

ADMINISTRATIVE PANEL DECISION

National Federation of State High School Associations v. Zhang Wei Case No. DCO2022-0044

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 Zhang Wei, China.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on May 27, 2022. On May 30, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 31, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

On June 1, 2022, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. On the same day, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

The Center verified that 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 in English and Chinese of the Complaint, and the proceedings commenced on June 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 27, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 28, 2022.

The Center appointed Matthew Kennedy as the sole panelist in this matter on July 4, 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 non-profit corporation incorporated in the State of Illinois, United States consisting 51 State high school associations serving 19,500 high schools and more than 12 million young people in the United States. It is an advocate for high school athletics as well as fine and performing arts programs in the United States. Since 2013, it has been party to a joint venture named "NFHS Network", which streams live and on-demand high school sports. NFHS Network covers 27 different sports. The Complainant has registered the domain name <nfhsnetwork.com> and all NFHS Network events are available to watch on a website associated with that domain name and through various applications. The Complainant holds United States trademark registration number 6165456 for NFHS NETWORK, registered on September 29, 2020 (applied for on August 9, 2019), with a claim of first use in commerce on August 1, 2013, specifying certain film and video production and distribution services in class 41. The registration includes a disclaimer of the exclusive right to use "Network" other than as shown in the mark. The trademark registration remains current.

The Respondent is an individual resident in China, although his name is listed in the Registrar's Whois database as an organization.

The disputed domain name was registered on July 8, 2019. It resolves to a landing page displaying Pay-Per-Click ("PPC") links regarding live video streaming and high school sports. It is also associated with an email server.

5. Parties' Contentions

A. Complainant

The Complainant obtained common law trademark rights in NFHS NETWORK as early as 2013. The disputed domain name is identical to that mark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not commonly known by the disputed domain name. The Complainant has not authorized or licensed the Respondent to use the NFHS NETWORK mark. The Respondent is not making a *bona fide* offering of goods or services in connection with the disputed domain name. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. There is no generic dictionary meaning of the disputed domain name that would justify the use that the Respondent's is making of it.

The disputed domain name was registered and is being used in bad faith. The disputed domain name is identical to the NFHS NETWORK mark. The Respondent selected the disputed domain name with an intent to create confusion to trade off the goodwill and reputation of the Complainant's mark.

B. Respondent

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

6. Discussion and Findings

6.1. Language of the Proceeding

Paragraph 11(a) of the Rules provides that "unless otherwise agreed by the Parties, or specified otherwise in

the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding". The Registrar confirmed that the Registration Agreement for the disputed domain name is in Chinese.

The Complainant requests that the language of the proceeding be English. Its main arguments are that: the disputed domain name is in English; the Respondent's website is hosted at an IP address owned by a provider whose terms of service and website are in English, from which it can be inferred that the Respondent understands that language; and translation of the Complaint into Chinese would cause undue delay and significant expense for the Complainant.

Paragraph 10(b) and (c) of the Rules requires the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties. See, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#); *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. ltd.*, WIPO Case No. [D2008-0293](#).

The Panel observes that in this proceeding the Complaint was filed in English. Despite the Center having sent the notification of the Complaint, the Written Notice of the Complaint, and an email regarding the language of the proceeding in both Chinese and English, the Respondent has not commented on the issue of language nor expressed any interest in otherwise participating in this proceeding. Therefore, the Panel considers that requiring the Complainant to translate the Complaint would create an undue burden and delay, whereas accepting it as filed without translation will not cause unfairness to either Party.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English. The Panel would have accepted a Response in Chinese, but none was filed.

6.2 Substantive Issues

Paragraph 4(a) of the Policy provides that a complainant must prove the following elements:

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

A. Identical or Confusingly Similar

Based on the evidence submitted, the Panel finds that the Complainant had registered rights in the NFHS NETWORK mark at the time when the Complaint was filed. That is sufficient to satisfy the standing requirement in the first element of paragraph 4(a) of the Policy.

However, due to the timing of the registration of the disputed domain name, the Panel will also consider the Complainant's claim to common law or unregistered rights in its NFHS NETWORK mark, which would be relevant also for the purposes of the discussion under the third element. The Panel begins by noting that, while "network" is a descriptive word, the combination of the acronym of the Complainant's name "NFHS" and that word is distinctive. According to archived screenshots provided by the Complainant, the website at "www.nfhsnetwork.com" has prominently displayed the NFHS NETWORK mark and made available live streaming and video content of an array of high school sports events since at least August 5, 2013, consistent with its claim of first use in commerce in its subsequent trademark registration. The Complainant has used the trademark since the inception of the network in 2013 to advertise and promote its network on Facebook, Twitter, Instagram, and YouTube, and it also has a LinkedIn account. The NFHS Network has

