

ADMINISTRATIVE PANEL DECISION

NTT Docomo, Inc. v. Nuno Oliveira
Case No. D2024-2656

1. The Parties

The Complainant is NTT Docomo, Inc., Japan, represented by Amino & Associates, Japan.

The Respondent is Nuno Oliveira, Portugal.

2. The Domain Name and Registrar

The disputed domain name <nwxgame-docomo.net> is registered with Dynadot Inc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 28, 2024. On June 28, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 2, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 2, 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 July 5, 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 July 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 5, 2024. The Respondent submitted a Response on July 30, 2024.

The Center appointed Steven A. Maier as the sole panelist in this matter on August 13, 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 a mobile communications provider, headquartered in Japan.

The Complainant (or its parent company, Nippon Telegraph and Telephone Corporation) is the owner of numerous registrations for the trademark DOCOMO in various jurisdictions around the world. Those registrations include, for example:

- Japan trademark registration number 2639494 for the word mark DOCOMO, registered on March 31, 1994 in numerous International Classes; and
- European Union trademark registration number 006135818 for the word mark DOCOMO, registered on June 19, 2008 in International Classes 9, 38, and 42.

The Complainant operates an official website at “www.docomo.ne.jp”. It is the owner of other domain names including <docomo.biz> and <docomo.info> and states that, while it does not own the domain name <docomo.com>, it has an agreement with the owner of that domain name to redirect all traffic to the Complainant’s official website.

The Complainant provides evidence that one of its subsidiary companies originally registered the disputed domain name in June 2011. It provides further evidence that, in February 2012, that domain name resolved to a website promoting a handheld video game named “PS Vita” for the Sony PlayStation platform, which included the text “PS VITA x NTT DOCOMO”.

According to the Whois record, the disputed domain name was registered on September 15, 2021. However, the Respondent states (although without any supporting evidence) that he acquired the disputed domain name on October 21, 2023 via an expired domain names auction.

The Complainant provides evidence that the disputed domain name has resolved to a black screen containing only the text “nwxgame-docomo.net Login”. The Complainant provides further evidence that clicking on that text has redirected users to pages promoting the purchase of domain names and websites generally and inviting enquiries, although making no reference to the disputed domain name specifically.

5. Parties’ Contentions

A. Complainant

The Complainant submits that it is Japan’s leading mobile communications company, with 87.49 million mobile phone contracts in 2022, representing 43.1 percent of the market. It states that its group revenue in 2022 was approximately JPY 6.069 trillion. It submits that it has branches in the United States of America, Germany, the United Kingdom and various countries in Asia, and that its DOCOMO trademark had a high level of recognition at the date the disputed domain name was registered, which continues today.

The Complainant submits that the disputed domain name is confusingly similar to its trademark DOCOMO. It contends in particular that the disputed domain name incorporates its DOCOMO trademark in full. It submits that the additional elements, comprising the letters “nwx” and the word “game”, has no particular significance and does not affect the distinctiveness of the relevant trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It states that it has no relationship with the Respondent and has never authorized it to use its DOCOMO trademark, that the Respondent has not commonly been known by the disputed domain name and that the Respondent is making neither bona fide commercial use nor legitimate noncommercial or fair use of the disputed domain name.

The Complainant contends that the Respondent has adopted the disputed domain name, which was owned and operated by the Complainant itself between at least February 2012 and November 2017, and cannot have been unaware of the Complainant's business and trademark rights.

The Complainant submits that the Respondent's offer to sell the disputed domain name cannot be regarded as a legitimate use of the disputed domain name, and that it should be inferred instead that the Respondent intends to sell the disputed domain name for a profit.

The Complainant submits that the disputed domain name was registered and has been used in bad faith. The Complainant repeats that the Respondent must be assumed to have been aware of the Complainant's prior ownership and use of the disputed domain name. The Complainant contends that the Respondent has no connection with the Complainant's trademark and has provided no explanation for its acquisition of the disputed domain name. The Complainant submits that it must be inferred that the Respondent intended unfairly to benefit from the Complainant's goodwill, in particular, by redirecting Internet users who expect to find the Complainant's website to the Respondent's website, where the disputed domain name is offered for sale.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

The Respondent states that he is a manager and broker of generic domain names.

The Respondent submits that he purchased the disputed domain name through an expired domain name auction held by Dynadot on October 23, 2021. The Respondent provides an order number, but exhibits no documentary evidence of the purchase.

The Respondent submits that he had never heard of the Complainant's trademark DOCOMO, which he contends is not a trademark that is known worldwide. He states that the Complainant's business has never been promoted in his country. He states that he purchased the disputed domain name because games are one of his areas of interest, and that the term "docomo" meant nothing to him other than being a "generic 6 words [sic] name".

