

ADMINISTRATIVE PANEL DECISION

Nuss Truck Group Inc. d/b/a Nuss Truck & Equipment v. Privacy Service
Provided by Withheld for Privacy ehf / Chris Banks
Case No. D2022-1191

1. The Parties

The Complainant is Nuss Truck Group Inc. d/b/a Nuss Truck & Equipment, United States of America (“United States” or “US”), represented by Nilan Johnson Lewis, PA, United States.

The Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / Chris Banks, Australia.

2. The Domain Name and Registrar

The disputed domain name <nussgroups.com> (the “Disputed Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 5, 2022. On April 6, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On April 6, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on April 20, 2022 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 April 25, 2022.

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 April 26, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 16, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 19, 2022.

The Center appointed Nick J. Gardner as the sole panelist in this matter on June 1, 2022. 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 Panel accepts the following facts as asserted by the Complainant as being true. The Complainant is a US company. It is a Minnesota based heavy truck and equipment dealer specializing in Mack and Volvo sales. It has been family owned and has, via predecessor businesses, operated since 1959, when it opened its first Mack dealership in Rochester, Minnesota. Today, it operates nine dealerships across the states of Minnesota and Wisconsin, including in Burnsville, Duluth, Eau Claire, East Bethel, Mankato, Monticello, Rochester, Roseville, and St. Cloud.

The Complainant was incorporated as Nuss Truck Group Inc. on or about February 14, 2003. The Complainant operated under the "Nuss Truck Group" name until December 10, 2008, when it rebranded as "Nuss Truck & Equipment." Since December of 2008, the Complainant has used "Nuss Truck & Equipment," "Nuss Group" and a logo comprising the letter "N" and the words "Nuss Truck & Equipment" to advertise its goods and services. These names and logo are referred to in this decision as the "NUSS trademarks". It uses a website linked to the domain name <nussgrp.com> to promote its business.

In the past five years, the Complainant has spent over USD 5,000,000 on advertising and promotion under the NUSS trademarks, including in print, online, and in social media. During that same five-year period, the Complainant's total sales exceeded USD 275,000,000 annually. The Complainant has received various awards and media recognition. For example in 2017, the Complainant was named the American Truck Dealer of the Year by the National Automotive Dealer Association for its dealership performance, industry leadership, and civic contributions.

The Disputed Domain Name was registered on July 29, 2021. The filed evidence clearly shows that it has been used for the fraudulent impersonation of the Complainant. Emails using the Disputed Domain Name have been used in attempts to commit fraud on innocent customers and as least some customers were defrauded.

5. Parties' Contentions

A. Complainant

The Complainant's contentions can be summarized as follows.

The Disputed Domain Name is confusingly similar to the Complainant's NUSS trademarks in respect of which it has unregistered rights given the scale of its activities under those trademarks.

The Respondent has no rights or legitimate interests in the term "NUSS" or "NUSS GROUP" or "NUSSGROUPS".

The Disputed Domain Name was registered and is being used in bad faith. The Complainant says the use of the Disputed Domain Name in connection with manifestly fraudulent activity is clear evidence of bad faith. It says the Respondent's motive was dishonest financial gain.

B. Respondent

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

6. Discussion and Findings

Preliminary Matters

The Panel notes that no communication has been received from the Respondent. However, given the Complaint and Written Notice were sent to the relevant addresses disclosed by the Registrar, the Panel considers that this satisfies the requirement in paragraph 2(a) of the UDRP Rules to “employ reasonably available means calculated to achieve actual notice”. Accordingly, the Panel considers it is able to proceed to determine this Complaint and to draw inferences from the Respondent’s failure to file any Response. While the Respondent’s failure to file a Response does not automatically result in a decision in favor of the Complainant, the Panel may draw appropriate inferences from the Respondent’s default (see, e.g., *Verner Panton Design v. Fontana di Luce Corp*, WIPO Case No. [D2012-1909](#)).

The Panel also notes this is a case where one Respondent (“Privacy Service Provided by Withheld for Privacy ehf”) appears to be a privacy or proxy service.

The Panel in this case adopts the approach of most UDRP panels, as outlined in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) at section 4.4.5, as follows:

“Panel discretion

In all cases involving a privacy or proxy service and irrespective of the disclosure of any underlying registrant, the appointed panel retains discretion to determine the respondent against which the case should proceed.