been available via an iOS mobile application for at least four years and via an Android mobile application for three years. It is also available on television applications for Roku, Amazon Fire, Google TV and Apple TV. The Complainant provides evidence showing that all top results of a Google search for “nfhs network” relate to the Complainant’s network. The Panel has verified, via a date-restricted search, that this would also have been true at the time of registration of the disputed domain name three years ago.¹ Based on this evidence, the Panel is satisfied that the Complainant has demonstrated that the name “NFHS Network” had become a distinctive identifier that consumers in the United States have associated with the Complainant and its network since some point after August 2013 and in any case before July 8, 2019. Therefore, the Panel is satisfied that the Complainant had common law rights in its NFHS NETWORK trademark for the purposes of the Policy before 2019. See [WIPO Overview 3.0](#), section 1.3.

The disputed domain name incorporates the NFHS NETWORK mark. It omits the space in the mark for technical reasons. The only additional element in the disputed domain name is a country code Top-Level Domain (“ccTLD”) suffix (“.co”) but, as a mere standard requirement of domain name registration, that element may be disregarded in the comparison between the disputed domain name and the NFHS NETWORK mark. See [WIPO Overview 3.0](#), section 1.11.

Therefore, the Panel finds that the disputed domain name is identical to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the panel, shall demonstrate that the respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

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

As regards the first and third circumstances set out above, the disputed domain name resolves to a landing page displaying PPC links to live video services that compete with those of the Complainant. The Complainant submits that it has not authorized or licensed the Respondent to use its mark. The disputed domain name is identical to the Complainant’s NFHS NETWORK mark, which carries a high risk of implied affiliation. The Respondent uses the disputed domain name for his own commercial gain, if he is paid to direct traffic to the linked websites, or the commercial gain of the operators of the linked websites, or both. In view of these circumstances, the Panel does not consider that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services, nor that he is making a legitimate noncommercial or fair use of the disputed domain name.

As regards the second circumstance set out above, the Respondent is identified in the Registrar’s Whois database as “Zhang Wei”, not the disputed domain name. There is no evidence that the Respondent has been commonly known by the disputed domain name.

¹ The Panel notes its general powers articulated *inter alia* in paragraphs 10 and 12 of the Rules and conducted a Google search for “nfhs network” with results restricted to those before the date of registration of the disputed domain name in order to verify the Complainant’s claim. The Panel considers this process of verification useful to assessing the case merits and reaching a decision. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.8.

In summary, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent failed to rebut that *prima facie* case because he did not respond to the Complaint.

Therefore, based on the record of this proceeding, the Panel finds that the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that certain circumstances shall be evidence of the registration and use of a domain name in bad faith. The fourth of these is as follows:

“(iv) by using the [disputed] domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent’s] web site 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 [the respondent’s] web site or location or of a product or service on [the respondent’s] web site or location.”

With respect to registration, the disputed domain name was registered before the Complainant applied for or obtained its trademark registration for NFHS NETWORK but after it acquired common law rights in that mark, for the reasons set out in section 6.2A above. The disputed domain name incorporates the NFHS NETWORK mark with no other additional element besides a ccTLD suffix. NFHS NETWORK is an arbitrary combination of the acronym of the Complainant’s name and the English word “network”. That combination appears to have no other meaning that as a reference to the Complainant’s high school sports network. The disputed domain name is almost identical to the Uniform Resource Locator (“URL”) of the Complainant’s NFHS NETWORK website, but for the omission of the final letter in “.com”. In view of all these circumstances, the Panel is persuaded that the Respondent was aware of the Complainant’s trademark when he registered the disputed domain name and targeted it in bad faith.

With respect to use, the Respondent uses the disputed domain name in connection with a website that displays PPC links to websites for services that compete with those of the Complainant. It appears designed to attract Internet users who mistype the URL of the Complainant’s NFHS NETWORK website and, in any event, by creating a likelihood of confusion with the Complainant’s NFHS NETWORK mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website. This use is intentional and either for the Respondent’s own commercial gain, if he is paid to direct traffic to other websites, or for the commercial gain of the operators of those websites, or both. In each scenario, these facts satisfy the requirements of paragraph 4(b)(iv) of the Policy. See *Express Scripts, Inc. v. Windgather Investments Ltd. / Mr. Cartwright*, WIPO Case No. [D2007-0267](#). Therefore, the Panel finds that the Respondent is using the disputed domain name in bad faith.

Accordingly, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has satisfied the third element in paragraph 4(a) 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 <nfhnetwork.co> be transferred to the Complainant.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: July 18, 2022