

## ADMINISTRATIVE PANEL DECISION

NOMEN International v. Niklas Järvikare, Proaudit Oy  
Case No. D2024-0803

### 1. The Parties

The Complainant is NOMEN International, France, represented by Legi-Mark, France.

The Respondent is Niklas Järvikare, Proaudit Oy, Finland.

### 2. The Domain Name and Registrar

The disputed domain name <nomenagency.com> is registered with 1API GmbH (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 22, 2024. On February 22, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 23, 2024, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 23, 2024, 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 February 26, 2024.

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 February 27, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 18, 2024. The Respondent sent email communications to the Center on February 27, 2024, March 18, 2024, and March 19, 2024.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on March 22, 2024. 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 an entity based in France and asserts that it is “a well-known naming agency specialized in names creation”.

The Complainant states that it is the owner of two registered trademarks for the word mark NOMEN, namely French Registered Trademark Number 023157275, registered on April 3, 2002, in Classes 9, 16, 35, 38, 41, and 42, and European Union Registered Trademark Number 002873610, registered on March 2, 2005, in Classes 9, 16, 35, 36, 38, 41, and 42.

The Complainant produces a search engine result for “nomen” showing that its agency appears at the top of the listing. Neither the identity of the search engine concerned nor the URL of the page displayed is specified. Nevertheless, the Complainant states that this is an extract from the Google search engine, which seems correct given the presence of the distinctive microphone and camera (or image search) icons. The location from which the search was executed is not specified, although the top result is in French, suggesting that the search may have been executed in France. The second item in the listing also appears to reference the Complainant as it uses the domain name <nomen.com> which appears to be operated by the Complainant, based upon its contact details. This listing suggests that the Complainant may have localized websites for certain markets but provides no additional information. The third item in the listing is a “Wikipedia” page for the term “nomen” indicating that this has several meanings that do not reference the Complainant.

The disputed domain name was registered on September 14, 2023. A screenshot of the website associated with the disputed domain name produced by the Complainant dated February 13, 2024, is titled “Nomen Agency / Maximize the Value of Your Brand’s Name”. The screenshot shows an “About Us” statement on the homepage promoting the eponymous agency as “architects of digital success” who will “make your brand’s story unforgettable”.

The Respondent organization is a company registered in Finland. Although the Whois record lists an organization named “Proaudit Oy”, the Respondent states that it is named “Nomen Agency Oy”. The Respondent states that it primarily specializes in providing video and photography solutions to its clients.

#### **5. Parties’ Contentions**

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

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that it is a well-known agency specializing in names creation, and that the disputed domain name reproduces the Complainant’s trademark identically and offers identical or similar services. The Complainant also submits that no license or authorization has been granted to the Respondent to make any use of the Complainant’s trademarks or to apply for registration of the disputed domain name. The Complainant contends that as it is a leader in the field of names creation, the Respondent must have been aware of its existence when registering the disputed domain name for an identical or similar activity. The Complainant submits that Google results for the name “nomen” are linked to the Complainant and its activity, such that the Respondent could not be unaware of the Complainant’s existence or of its prior rights. The Complainant contends that the Respondent intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s marks.

## **B. Respondent**

The Respondent did not reply formally to the Complainant's contentions but it made a number of contentions in its email communication to the Center on February 27, 2024. Notably, the Respondent asserts that it is a duly registered company in Finland named Nomen Agency Oy and that it selected the disputed domain name to reflect this and to establish a consistent online presence. The Respondent contends that it was unaware of the Complainant and its activities before receiving the Complaint, adding that while both companies may be engaged in similar services, the Respondent primarily specializes in providing video and photography solutions to its clients. The Respondent states that it is open to making necessary adjustments to the information presented regarding its services and states that it acknowledges the importance of avoiding any confusion for Internet users.

In another email communication of March 18, 2024, the Respondent stated: "We did some changes on our website, so there should be no reason for confusion."

## **6. Discussion and Findings**

### **A. Identical or Confusingly Similar**

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here, "agency", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

### **B. Rights or Legitimate Interests**

The requirements of paragraph 4(a) of the Policy are conjunctive. A consequence of this is that failure on the part of a complainant to demonstrate one element of the Policy will result in failure of the complaint in its entirety. Accordingly, in light of the Panel's findings in connection with the third element under the Policy, no good purpose would be served by addressing the issue of the Respondent's rights or legitimate interests in the disputed domain name.

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

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The evidence in the case file as presented does not indicate that the Respondent's aim in registering the disputed domain name was to profit from or exploit the Complainant's trademark.

