

ADMINISTRATIVE PANEL DECISION

NuStar Energy L.P. v. Domain Administrator, See PrivacyGuardian.org/
Lukyanov Andrey Pavlovich
Case No. D2022-2944

1. The Parties

The Complainant is NuStar Energy L.P., United States of America (“United States”), represented by Jackson Walker, LLP, United States.

The Respondent is Domain Administrator, See PrivacyGuardian.org, United States / Lukyanov Andrey Pavlovich, Russian Federation.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 10, 2022. On August 10, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On August 10, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on August 11, 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 August 15, 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 August 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 6, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 7, 2022.

The Center appointed Mathias Lilleengen as the sole panelist in this matter on September 16, 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 to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is one of the largest independent liquids terminal and pipeline operators in the United States.

The Complainant has used its trademarks NUSTAR since at least April 2, 2007, such as United States Trademark Registration Nos. 3,395,530 registered on March 11, 2008, and 3,402,609 registered on March 25, 2008.

The Domain Name was registered on March 19, 2022. The Domain Name has resolved to a website that fraudulently purports to be the website of one of the Complainant's subsidiaries, NuStar Permian Transportation and Storage, LLC.

5. Parties' Contentions

A. Complainant

The Complainant documents registered trademark rights and argues that the trademark is famous. The Complainant argues that the Domain Name is identical/confusingly similar to the Complainant's trademark, because it incorporates the distinctive element of the Complainant's trademark with the immaterial addition of the word "permian".

The Complainant argues that there is no evidence to support that the Respondent is commonly known by the Domain Name. The Respondent cannot establish rights or legitimate interests in the Domain Name, as the Respondent has not made any use of, or demonstrable preparations to use, the Domain Name in connection with a *bona fide* offering of goods or services. The use of the Domain Name is fraudulent.

The Complainant submits that the Complainant's trademark is famous, and the Respondent must have or should have been aware of the Complainant's trademark when the Respondent registered the Domain Name. Furthermore, the Respondent is using the Domain Name to confuse Internet users by creating confusion with the Complainant's trademark. The Respondent's use of the website to impersonate the Complainant, including the Respondent's use of false contact details, is evidence of bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has established rights in its trademark NUSTAR. The test for confusing similarity involves a comparison between the trademark and the Domain Name. The Domain Name incorporates the Complainant's trademark with "permian" added at the end. This addition does not prevent a finding of confusing similarity.

For the purposes of assessing confusing similarity under paragraph 4(a)(i) of the Policy, it is permissible for the Panel to ignore the generic Top-Level Domain ("gTLD") as it is viewed as a standard registration

requirement, see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)) section 1.11.

The Panel finds that the Domain Name is confusingly similar to a trademark in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Respondent is not affiliated with nor authorized by the Complainant. There is no evidence that the Respondent is commonly known by the Domain Name. The Respondent cannot establish rights in the Domain Name, as it has not made use of, or demonstrable preparations to use, the Domain Name in connection with a *bona fide* offering. On the contrary, the use suggests bad faith.

UDRP Panels have categorically held that the use of a domain name for illegal activity, in this case impersonation, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.

The Panel finds that the Complainant has made out a *prima facie* case showing that the Respondent has no rights or legitimate interests in the Domain Name, which has been unrebutted by the Respondent.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name in accordance with paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Complainant's trademarks were registered before the registration of the Domain Name. The composition and use of the Domain Name indicate that the Respondent was aware of the Complainant's trademark when the Respondent registered the Domain Name.

The Domain Name seems to be registered to attract Internet users by misleading them into believing that the website at the Domain Name is somehow connected to the Complainant. The Respondent has not provided any evidence of good faith use, and the Respondent's use of the website to impersonate the Complainant, is clear evidence of bad faith.

The Panel finds that the Domain Name was registered and is being used in bad faith, within the meaning of the 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 Domain Name <nustarpermian.com> be transferred to the Complainant.

/Mathias Lilleengen/

Mathias Lilleengen

Sole Panelist

Date: September 27, 2022