offering links to the Complainant's services creates a likelihood of confusion with the Complainant's trademark and potentially obtains revenue from this practice. Under such circumstances, the Panel finds that the disputed domain name was being used in bad faith.

Although at the time of this decision the disputed domain name resolves to inactive webpage, its previous bad faith use and lack of explanation of possible good faith use from the Respondent makes any good faith use of the disputed domain name implausible. Thus, the current passive holding of the disputed domain name does not prevent a finding of bad faith (see, e.g., *Abbott Diabetes Care Inc. v. Privacy Protection, Hosting Ukraine LLC / Bumanuĭ Броцман (Vitalii Brocman)*, WIPO Case No. [DPW2017-0003](#)).

The Respondent ignored its possibility to comment on the contrary and provide any explanations to prove its good faith while registering and using the disputed domain name.

Considering the above, the Panel finds the disputed domain name was registered and is being used in bad faith. Therefore, the Complainant has established its case under paragraph 4(a)(iii) 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, <nfhsnetwork.live> be transferred to the Complainant.

/Taras Kyslyy/

Taras Kyslyy

Sole Panelist

Date: August 22, 2022