

ADMINISTRATIVE PANEL DECISION

NFX Capital Management, LLC v. Rana Yar
Case No. D2023-1276

1. The Parties

Complainant is NFX Capital Management, LLC, United States of America (“United States”), internally represented.

Respondent is Rana Yar, United States.

2. The Domain Name and Registrar

The disputed domain name <nfxvc.com> is registered with Gransy, s.r.o. d/b/a subreg.cz (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 23, 2023. On March 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 27, 2023, 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 (John Doe), and from the Respondent identified by reference to Annex 1 to the Complaint (Not Disclosed Not Disclosed, My Domain Provider), and contact information in the Complaint. The Center sent an email communication to Complainant on March 27, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on April 3, 2023.

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 Respondent of the Complaint, and the proceedings commenced on April 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 24, 2023. Respondent did not submit any response. However, two email communications were received from third party on April 4, 2023, stating: “Be advised that we are not the registrant,” and “Thank you for the added context. We have no relationship with the respondent and will not submit a response.” Accordingly, the Center notified the Commencement of Panel Appointment Process on April 25, 2023.

The Center appointed Gregory N. Albright as the sole panelist in this matter on May 1, 2023. 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

Complainant is a venture capital firm that invests in early-stage startups in the United States, Israel, South and Central America, and the United Kingdom. Complainant was originally founded by James Currier, Pete Flint, and Gigi Levy Weiss, who were Complainant's original general partners. Today Complainant has a total of five general partners and over USD1 billion of assets under management. Complainant is based in San Francisco, California and employs approximately 40 people.

Complainant has been using the NFX trademark or service mark continuously since at least March 2015.

Complainant owns the following registrations for its NFX mark:

- United Kingdom Trade Marks Registration No. UK00003366168, registered March 3, 2019.
- European Union Intellectual Property Office Registration No. 018003745, registered May 16, 2019.
- United States Patent and Trademark Office Registration No. 6,013,826, registered March 17, 2020.
- United States Patent and Trademark Office Registration No. 6,292,570, registered March 16, 2021.

The disputed domain name was registered on March 10, 2023. As elaborated upon below, the Complainant has provided evidence demonstrating that the disputed domain name has been used in connection with an email address whereby the emails impersonate the Complainant.

5. Parties' Contentions

A. Complainant

Complainant is the owner of the trademark or service mark registrations listed in Section 4 above.

Complainant asserts that it also uses the domain name <nfx.com> as the address for the website Complainant operates to promote its business, and Complainant began using that domain name in connection with its services before the disputed domain name was registered.

The disputed domain name is identical or confusingly similar to Complainant's mark. First, the ".com" portion of the disputed domain name must be disregarded when comparing it with a trademark to determine their confusing similarity. Second, the confusing similarity of the disputed domain name to Complainant's mark is not overcome merely by the addition of generic or dictionary terms. Complainant asserts that the addition of the letters "vc" to the disputed domain name does not alleviate confusion, because "vc" is likely meant to stand for "venture capital", and Complainant is a venture capital firm. Third, the disputed domain name incorporates the entirety of Complainant's NFX mark.

In addition, Respondent has used the disputed domain name in an attempt to defraud individuals into believing that Respondent is one of the Complainant's general partners and co-founders. Complainant submitted evidence of a post to Complainant's internal message boards from the CEO of one of Complainant's portfolio companies, in which he warns Complainant's other portfolio companies of "a pretty good phishing attempt" that was sent from the disputed domain name, and purported to be from one of the Complainant's general partners and co-founders. Complainant received numerous additional e-mails from its portfolio companies describing the same fraudulent scheme.

Complainant has adduced evidence of actual confusion, including email chains that show representatives of Complainant's portfolio companies were initially misled by Respondent's phishing scam.

Complainant asserts on information and belief that Respondent has never used "nfx" as part of a trademark, trademark, trade name or other trade symbol, or in a descriptive or informative manner to describe Respondent's goods or services, or any other entity's goods or services, or to comment thereon. Furthermore, "nfx" is not Respondent's personal name, and Respondent never made any preparations to use the disputed domain name or corresponding name in connection with a *bona fide* offering of goods or services before notice of this dispute. Respondent is not known by the designation "nfx" and, Complainant is informed and believes, Respondent owns no trademark registrations for NFX.

Respondent does not have any current business relations with Complainant, and Complainant has not consented to, licensed or authorized Respondent's use of Complainant's mark, whether in a domain name or otherwise. Complainant also has never acquiesced, expressly or impliedly, in the use or registration of the disputed domain name by Respondent.

