

ADMINISTRATIVE PANEL DECISION

Nobli Ltd. v. Cykon Technology Limited
Case No. D2022-2970

1. The Parties

The Complainant is Nobli Ltd., Cyprus, represented by Marios Kontemeniotis, Cyprus.

The Respondent is Cykon Technology Limited, Hong Kong, China.

2. The Domain Name and Registrar

The disputed domain name <nobli.com> is registered with PSI-USA, Inc. dba Domain Robot (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 10, 2022. On August 11, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 12, 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 August 12, 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 August 16, 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 August 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 5, 2022. The Response was filed with the Center on August 20, 2022. On September 7, 2022, the Complainant filed a supplemental submission.

The Center appointed Andrew F. Christie as the sole panelist in this matter on September 12, 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 is a registered Cyprus company, incorporated on November 19, 2021. The Complainant provided no statement or evidence as to the nature of its business.

The Complainant claims to have rights in Cyprus Trademark Registration No. 92318 (filed on December 28, 2021; published on July 8, 2022) for the stylized trademark NOBLI LIFE MEDIA. At the date of this decision, it appears that this trademark has not yet been registered.

The disputed domain name was registered on September 10, 2009. The Complainant provided no statement or evidence as to the use made of the disputed domain name by the Respondent. At the time of this decision, the disputed domain name resolves to a webpage stating “NOBLI.COM is available for sale” and provides a form to be completed “to get a price quote” for it. The Complainant has provided a screenshot, taken on March 8, 2022, of the form completed by the Complainant’s representative, requesting that the disputed domain name be transferred to the Complainant “at a reasonable price” which, the Complainant states, was “to no avail”.

5. Parties’ Contentions

A. Complainant

To establish that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights, the Complainant simply stated: “The domain name is identical to a trademark in which the Complainant has rights. Please see Annexes 4 and 5”.

To establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name, the Complainant simply stated: “The Respondent has no legitimate interests in respect of the domain name nobli.com”.

To establish that the disputed domain name was registered and is being used in bad faith, the Complainant simply stated: “The current registrant appears to have registered the domain name under the practice of cybersquatting”.

B. Respondent

The Respondent denies that the disputed domain name is identical or confusingly similar to the trademark in which the Complainant claims to have rights, on the ground that “the verbal element” of that trademark is “nobli Life Media”, which is obviously unidentical to the disputed domain name since it is comprised only of the word “nobli”, when the common “.com” extension is excluded. In addition, the Complainant’s trademark was applied for on December 28, 2021, published on July 8, 2022, and not fully registered as of August 19, 2022.

The Respondent states that the disputed domain name was independently invented and created by it, and was registered on September 10, 2009. At the time of registration, the Respondent believed that the disputed domain name “may in future be of interest to someone who wanted to adopt a new unique brand”. As such, the Respondent was engaged in legitimate business. The business of creating and supplying names for new entities is a legitimate activity. Where, as here, the disputed domain name forms part of the

Respondent's "stock-in-trade", that constitutes a use of the domain name in connection with a *bona fide* offering of goods or services.

The Respondent legitimately registered the disputed domain name on September 10, 2009, which predates the Complainant's company incorporation date (November 19, 2021), and the Complainant's trademark application date (December 28, 2021), by over 12 years. There is no evidence whatsoever that the Respondent could have registered the disputed domain name with the knowledge of the Complainant or in bad faith.

The Respondent contends that the Complainant has abused the UDRP procedure and has engaged in Reverse Domain Name Hijacking, because: (i) the Complaint has been brought "without a shred of evidence" to support its serious allegations of bad faith registration and use; (ii) the Complainant's trademark and the disputed domain name are not identical; (iii) the Complainant's trademark has not even been registered; and (iv) the disputed domain name's registration date predates the Complainant's company incorporation and trademark application by well over 12 years. There is strong evidence that the Complainant used its new trademark application and the UDRP process to "unfaithfully attempt to secure the disputed domain name", which was legitimately registered and used in good faith by the Respondent over the past decade. Under such circumstances, the Complainant should be found to have abused the UDRP procedure and thereby be found to have engaged in Reverse Domain Name Hijacking.

C. Complainant's Supplemental Filing

In an unsolicited supplemental submission filed on September 7, 2022, the Complainant submitted what it said was "new evidence", being a chain of communications in early October 2021. In response to what the Complainant called its "low offer" of "\$1,300.00", the Respondent said: "The price now for the domain name is \$300,000 USD. Would you like to buy it?" The Complainant replied: "Apparently you are not interested to sell it. Thank you very much anyway." To this the Respondent replied: "Thanks for your reply. Kindly let us know when you have more budget to purchase this premium domain name "NOBLI.com" in the near future, thanks."

