

## **ADMINISTRATIVE PANEL DECISION**

Task International B.V. (doing business as NOPPIES) v. ying wang  
Case No. D2022-3434

### **1. The Parties**

The Complainant is Task International B.V. (doing business as NOPPIES), Netherlands, represented by Merkenbureau Knijff & Partners B.V., Netherlands.

The Respondent is ying wang, China.

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

The disputed domain name <noppies.shop> (the “Domain Name”) is registered with Porkbun LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 15, 2022. On September 16, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On September 16, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent<sup>1</sup> and contact information in the Complaint. The Center sent an email communication to the Complainant on September 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 September 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 September 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 11, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 17, 2022.

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

The Center appointed Nicholas Smith as the sole panelist in this matter on October 20, 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 Netherlands company, that for over 20 years has been involved in the retail, wholesale, and trading of clothing (and in particular maternity, baby, and children's clothing) under the word mark NOPPIES (the "NOPPIES Mark"). The Complainant's NOPPIES products are available online from its website at "www.noppies.com" and from stores in various jurisdictions.

The Complainant is the owner of an international trademark registration for the NOPPIES Mark designating various jurisdictions including the United States of America and the Russian Federation registered on August 30, 2002, (registration number 791011) for goods including clothing.

The Domain Name was registered on July 2, 2022. The Domain Name resolves to a website ("the Respondent's Website") that purports to offer children's and maternity clothing under the NOPPIES Mark.

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

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

The Complainant makes the following contentions:

- (i) that the Domain Name is identical or confusingly similar to the Complainant's NOPPIES Mark;
- (ii) that the Respondent has no rights nor any legitimate interests in respect of the Domain Name; and
- (iii) that the Domain Name has been registered and is being used in bad faith.

The Complainant is the owner of the NOPPIES Mark, having registered the NOPPIES Mark in the United States. The Domain Name is identical to the NOPPIES Mark.

There are no rights or legitimate interests held by the Respondent in respect of the Domain Name. The Respondent is not commonly known by the Domain Name nor does the Respondent have any authorization from the Complainant to register the Domain Name. The Respondent is not making a legitimate noncommercial or fair use of the Domain Name. Rather the Respondent is using the Domain Name to resolve to a website that sells goods competing with the Complainant under the same mark as the Complainant.

The Domain Name was registered and is being used in bad faith. By using the Domain Name to resolve to a website that offers competing goods, the Respondent is using the Domain Name to divert Internet users searching for the Complainant to its own website for commercial gain. Such conduct amounts to registration and use of the Domain Name in bad faith. Furthermore, there are aspects of the Respondent's Website that suggest that the website could be a scam website.

##### **B. Respondent**

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

## 6. Discussion and Findings

### A. Identical or Confusingly Similar

To prove this element the Complainant must have trade or service mark rights and the Domain Name must be identical or confusingly similar to the Complainant's trade or service mark.

The Complainant is the owner of the NOPPIES Mark, having a registration for the NOPPIES Mark as a trademark in the United States. Disregarding the ".shop" generic Top-Level Domain as an essential element of any domain name, the Domain Name is identical to the NOPPIES Mark. Consequently, the requirement of paragraph 4(a)(i) of the Policy is satisfied.

### B. Rights or Legitimate Interests

To succeed on this element, a complainant must make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. If such a *prima facie* case is made out, then the burden of production shifts to the respondent to demonstrate rights or legitimate interests in the domain name.

Paragraph 4(c) of the Policy enumerates several ways in which a respondent may demonstrate rights or legitimate interests in a domain name:

"Any of the following circumstances, in particular but without limitation, if found by the panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

- (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 is not affiliated with the Complainant in any way. It has not been authorized by the Complainant to register or use the Domain Name or to seek the registration of any domain name incorporating the NOPPIES Mark or a mark similar to the NOPPIES Mark. There is no evidence that the Respondent is commonly known by the Domain Name or any similar name. There is no evidence that the Respondent has used or made demonstrable preparations to use the Domain Name in connection with a legitimate noncommercial or fair use.

