

## **ADMINISTRATIVE PANEL DECISION**

### **National Federation of State High School Associations v. Riswandi Case No. D2022-1964**

#### **1. The Parties**

The Complainant is National Federation of State High School Associations, United States of America (“United States”), represented by Nelson Mullins Riley & Scarborough, L.L.P., United States.

The Respondent is Riswandi Riswandi, Personal, Indonesia.

#### **2. The Domain Name and Registrar**

The disputed domain name <nfhnetwork.site> is registered with Web Commerce Communications Limited dba WebNic.cc (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 31, 2022. On May 31, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 31, 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 June 13, 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 June 13, 2022. The Center received an informal communication from the Respondent on June 13, 2022, in response to which the Center sent to the Parties a possible settlement email on June 14, 2022. The Complainant requested the suspension of proceedings on June 14, 2022. The Complainant requested on July 8, 2022, the reinstatement of proceedings. On July 11, 2022, the Center received an informal communication from the Respondent.

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 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 9, 2022. The Center received another informal communication from

the Respondent on July 28, 2022, but the Respondent did not submit any formal response. Accordingly, the Center proceeded to Panel appointment on September 1, 2022.

The Center appointed Nayiri Boghossian as the sole panelist in this matter on September 7, 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 national leader and advocate for high school athletics as well as fine and performing arts programs in the United States. The Complainant uses the trademark NFHS NETWORK in connection with streaming live and on demand high school sports.

The Complainant owns United States trademark registration No. 6,165,456 for NFHS NETWORK registered on September 29, 2020, with a first use date of August 2013. Also, the Complainant is the registrant of and uses the domain name <nfhsnetwork.com>, registered to the Complainant since November 26, 2012. By virtue of its long-standing and continuous use, the Complainant also owns unregistered rights in NFHS NETWORK as it is commonly known as NFHS NETWORK.

The disputed domain name was created on November 16, 2021, and offered streaming services relating to school sports' events. The disputed domain does not currently resolve to an active website.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that the disputed domain name is identical to its trademark as it only consists of the Complainant's trademark.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not commonly known by NFHS NETWORK nor is he a licensee of the Complainant or authorized by the latter to use its trademark. The disputed domain name is not used in connection with a *bona fide* offering of goods or services as it resolves to a website making unauthorized use of the Complainant's trademark and containing a video player with a link to sign up for an account to gain access to content identical or similar to that offered by the Complainant. The aim is to attract Internet traffic directed to the Complainant's website. There is no legitimate noncommercial or fair use as the said website purportedly offers access to live streaming video services without authorization.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. The disputed domain name is identical to the Complainant's trademark and the Respondent has no relationship with the Complainant or its trademark and is not using the disputed domain name in connection with a *bona fide* offering of goods or services. The Respondent must have been aware of the Complainant's trademark. The Respondent is attempting to create confusion in order to trade off the good will and reputation of the Complainant's trademark. Furthermore, the disputed domain name offers access to content that either belongs to the Complainant or to its competitors.

##### **B. Respondent**

The Respondent did not reply to the Complainant's contentions. In the Respondent's three informal communications to the Center, the Respondent indicated that it had deleted the website.

## 6. Discussion and Findings

### A. Identical or Confusingly Similar

The Complainant owns a trademark registration for NFHS NETWORK. The Panel is satisfied that the Complainant has established its ownership of the trademark NFHS NETWORK.

The disputed domain name consists solely of the Complainant's trademark NFHS NETWORK. Accordingly, there can be no doubt that the disputed domain name is identical to the Complainant's trademark. The generic Top-Level-Domain ("gTLD") ".site" can be ignored when assessing confusing similarity as it is a standard registration requirement.

Consequently, the Panel finds that the disputed domain name is identical to the trademark of the Complainant and that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

### B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make at least a *prima facie* showing that a respondent does not have any rights or legitimate interests in the disputed domain name. Once such showing is made, the burden of production shifts to the respondent. In the instant case, the Complainant asserts that the Respondent is not authorized by the Complainant to use its trademark and contends that the Respondent has no rights or legitimate interests in the disputed domain name and that the disputed domain name is not being used in connection with a *bona fide* offering of goods or services. The Complainant has established a *prima facie* case and the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name.

Furthermore, the absence of a substantive response by the Respondent allows the Panel to draw inferences, and under the circumstances, the absence of a substantive response leaves the Complainant's *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name un rebutted. Taking into consideration the identical nature of the disputed domain name, the Panel finds that it carries a high risk of implied affiliation that cannot constitute fair use. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.5.1. Additionally, considering the impersonating nature of the content previously exhibited at the disputed domain name, which displayed both the Complainant's trademark and logo and offered identical services, the use cannot be considered "fair" as it falsely suggests affiliation with the Complainant.

Lastly, noting that the Respondent was aware of the proceeding and limited its communications to the indication that the website at the disputed domain name was deleted, the Panel finds that the Respondent's deletion of the website and failure to assert any rights or legitimate interests as *prima facie* evidence that the Respondent had no rights or legitimate interests in the disputed domain name.

Accordingly, the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

### C. Registered and Used in Bad Faith

The Respondent must have been aware of the Complainant's trademark and has registered the disputed domain name with the aim of attracting Internet users looking for the Complainant's website. This is so because the disputed domain name resolves to a website, which contains the Complainant's trademark and logo and thus create the impression that it belongs to the Complainant or is affiliated with it. More importantly, the said website used to offer streaming services relating to school sports' events. Such content is identical to what is offered by the Complainant. Accordingly, the Respondent must have registered the disputed domain name with the intention to attempt to attract for commercial gain Internet users to its website by creating the likelihood of confusion with the Complainant's trademark.

As regards the current inactive use, prior UDRP panels have found that passive holding does not prevent a finding of confusing similarity if the totality of circumstances support an inference of bad faith. See section 3.3 of the [WIPO Overview 3.0](#). Noting the prior use capitalized on the reputation of the Complainant's trademark, the Respondent's deletion of the website, and the Respondent's failure to provide any good-faith explanation for its registration and use of the disputed domain name, the Panel finds that the current passive holding of the disputed domain name does not prevent the Panel's bad faith finding.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(iii) 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, <nfhsnetwork.site>, be transferred to the Complainant.

*/Nayiri Boghossian/*

**Nayiri Boghossian**

Sole Panelist

Date: September 13, 2022