

ADMINISTRATIVE PANEL DECISION

GROUPE NOCIBE v. stenio lima

Case No. D2024-4535

1. The Parties

The Complainant is GROUPE NOCIBE, France, represented by SCP Deprez, Guignot et Associés, France.

The Respondent is stenio lima, Brazil.

2. The Domain Name and Registrar

The disputed domain name <nocibeparfumerie.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 5, 2024. On November 5, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 6, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 6, 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 November 8, 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 November 13, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 3, 2024. The Respondent sent an email communication to the Center on November 19, 2024.

The Center appointed Alistair Payne as the sole panelist in this matter on December 17, 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 French perfume and cosmetics retailer founded in Lille in 1984. Subsequently it became a subsidiary of the German Douglas Holding group and is now highly ranked in the European selective perfume market. It has approximately 15 million retail customers and over 60 million visitors to its website at <nocibe.fr>, NOCIBE is one of the leaders in the selective distribution of perfumes and cosmetics offering over 600 perfume brands and 30,000 stock keeping units.

The Complainant owns various registrations for its NOCIBE trade mark including: International trade mark registration number 682885 for NOCIBE registered on filed on October 24, 1997 in various jurisdictions throughout the world, including Benelux, Switzerland, Austria, Germany, Italy, Poland, Portugal, Spain; and French trade mark registration number 96643502 for NOCIBE registered on March 14, 1997.

The disputed domain name was registered on September 5, 2024, and as evidenced in the Complaint, as well as at the date of this decision, resolves to a webpage that appears to have a link to “Shopify” and which features the legend “Sorry this store is currently unavailable”.

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 owns registered trade mark rights for its NOCIBE trade mark in various jurisdictions as noted above and that the disputed domain name wholly incorporates its mark and is therefore confusingly similar to it and that the addition of the descriptive term “parfumerie” does not prevent a finding of confusing similarity.

The Complainant submits that its registered trade mark rights precede the registration of the disputed domain name by many years and that such use has never been authorised by the Complainant. It says that the disputed domain name carries a risk of implied affiliation and gives the impression that the website to which it resolves, either offers, or will some day offer, services related to the marketing of perfumes which are identical to the Complainant’s field of activity and linked to the Complainant. This, says the Complainant, cannot amount to a bona fide offering of goods or services, or to a legitimate noncommercial or fair use of the disputed domain name. According to the Complainant, in these circumstances, the Respondent does not have any right or legitimate interest to use the trade mark NOCIBE or any variation of it.

The Complainant submits that the disputed domain name is composed entirely of the Complainant’s well-known trade mark NOCIBE, placed before the generic term “parfumerie”, and re-directs to a website resolving to a hosting provider parking page stating “Sorry, this store is currently unavailable”. It says that it is clear that the Respondent has intended to capitalise on confusion between the disputed domain name and the NOCIBE trade mark and has aimed to mislead Internet users into believing there is a form of association between the Respondent and the Complainant when there is not. It says that even though the disputed domain name does not resolve to an active website, the disputed domain name is nonetheless being “used” in bad faith under the doctrine of passive holding. Moreover, says the Complainant, the fact that the Respondent used a domain privacy company to hide its true identity is additional evidence of the Respondent’s bad faith.

B. Respondent

The Respondent did not formally reply to the Complainant's contentions. However, on November 19, 2024, the Respondent sent an email confirming that the disputed domain name has remained unused and inactive since registration, and offering to transfer the disputed domain name upon mutually agreed settlement terms.

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 trade mark 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 trade mark 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, "parfumerie") 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

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.

The Complainant has submitted that its registered trade mark rights precede the registration of the disputed domain name by many years and that the use of this mark in the disputed domain name has never been authorised by the Complainant. It has asserted that the disputed domain name carries a risk of implied affiliation and gives the impression that the website to which it resolves, either offers, or will some day offer, services related to the marketing of perfumes which are identical to the Complainant's field of activity and linked to the Complainant. The Complainant has asserted that this cannot amount to a bona fide offering of goods or services, or to a legitimate noncommercial or fair use of the disputed domain name and that in the circumstances the Respondent does not have any right or legitimate interest to use the trade mark "NOCIBE" or any variation of it.

Having reviewed the available record and for the reasons noted in Part C below, 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.

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.

The disputed domain name was registered in September 2024, many years after the registration of the Complainant's trade mark for NOCIBE and by which time the Complainant had developed a very substantial international business such that its NOCIBE business is, according to the Complainant, considered a leader in the selective distribution of perfumes and cosmetics, including through its website at <nocibe.fr>. In these circumstances and considering the distinctive nature of the NOCIBE mark it seems more than likely that the Respondent, even based in Brazil, was aware of the Complainant and of its NOCIBE mark when it registered the disputed domain name.

Panels have found that the non-use of a domain name (including a blank or "coming soon" page of the kind in this case) 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 distinctiveness of the NOCIBE trade mark, the substantial reputation that the Complainant appears to have developed in connection with this mark, its wholesale incorporation (with a related descriptive term) into the disputed domain name, the Respondent's use of a privacy service to hide its real identity, and the implausibility of the Respondent (who has failed to explain its conduct) seeking to use the disputed domain name for bona fide purposes. Accordingly, the Panel 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 <nocibeparfumerie.com> be transferred to the Complainant.

/Alistair Payne/

Alistair Payne

Sole Panelist

Date: December 31, 2024