The Respondent has used the Domain Name to operate a website purporting to sell NOPPIES children's clothing and maternity wear, though it is unclear whether the products purported to be sold on the Respondent's Website are the Complainant's products or counterfeit products. If the NOPPIES products sold on the Respondent's Website are not genuine products produced by the Complainant, the Respondent's use of the Domain Name does not grant it rights or legitimate interests since it is using the Complainant's NOPPIES Mark for a site selling counterfeit or at the minimum unauthorized products.

Even if the Respondent was offering genuine NOPPIES products from the Respondent's Website, such use does not automatically grant it rights and legitimate interests. The principles that govern whether a reseller of genuine goods has rights or legitimate interests have been set out in a variety of UDRP decisions, starting with the case of *Okidata Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

The WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition section 2.8 summarizes the consensus views of UDRP panels in assessing claims of nominative (fair) use by resellers or distributors in the following manner:

“... Panels have recognized that resellers, distributors, or service providers using a domain name containing the complainant’s trademark to undertake sales or repairs related to the complainant’s goods or services may be making a *bona fide* offering of goods and services and thus have a legitimate interest in such domain name. Outlined in the “Oki Data test”, the following cumulative requirements will be applied in the specific conditions of a UDRP case:

- (i) the respondent must actually be offering the goods or services at issue;
- (ii) the respondent must use the site to sell only the trademarked goods or services;
- (iii) the site must accurately and prominently disclose the registrant’s relationship with the trademark holder; and
- (iv) the respondent must not try to “corner the market” in domain names that reflect the trademark.

The *Oki Data* test does not apply where any prior agreement, express or otherwise, between the parties expressly prohibits (or allows) the registration or use of domain names incorporating the complainant’s trademark.”

In this case, the Respondent’s Website does not accurately or prominently disclose the Respondent’s relationship with the Complainant, in particular that it is not an authorized dealer or has any particular connection with the Complainant. Rather, its prominent display of the NOPPIES Mark and the absence of a disclaimer or any explanation as to the identity of the operator of the Respondent’s Website results in the impression that the Respondent’s Website is an official website of the Complainant. Even in the event that the Respondent is reselling genuine NOPPIES products, its use of the Domain Name for the Respondent’s Website in the circumstances described above does not grant it rights or legitimate interests in the Domain Name. Moreover, the composition of the Domain Name, being identical to the NOPPIES Mark, carries a high risk of implied affiliation (see [WIPO Overview 3.0](#), section 2.5.1).

The Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has had the opportunity to put on evidence of its rights or legitimate interests, including submissions as to why its conduct amounts to a right or legitimate interest in the Domain Name under the Policy. In the absence of such a Response, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name under paragraph 4(a)(ii) of the Policy.

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

For the purposes of paragraph 4(a)(iii) 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:

- (i) circumstances indicating that the respondent has registered or has 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 trade mark or service mark or to a competitor of the complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

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

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 the respondent's website or location or of a product or service on the respondent's website or location (Policy, paragraph 4(b)).

The Panel finds that the Respondent was aware of the Complainant and its reputation in the NOPPIES Mark at the time the Domain Name was registered. The Respondent's Website purports to offer the Complainant's products for sale. The registration of the Domain Name in awareness of the NOPPIES Mark and in the absence of rights or legitimate interests amounts under these circumstances to registration in bad faith.

The Respondent registered the Domain Name for the purposes of operating a website specifically to sell either the Complainant's products or counterfeit products that compete with the Complainant's. The Respondent is using the Domain Name, being identical to the NOPPIES Mark, to sell products, be they genuine or otherwise, in competition with the Complainant and without the Complainant's approval and without meeting the *Oki Data* test. Consequently the Panel finds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant and the Complainant's NOPPIES Mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's Website.

Accordingly, the Panel finds that the Respondent has registered and used the Domain Name in bad faith 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 Domain Name, <noppies.shop>, be transferred to the Complainant.

*/Nicholas Smith/*

**Nicholas Smith**

Sole Panelist

Date: November 1, 2022