Depending on the facts and circumstances of a particular case, e.g., where a timely disclosure is made, and there is no indication of a relationship beyond the provision of privacy or proxy registration services, a panel may find it appropriate to apply its discretion to record only the underlying registrant as the named respondent. On the other hand, e.g., where there is no clear disclosure, or there is some indication that the privacy or proxy provider is somehow related to the underlying registrant or use of the particular domain name, a panel may find it appropriate to record both the privacy or proxy service and any nominally underlying registrant as the named respondent.”

In the present case the Panel considers the substantive Respondent to be Chris Banks and references to the Respondent are to that person.

Substantive Matters

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

- (i) the Disputed Domain Name is identical with 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 Panel finds the Disputed Domain Name is confusingly similar to the NUSS trademarks. The Panel finds that the Complainant has unregistered trademark rights in the NUSS trademarks in connection with its business activities. . WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) addresses this issue as follows:

“1.3 What does a complainant need to show to successfully assert unregistered or common law trademark rights?”

To establish unregistered or common law trademark rights for purposes of the UDRP, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant's goods and/or services.

Relevant evidence demonstrating such acquired distinctiveness (also referred to as secondary meaning) includes a range of factors such as (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (*e.g.*, consumer, industry, media) recognition, and (v) consumer surveys.

(Particularly with regard to brands acquiring relatively rapid recognition due to a significant Internet presence, panels have also been considering factors such as the type and scope of market activities and the nature of the complainant's goods and/or services.)

Specific evidence supporting assertions of acquired distinctiveness should be included in the complaint; conclusory allegations of unregistered or common law rights, even if undisputed in the particular UDRP case, would not normally suffice to show secondary meaning. In cases involving unregistered or common law marks that are comprised solely of descriptive terms which are not inherently distinctive, there is a greater onus on the complainant to present evidence of acquired distinctiveness/secondary meaning.”

In the present case given the evidence (see factual background above) the Panel concludes that the Complainant has established that its name and associated logo have acquired the distinctiveness necessary to satisfy this requirement and amounts to a trademark in which it has rights.

There is no evidence that the word “NUSS” has any meaning apart from in relation to the Complainant and its inclusion in the Disputed Domain Name was manifestly not coincidental. The Disputed Domain Name simply adds an “s” to what is in substance the Complainant's name. As such it is confusingly similar to the NUSS trademarks and was clearly chosen by the Respondent for precisely that reason.

It is well established that the Top-Level-Domain (“TLD”), in this case “.com”, does not affect the Disputed Domain Name for the purpose of determining whether it is identical or confusingly similar. See, for example, *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. [D2000-0429](#).

Accordingly, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's trademark and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a domain name:

(i) before any notice to the respondent of the dispute, use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) the respondent has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

None of these apply in the present circumstances. The Complainant has not authorised, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use the NUSS trademarks. The Complainant has prior rights in the NUSS trademarks which precede the Respondent's registration of the Disputed Domain Name. The Complainant has therefore established a *prima facie* case that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Name (see, for example, *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

The Panel finds that the Respondent has failed to produce any evidence to establish his rights or legitimate interests in the Disputed Domain Name. Accordingly, the Panel finds the Respondent has no rights or any legitimate interests in the Disputed Domain Name and the second condition of paragraph 4(a) of the Policy has been fulfilled.

C. Registered and Used in Bad Faith

In the present circumstances the fact that the Disputed Domain Name was used in relation to emails which impersonated the Complainant and which were fraudulent in nature leads the Panel to conclude the registration and use were in bad faith.

Under paragraph 4(b) of the Policy a non-exhaustive list of factors evidencing registration and use in bad faith comprises:

- (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.

In the present circumstances, the Panel agrees with the Complainant that factor (iv) applies, as the Respondent is engaged in fraud which relies on confusion with the Complainant's mark and is with a view to dishonest financial gain. This is manifestly indicative of bad faith as has been held in many previous decisions under the Policy – see for example *Nordic Waterproofing AB v. Contact Privacy Inc. Customer 1245905149 / Name Redacted*, WIPO Case No. [D2020-0217](#). The Panel also notes that the Respondent has not filed a Response and hence has not availed himself of the opportunity to present any case of good faith that he might have. The Panel infers that none exists.

Accordingly, the Panel finds that the Disputed Domain Name has been registered and is being used in bad faith and the third condition of paragraph 4(a) of the Policy has been fulfilled

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 <nussgroups.com> be transferred to the Complainant.

Nick J. Gardner

Nick J. Gardner

Sole Panelist

Date: June 14, 2022