The Respondent submits that the disputed domain name has resolved only to an empty black page with a login link. He states that the login link resolved to an "under construction" page which did not relate to the buying or selling of domain names (again the Respondent produces no documentary evidence in this regard). The Respondent submits that the disputed domain name has never been offered for sale, has never hosted any content, and has produced zero revenue.

The Respondent submits that the Complaint does not fulfil the requirements of the UDRP and seeks a finding of Reverse Domain Name Hijacking ("RDNH") against the Complainant.

6. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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

The Complainant has established that it is the owner of registered trademark rights in the mark DOCOMO. The disputed domain name wholly incorporates that trademark, preceded by the term “nwxgame” and a hyphen. The Panel does not consider that these additional elements prevent the Complainant’s trademark from being recognizable within the disputed domain name.

The Panel therefore finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

It is well-established under the UDRP that the mere registration of a domain name does not give rise to rights or legitimate interests in respect of it. However, a dealer in domain names (or “domainer”) may be able to establish rights or legitimate interests in a domain name that he offers for sale in the course of his business, subject to the conditions that the domain name comprises a dictionary or otherwise “generic” term (e.g. an acronym or string of letters), and that the domainer is offering the domain name for legitimate use in connection with that dictionary or generic term, and not for the purpose of targeting a third-party trademark.

A respondent may also be able to establish rights or legitimate interests in a domain name where it can provide evidence of a “credible pre-complaint website corresponding to a dictionary meaning” of the domain name in question (see section 3.1.1 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”)).

In this case, the Panel does not consider the Complainant’s trademark DOCOMO to comprise a dictionary (or in any other manner a generic) term. On the evidence available, the Panel finds that trademark to be distinctive and to be widely recognized within the field of mobile telecommunications as identifying the Complainant. Moreover, a simple Google search against the term “docomo” undertaken by the Panel produces results that refer overwhelmingly to the Complainant and do not indicate any other common use of that term, whether in commerce or otherwise.

The Respondent submits that it acquired the disputed domain name as it combined the term “game” with a generic six-letter term. The Panel does not find that explanation to be credible, noting inter alia the composition of the disputed domain name wholly incorporating the Complainant’s mark, while separated from the other textual components of the disputed domain name by a hyphen. Nor has the Respondent otherwise indicated any evidence of rights or legitimate interests on its part in the disputed domain name, whether in the circumstances contemplated by paragraph 4(c) of the Policy or otherwise. On the contrary, for the reasons set out further below, the Panel finds on balance that the Respondent acquired the disputed domain name for the purpose of targeting the Complainant’s trademark rights. Moreover, in these circumstances the resolution of the disputed domain name to a blank “Login” page redirecting to an under construction page, on its own, is not indicative of any rights or legitimate interests for the purposes of the Policy.

The Panel therefore finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The Respondent states that he was unaware of the Complainant’s trademark DOCOMO at the time he registered the disputed domain name, and had no reason to be aware of it given the geographical use of that trademark. However, as observed in section 3.2.3 of [WIPO Overview 3.0](#):

“Panels have held that especially domainers undertaking bulk purchases or automated registrations have an affirmative obligation to avoid the registration of trademark-abusive domain names.”

In this case, the Respondent claimed the acquisition of the disputed domain name involved a specific (and therefore not even bulk) purchase of a domain name, which he knew to have been previously owned and expired. He provides no credible explanation for his registration of a domain name including the term “nwx” and/or the Complainant’s DOCOMO trademark, and the Panel considers it improbable that he carried out no due diligence on a distinctive, expired domain name for which he was bidding at auction. The Panel finds in any event that the Respondent was, or ought to have been, aware of the Complainant’s trademark DOCOMO at the date he acquired the disputed domain name, and that he acquired the disputed domain name in an opportunistic attempt to benefit from the goodwill attaching to that trademark.

Given the distinctive nature of the Complainant’s DOCOMO trademark, the Panel considers the disputed domain name to be inherently misleading, as being likely to confuse Internet users into believing that it is owned or operated by, or otherwise commercially affiliated with the Complainant. In these circumstances, the Panel finds it difficult to conceive of any legitimate use that the Respondent could make of the disputed domain name without the Complainant’s authorization.

The Panel accepts that the disputed domain name has resolved to a black page including only a “Login” link and that the Respondent did not directly offer the disputed domain name for sale. However, the links exhibited by the Complainant clearly imply that the disputed domain name was available for purchase and, in any event, even the passive holding of a domain name does not preclude a finding of bad faith where the overall circumstances of the case point to such a finding (see section 3.3 of [WIPO Overview 3.0](#)). Relevant factors in this regard include the composition of the disputed domain name and implausibility of any good faith use to which the disputed domain name could be put.

The Panel therefore finds that the disputed domain name has been registered and is being used in bad faith.

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 <nwxgame-docomo.net> be transferred to the Complainant.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: August 27, 2024