

ADMINISTRATIVE PANEL DECISION

Nordstrom, Inc, and NIHC, Inc v. Domain Administrator, See
PrivacyGuardian.org / Kas Is
Case No. D2022-1818

1. The Parties

The Complainants are Nordstrom, Inc, and NIHC, Inc, United States of America (“United States”), represented by The GigaLaw Firm, Douglas M. Isenberg, Attorney at Law, LLC, United States.

The Respondent is Domain Administrator, See PrivacyGuardian.org, United States / Kas Is, United Kingdom.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 20, 2022. On May 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 20, 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 May 23, 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 amendment to the Complaint on May 24, 2022.

The Center verified that the Complaint together with the amendment to the 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 May 25, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 14, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 15, 2022.

The Center appointed Alistair Payne as the sole panelist in this matter on June 21, 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 Complainant is a leading United States based fashion retailer that was founded in 1901 and is a publicly traded company on the New York Stock Exchange. It operates more than 350 stores including online through its “Nordstrom” and Nordstrom Rack” websites and in the 2014 – 2018 period expanded into Canada and Puerto Rico. It owns numerous trade mark registrations for its NORDSTROM mark, including in particular United States trade mark registration number 1281000 registered on June 5, 1984. It owns numerous domain names that incorporate the NORDSTROM mark including <nordstrom.com> registered in 1999 and from which it operates one of its main websites and also the domain name <mynordstrom.com>. The Complainant uses this latter domain name in connection with a non-public closed site for its employees to provide them with administrative and employment related information.

The disputed domain name was first registered on July 28, 2019, and was subsequently “updated” according to the Registrar’s record on May 15, 2022. The disputed domain resolves to a website entitled “My Nordstrom” which appears to contain both images and text that mirror the Complainant’s employee closed site at <mynordstrom.com>.

5. Parties’ Contentions

A. Complainant

The Complainant submits that it owns registered trade mark rights as noted above and that the disputed domain name wholly incorporates its NORDSTROM mark. It says that the inclusion of the words “my” and “login” and the letter “s” do not prevent a finding of confusing similarity and in circumstances that the overall impression of the disputed domain name is one of being connected to the Complainant’s NORDSTROM trade mark, the disputed domain name is confusingly similar to the Complainant’s registered trade mark for NORDSTROM.

The Complainant submits that the Respondent has no rights or legitimate interests in the disputed domain name and that it has never assigned, granted, licensed, sold, transferred or in any way authorised the Respondent to register or use the NORDSTROM trade mark in any manner. The Complainant also submits that the Respondent has never been commonly known by the disputed domain name and has never acquired any trade mark or service mark rights in the disputed domain name.

It says that by using the disputed domain name in connection with a website that falsely purports to be a website for, or that is otherwise associated with the Complainant and the Complainant’s “MyNordstrom” website and by using the NORDSTROM trade mark on the website, displaying photos of the Complainant’s stores and purporting to provide information about “the Mynordstrom” employee portal, the Respondent has failed to create a *bona fide* offering of goods or services under the Policy and, therefore it cannot demonstrate rights or legitimate interests under paragraph 4(c)(i) of the Policy. The Complainant says that the Respondent’s actions are clearly not legitimate and are misleading and illegitimately diverting Internet users seeking the Complainant’s site to the Respondent’s website. This, says the Complainant, amounts to initial interest confusion and cannot qualify as fair use as it incorrectly suggests connection with the Complainant in spite of there being a disclaimer on the website. In essence, says the Complainant, the Respondent is using the disputed domain name to confuse Internet users and this is not consistent with the Respondent having rights or legitimate interests in the disputed domain name.

The Complainant says that the mere registration of the disputed domain name, including the very well reputed NORDSTROM mark, by itself creates a presumption of bad faith. It says that considering that the

disputed domain name was registered many years after the registration of the Complainant's NORDSTROM mark and also in view of the very substantial reputation attaching to it, the Respondent must have been aware of the Complainant and its mark when it registered the disputed domain name.

It says that the Respondent's registration and use of the disputed domain name is creating a likelihood of confusion with the NORDSTROM trade mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website, which is evidence of registration and use in bad faith under paragraph 4(b)(iv) of the Policy. The fact that the Respondent has sought to make its website look extremely similar to the Complainant's website so as to confuse Internet users into thinking that they have reached the Complainant's website is strongly indicative of opportunistic bad faith and also because the disputed domain name is so obviously connected with the Complainant.

The Complainant says that it is likely that the Respondent intends to use the disputed domain name for phishing or some other illegitimate activity, although there is no evidence of this as yet. However, the Complainant notes that the Respondent is a repeat cybersquatter who has lost at least one decision under the Policy, being *LF, LLC v. Kas Is / cas issen, Forum Claim No. 1958712*, in relation to the domain names <myloweslifelogin.com> and <myloweslifes.org>.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has demonstrated that it owns various registered trade mark rights for its NORDSTROM mark, including in particular United States trade mark registration cited above. The NORDSTROM mark is wholly incorporated into the disputed domain name and the additional inclusion of the common English words "my" and "login" and the letter "s" do not prevent a finding of confusing similarity. Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's registered trade mark rights and the Complaint succeeds under this element of the Policy.