The issue in the present case turns on the question of whether the Respondent knew of the Complainant and/or its mark when it registered the disputed domain name and whether, in such knowledge, it then proceeded with such registration in order to target the Complainant's rights unfairly. There is insufficient evidence before the Panel demonstrating that the Respondent might have had any such knowledge at the material time. The only evidence before the Panel from which such knowledge might be inferred is the Complainant's Google search for the term "nomen", showing the Complainant's presence in the first two results. The remainder of the Complainant's case is based entirely upon conclusory allegations that it or its mark are well-known, which are not supported in the record by any other evidence.

The Panel is not prepared to find, on the balance of probabilities, that the Respondent had prior knowledge of and targeted the Complainant's rights when it registered the disputed domain name on the strength of the Complainant's Google search alone. First, the search is not dated. Secondly, there is no indication of where the search was executed, it being well understood that this particular search engine endeavors to localize search results for maximum relevance. Thirdly, there is evidence even within the search result itself, from the third entry, that the term "nomen" has a variety of ordinary meanings such that it is not exclusively referable to the Complainant's name or mark.

Had the Complainant been able to show the date of its search and the fact that it had been able to suppress localization (for example, by executing the search via a proxy server based in the Respondent's location and by restricting the results in time to the point where the disputed domain name was created) the Panel would have been able to afford it greater weight and materiality in its assessment on this topic. Nevertheless, the Panel's own Google search for "nomen" (which might well be similarly localized) does not show the Complainant's presence in the first results but considerably further down the page, after multiple dictionary definitions of the term as a German and Latin word.<sup>1</sup> Equally, the Complainant might have provided other suitable evidence of its alleged fame including, for example, independent evidence of the extent and reach of its Internet presence, such that the Respondent's knowledge could readily have been inferred. Finally, there is no evidence before the Panel tending to suggest that the Respondent's agency is not a genuine business but is rather a pretext for cybersquatting. This is a matter that the Complainant could have researched, given the existence of an apparently trading business at the website associated with the disputed domain name. The Complainant could also have researched any apparent discrepancy between the organization listed on the Whois record for the disputed domain name and the organization named by the Respondent, "Nomen Agency Oy".

The Panel is conscious of the fact that both of the Parties are, or claim to be, branding agencies. The Panel is aware from its own knowledge (supported to an extent by the third entry on the Complainant's search result) that the term "nomen" is the Latin word for "name". It would also appear to be the German word for "noun". Given these facts, it is perhaps an apt term for a branding agency such as the Respondent's alleged agency, and is one that it might plausibly have chosen independently of any knowledge of the Complainant or its mark. These facts on their own lend some support or credibility to the Respondent's denial of knowledge, in the absence of sufficient countervailing evidence of the Complainant's fame from which such knowledge might reasonably be inferred.

On the basis of the present record, the Panel considers that the Parties most likely have competing interests in the name "nomen". The Policy is limited in scope, and is designed to address cybersquatting rather than to act as a general domain name court addressing such competing interests (see: *The Thread.com, LLC v. Jeffrey S. Poploff*, WIPO Case No. [D2000-1470](#)). That said, the Panel has not overlooked the fact that the Complainant and the Respondent appear to be in a very similar, if not identical, line of business, and that the Complainant is the owner of a prior registered trademark for the NOMEN mark which has effect across the European Union, including in Finland where the Respondent is based. The Panel notes that whether the

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<sup>1</sup>The Panel considered it helpful to its decision in the present case to reproduce the Complainant's search. On the topic of a panel conducting such independent research of publicly available sources, see section 4.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Complainant could make out any case of trademark infringement against the Respondent in a competent forum is a separate inquiry outside the scope of this proceeding (see, for example, *Papa Gyros, Inc. v. Registration Private, Domains By Proxy, LLC / GEORGIOS BATSIOS*, WIPO Case No. [D2022-2256](#)). Although there may be some conceptual overlap, trademark infringement and abusive registration of domain names under the Policy are not always the same thing (see *Delta Air Transport NV (trading as SN Brussels Airlines) v. Theodule De Souza*, WIPO Case No. [D2003-0372](#)).

The Policy requires a complainant to prove, on the balance of probabilities, bad faith intent to target a trademark on the part of a respondent, and the Panel finds that the Complainant in the present case has not carried that burden.

The Panel finds the third element of the Policy has not been established.

## **7. Decision**

For the foregoing reasons, the Complaint is denied.

*/Andrew D. S. Lothian/*

**Andrew D. S. Lothian**

Sole Panelist

Date: April 5, 2024