

ADMINISTRATIVE PANEL DECISION

Nalli Chinnasami Chetty v. Write Or, Detonator
Case No. D2024-3107

1. The Parties

The Complainant is Nalli Chinnasami Chetty, India, represented by DePenning & DePenning, India.

The Respondent is Write Or, Detonator, United States of America (“US”).

2. The Domain Name and Registrar

The disputed domain name <nalliwally.com> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 30, 2024. On July 31, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 12, 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 (Contact Privacy Inc. Customer 0170525025) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 13, 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 August 14, 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 August 19, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 8, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 10, 2024.

The Center appointed Mihaela Maravela as the sole panelist in this matter on September 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

According to information in the Complaint, the Complainant is a company established in 1928 and headquartered in India, doing business in the field of manufacturing and marketing various goods such as clothing and readymade garments, fashion accessories, textile goods etc., under the trademark NALLI.

The Complainant is the holder of a number of trademarks for NALLI, including the US trademark No. 2444608 for NALLI registered on April 17, 2001, for classes 24 and 25. The Complainant is also the owner of the domain name <nalli.com>, registered on April 28, 1998, which it uses as its official website, and owns numerous other domain names incorporating its NALLI trademark.

The disputed domain name was registered on March 8, 2024, and before the Complaint, it resolved to a website offering for sale various products for home decoration, displaying NALLI. At the date of this Decision, the disputed domain name resolves to an inactive Shopify web page.

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 the disputed domain name is confusingly similar to its trademark NALLI, by comparison, be it aural, visual or structural.

As regards to the second element, the Complainant argues that it has not licensed or otherwise permitted the Respondent to use their trademark NALLI or to apply for any domain name incorporating the said trademark. Given the similarity between the disputed domain name and the Complainant's trademark, the Complainant submits that the purpose of the Respondent's registration of the disputed domain name is to misappropriate the reputation of the Complainant's trademark.

With respect to the third element, the Complainant contends that, taking into account the well spread reputation and goodwill, incessant use and registration of the Complainant's trademark NALLI in India and foreign jurisdictions, the Respondent ought to have had constructive notice of the Complainant's rights in the trademark NALLI. The website at the disputed domain name displays the Complainant's trademark NALLI and not "nalliwally", which establishes the fact that the Respondent by registering the disputed domain name is trying to usurp the Complainant's reputed trademark NALLI in bad faith. The Respondent's use of the disputed domain name is bound to induce Internet users to believe that either the Complainant has ventured into optical technology, modern lightning solutions, and portable audio device business or that the Respondent has a trade connection, association, relationship with the Complainant or approval of the Complainant, when it is not so.

B. Respondent

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

6. Discussion and Findings

Although properly notified, no response has been received from the Respondent in this case. Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules. The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.2.

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (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

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 3.0](#), section 1.7.

The Complainant has shown rights in respect of the trademark NALLI 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, "wally") 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 agrees that the Top-Level Domain ("TLD") ".com" is disregarded in the confusing similarity test, as it does not form part of the comparison as it is a standard registration requirement for technical reasons. [WIPO Overview 3.0](#), section 1.11.1.

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

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

There is no evidence showing that the Respondent holds any rights for NALLI trademarks. The Panel also notes that there is no evidence showing that the Respondent is authorized or licensed to use the trademark NALLI.

Further, there is no evidence of 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. According to the un rebutted evidence provided with the Complaint, the disputed

domain name resolved to a website offering for sale various products for home decoration, displaying the trademark NALLI. It also displayed a copyright sign with NALLI, without any disclaimer as to the lack of any relationship with the Complainant. The Panel finds that such use of the disputed domain name cannot amount to a bona fide offering of goods and services or a legitimate noncommercial or fair use.

At the date of the Decision, the disputed domain name resolves to an “under construction” Shopify page indicating that “this store is currently unavailable”. The Panel considers that the use of the disputed domain name to resolve to a landing page for an inactive Shopify webpage does not represent a bona fide offering of goods or services, or a legitimate noncommercial or fair use, given the substantial reputation and goodwill of the Complainant’s trademark or capacity to otherwise mislead Internet users.

Also, there is no evidence that the Respondent is commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy.

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

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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

According to the unrebutted assertions of the Complainant, its NALLI trademarks were widely used in commerce well before the registration of the disputed domain name and are reputed. The disputed domain name is confusingly similar with the Complainant’s trademarks. The website to which the disputed domain name resolved displayed the trademark NALLI. Given the long use of the Complainant’s trademark, the Panel considers that the Respondent more likely than not knew that the disputed domain name included the Complainant’s trademark when registering the disputed domain name. Registration of the disputed domain name in awareness of the reputed NALLI mark and in the absence of rights or legitimate interests in this case amounts to registration in bad faith.

As regards to the use of the disputed domain name, from the evidence submitted by the Complainant and not rebutted by the Respondent, it results that the disputed domain name resolved to a website displaying the Complainant’s NALLI trademark without authorization from the Complainant. Such use creates a false impression of an association with the Complainant. As the Respondent is not authorized by the Complainant to use the Complainant’s trademarks and is not associated with the Complainant in any way, such use is in bad faith. Accordingly, noting the circumstances and without the assistance of a Response, the Panel finds it likely that the Respondent has registered the disputed domain name with the intention of taking advantage of the fame and reputation of the Complainant’s trademark for the commercial benefit of the Respondent.

The disputed domain name currently resolves to a landing page for an inactive Shopify webpage. Panels have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the reputation of the Complainant’s trademark, and the composition of the disputed domain name, and lack of a response from the Respondent and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

The Panel finds that the Complainant has established the third element 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 <nalliwally.com> be transferred to the Complainant.

/Mihaela Maravela/

Mihaela Maravela

Sole Panelist

Date: September 23, 2024