B. Rights or Legitimate Interests

The Complainant has submitted that the Respondent has no rights or legitimate interests in the disputed domain name and that it has never assigned, granted, licensed, sold, transferred or in any way authorised the Respondent to register or use the NORDSTROM trade mark in any manner. The Complainant has also submitted that the Respondent has never been commonly known by the disputed domain name and has never acquired any trade mark or service mark rights in the disputed domain name. The Panel notes that the Complainant's business is extremely well known, at least in North America under the NORDSTROM mark.

The website at the disputed domain name is very similar to the Complainant's internal employee "MyNordstrom" website. Much of it appears to be a copy and paste of the text from the Complainant's website including use of the Complainant's NORDSTROM mark and of certain images. While there is no current evidence on the record of use of the website for fraudulent purposes, it is clear that the Respondent is not making a *bona fide* offering of goods or services on the website and in that the textual content closely mirrors the content of the "MyNordstrom" website there is no evidence that the Respondent is using it for *bona fide* criticism or comment purposes or as some other kind of review portal for the Complainant's employees.

The Respondent is essentially using the disputed domain name to confuse Internet users and redirect them to its own website and while the purpose is not currently clear, based on the Respondent's past conduct as a

cybersquatter as discussed by the panel in the case of *LF, LLC v. Kas Is / cas issen, supra*, it is most probable that the Respondent's intentions for its website at the disputed domain name are not legitimate. The Panel notes that in that case the Respondent developed blogs at the domain name <myloweslifelogin.com> and at <myloweslife.org> and pretended to offer information from the blogs as to how to access the complainant in that case's employee portal website. The panel in that case found that, in quite similar circumstances to the present case, the Respondent was using the websites at the respective disputed domain names for phishing, to link Internet users visiting the site to other fake blogs and to show monetized advertisements. The Panel notes that the Respondent has failed to explain its conduct in this case and there is nothing to suggest that this is a *bona fide* criticism or review site. The evidence of its past conduct is not consistent with the Respondent having *bona fide* intentions or having rights or legitimate interests in the disputed domain name, which contains the very well reputed NORDSTROM mark and is obviously aimed at the Complainant's employees.

In these circumstances the disclaimer that in this case can only be found if users click on the "About Us" section near the very end of the site and at the foot of the page and then scroll down, does not function as an effective disclaimer to prevent or dispel user confusion. Quite apart from the fact the website looks extremely similar to the Complainant's employee website and therefore looks and appears to have been conceived as if it belongs to the Complainant, very few user employees of the Complainant are ever likely to even see the disclaimer in this location.

On this basis, the Panel finds that the Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has failed to respond to or to rebut the Complainant's case and the Panel accordingly finds that the Complaint also succeeds under this element of the Policy.

C. Registered and Used in Bad Faith

The Complainant has demonstrated that it owns registered trade mark for its NORDSTROM mark. The Panel notes that this mark was registered long before the disputed domain name and that in view of the very substantial degree of repute attaching to the NORDSTROM mark and the fact that the website at the disputed domain name features the NORDSTROM mark and is aimed at the Complainant's employees, then the Respondent must have been aware of the Complainant's business and mark when it acquired or registered the disputed domain name in the period 2019-2022.

Under paragraph 4(b)(iv) of the Policy there is evidence of registration and use of a disputed domain name in bad faith where a respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's trade marks as to the source, sponsorship, affiliation or endorsement of the website

It is apparent, as described above that the Respondent has intentionally used the disputed domain name to resolve to a website that features the NORDSTROM mark and mirrors much of the text and images on the Complainant's employee website, in an effort to attract Nordstrom employees and to confuse them into thinking that the website belongs to, or is authorised by, the Complainant when that is not the case. It appears, based on its past conduct in the case of *LF, LLC v. Kas Is / cas issen, supra*, that the Respondent has done this either with a view to potentially collecting employee information without authority, phishing or otherwise benefiting commercially from the website. There is no other reason why the Respondent would attempt to present the website as if it is the Complainant or has the right to use the Complainant's marks and to provide Nordstrom employment specific information to the Complainant's employees. The overwhelming inference, in the absence of any evidence of the site being for legitimate criticism or review purposes as discussed under Part B above, is that this conduct is for its own commercial or fraudulent purposes and amounts to use in bad faith. In the circumstances, the Respondent's use of a privacy service to conceal its identity as the registrant of the disputed domain name only further affirms the Panel's view of the Respondent's bad faith.

Under paragraph 4(b)(ii) of the Policy there is evidence of registration and use in bad faith where a domain

name has been registered in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that the registrant has engaged in a pattern of such conduct. In this case the Panel finds that the Respondent has registered the disputed domain name in an effort to prevent the Complainant from reflecting its extremely well reputed mark in a corresponding domain name and based on the Respondent's past course of conduct, as described above, it has previous form in this regard. As a result, the Panel finds that the requirements of this element of the Policy are also made out.

Accordingly, the Panel finds that the disputed domain name has been registered and used in bad faith and that the Complaint also succeeds under this 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 <mynordstromslogin.com> be transferred to the Complainant.

/Alistair Payne/

Alistair Payne

Sole Panelist

Date: July 1, 2022