6. Discussion and Findings

A. Admission of the Complainant's Supplemental Filing

Although it was stated to be "new evidence", the Complainant's supplemental filing gave no reason as to why this evidence from October 2021 was not available for submission when the Complaint was filed in August 2022. As explained in section 4.6 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), panels have repeatedly affirmed that the party submitting or requesting to submit an unsolicited supplemental filing should clearly show its relevance to the case and why it was unable to provide the information contained therein in its complaint or response (e.g., owing to some "exceptional" circumstance). In the Panel's view, the Complainant did not establish any exceptional circumstance for admission of its supplemental filing. In particular, the supplemental filing did not address any issue that either was not already addressed in the Complaint or could not reasonably be expected to have been addressed by the Respondent in its Response.

Accordingly, if it had been necessary to decide the issue, the Panel would have declined to admit the Complainant's unsolicited supplemental filing. However, there is no need to decide the issue because the supplemental filing does not contain any information that supports the Complainant's case in any way beyond that contained in the Complaint as originally filed.

B. Identical or Confusingly Similar

It is not clear to the Panel that the Complainant is correct in its assertion that it has achieved registration of its NOBLI LIFE MEDIA stylized trademark. On the one hand, the certified English translation of the “History of Trademark No. 92318” from the Cyprus Department of Registrar of Companies and Intellectual Property states: “Date of Registration of Trademark: 28 December 2021”. On the other hand, that document also states: “The issuance of the certificate of registration is pending”. An online search of the Cyprus Trademark Register conducted by the Panel at the date of this decision discloses that the Complainant’s stylized trademark is “Δημοσιευμένο” (published), not “Εγγεγραμμένο” (registered).

The Complainant provided no evidence of any use of its stylized trademark; in fact, the Complainant provided no evidence of any activity at all conducted by it. Thus, there is no evidence before the Panel on which it can conclude that the Complainant has unregistered (or common law) trademark rights to its stylized trademark or any trademark incorporating the string “nobli”.

Accordingly, if it had been necessary to decide the issue, the Panel would have concluded that the Complainant had failed to establish that it has rights in a trademark for the purposes of the first element of the Policy. However, there is no need to decide the issue because, for the reasons set out below, the Complainant has failed to establish the second and third elements of the Policy.

C. Rights or Legitimate Interests

The Complainant’s sole contention on the issue of the Respondent’s rights or legitimate interests in the disputed domain name was a bare statement, with no reasoning or evidence in support, that the Respondent had none. Such a bare claim, without more, does not give rise even to a *prima facie* case. Accordingly, the burden of production on this element does not shift to the Respondent.

In any case, even if the burden of production had shifted to the Respondent, the Respondent would have met the burden of demonstrating rights or legitimate interests in the disputed domain name. The Respondent registered the disputed domain name more than 12 years before the Complainant sought registration of its stylized trademark and, indeed, more than 12 years before the Complainant even came into existence. There is no evidence to indicate that the Respondent was at any stage prior to the filing of the Complaint aware of the Complainant or its trademark. The disputed domain name consists of a term, “nobli”, that has no meaning in English. The Panel accepts the Respondent’s claim that it registered the disputed domain name because it “may in future be of interest to someone who wanted to adopt a new unique brand”. As explained in section 2.1 of [WIPO Overview 3.0](#), panels have accepted that aggregating and holding domain names (usually for resale) consisting of acronyms, dictionary words, or common phrases can be *bona fide* and is not *per se* illegitimate under the Policy. In the Panel’s view, depending on the circumstances, this practice may also extend to made-up phrases.

The Panel finds that the Complainant has failed to establish that the Respondent lacks rights or legitimate interests in the disputed domain name. Accordingly, the Complaint fails.

D. Registered and Used in Bad Faith

Although it is not strictly necessary to do so, the Panel notes that the Respondent’s registration and use of the disputed domain name in the circumstances described above does not constitute acting in bad faith.

E. Reverse Domain Name Hijacking

Paragraph 15(e) of the Rules provides that, if the Panel finds that the complaint “was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder”, the Panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding. Paragraph 1 of the Rules defines “Reverse Domain Name Hijacking” to be “using the Policy in bad faith to attempt to deprive a registered domain name holder of

a domain name”.

Section 4.16 of the [WIPO Overview 3.0](#), lists, non-exhaustively, circumstances which previous panels have considered to be indicative of a complaint having been brought in bad faith. One such circumstance is that the facts demonstrate the complainant knew it could not succeed as to one or more of the required three elements - e.g., because of the complainant’s lack of trademark relevant rights, clear knowledge of the respondent’s right or legitimate interests, and/or clear knowledge of a lack of respondent bad faith such as due to registration of the disputed domain name well before the complainant acquired trademark rights. Another such circumstance is that the complaint is based on only the barest of allegations without any supporting evidence. The Panel considers that these two circumstances, at least, are present in this case.

Accordingly, the Panel finds that the Complaint was brought in bad faith, in an attempt at Reverse Domain Name Hijacking, and therefore constituted an abuse of the administrative proceeding.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Andrew F. Christie/

Andrew F. Christie

Sole Panelist

Date: September 26, 2022