Respondent registered and is using the disputed domain name in bad faith. First, Respondent registered the disputed domain name on March 10, 2023, long after Complainant's (a) first use of its mark, (b) registrations of the mark, and (c) first use of the <nfx.com> domain name. Respondent therefore registered the disputed domain name with at least constructive notice of Complainant's ownership of the NFX mark.

Respondent is also using the disputed domain name in bad faith, including as part of the phishing scam described above.

B. Respondent

Respondent did not reply to the Complainant's contentions. An ostensible third party sent an email in response to notice of the Complaint stating it would not submit a response to the Complaint.

6. Discussion and Findings

Paragraph 4(a) of the Policy requires Complainant to prove: (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; (ii) 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.

Paragraph 4(b) of the Policy elaborates some circumstances that shall be evidence of the registration and use of the disputed domain name in bad faith. Paragraph 4(c) sets out various circumstances which, if found by the Panel to be proved based on the evaluation of all the evidence presented, shall demonstrate that Respondent has rights or legitimate interests in the disputed domain name.

A. Identical or Confusingly Similar

Complainant has rights in the NFX mark, for which it owns registrations in the United States, the United Kingdom, and the European Union.

The disputed domain name incorporates the entirety of Complainant's mark.

The addition of "vc" to the disputed domain name does not, in the Panel's view, prevent confusing similarity between Complainant's mark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 1.8.

While not a replacement as such for the typical side-by-side comparison, panels may benefit from considering the broader case context to affirm confusing similarity. [WIPO Overview 3.0](#), section 1.7. Here,

Complainant has also submitted evidence of instances of actual confusion, in which Respondent deceived persons associated with Complainant's portfolio companies by sending numerous emails to them from the disputed domain. Actual confusion created by a phishing scam, using the disputed domain name, is compelling evidence of confusing similarity.

The Panel therefore finds that the disputed domain name is confusingly similar to the NFX mark.

The first element of paragraph 4(a) of the Policy is satisfied.

B. Rights or Legitimate Interests

"While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of 'proving a negative', requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element." [WIPO Overview 3.0](#), section 2.1.

Here, Complainant has made a *prima facie* case that Respondent does not have any rights or legitimate interests in respect of the disputed domain name. Complainant asserts that it has not given Respondent permission to use the NFX mark in any manner, including in domain names. Nor is there any evidence that "nfx" is Respondent's personal name, or that Respondent is known by, or has acquired any trademark rights in the disputed domain name. In addition, the nature of the disputed domain name carries a risk of implied affiliation. See section 2.5.1 of [WIPO Overview 3.0](#) ("Even where a domain name consists of a trademark plus an additional term (at the second- or top-level), UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner"). Complainant asserts, and the Panel finds, that the addition of "vc" to the NFX mark in the disputed domain name suggests that the disputed domain name is affiliated with Complainant's venture capital firm, in view of the fact that "vc" can be interpreted as an abbreviation for "venture capital". Respondent has not responded to the Complaint to dispute this point, or to otherwise assert any rights or legitimate interests in respect of the disputed domain name.

Lastly, given the use of the disputed domain name for a fraudulent email scheme whereby the Respondent has impersonated the Complainant, the Panel finds that such use can never confer rights or legitimate interests upon the Respondent. [WIPO Overview 3.0](#), section 2.13.

The second element of paragraph 4(a) of the Policy is satisfied.

C. Registered and Used in Bad Faith

The Panel finds sufficient evidence that Respondent registered the disputed domain name in bad faith. It may be inferred that Respondent registered the disputed domain name with knowledge of Complainant and its NFX mark because Complainant owns numerous registrations that pre-date Respondent's registration of the disputed domain name. In addition, including "vc" in the disputed domain name appears calculated to create a false impression of approval by, or affiliation with, Complainant, as discussed above in Section 6.B, particularly in light of the use of the disputed domain name to impersonate the Complainant.

Complainant has also shown that Respondent has used the disputed domain name in bad faith, as part of a fraudulent phishing scam, impersonating one of Complainant's founders. This is a clear-cut bad faith use and also concretely demonstrates the Respondent's awareness of and intentional targeting of the Complainant when registering and using the disputed domain name. See [WIPO Overview 3.0](#), section 3.1.4 ("use of a domain name for per se illegitimate activity such as the sale of counterfeit goods or phishing ... is manifestly considered evidence of bad faith").

The third element of paragraph 4(a) of the Policy is satisfied.

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 <nfxvc.com> be transferred to Complainant.

/Gregory N. Albright/

Gregory N. Albright

Sole Panelist

Date: May 15, 2023