

ADMINISTRATIVE PANEL DECISION

Laboratoires Thea v. 余秀松 (xiusong yu)
Case No. D2022-3366

1. The Parties

The Complainant is Laboratoires Thea, France, represented by AARPI Scan Avocats, France.

The Respondent is 余秀松 (xiusong yu), China.

2. The Domain Name and Registrar

The disputed domain name <enutrof.com> is registered with West263 International Limited (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on September 9, 2022. On September 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 14, 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 September 16, 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 in English on September 19, 2022.

On September 16, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On September 19, 2022, the Complainant submitted an amended Complaint including a request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint and the amended Complaint satisfy 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 in English and Chinese of the Complaint, and the proceedings commenced on September 22, 2022. In accordance

with the Rules, paragraph 5, the due date for Response was October 12, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Parties of the Respondent's default on October 13, 2022.

The Center appointed Joseph Simone as the sole panelist in this matter on October 26, 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 based in France and is a leading player in the pharmaceuticals industry.

The Complainant has an extensive global portfolio of trade marks containing the term "Nutrof", including the following:

- International Trade Mark registration for NUTROF No. 931136 in Class 5, registered on July 6, 2007;
- European Union Trade Mark Registration for NUTROF No. 002044030 in Classes 3 and 5, registered on March 28, 2002; and
- France Trade Mark Registration for NUTROF No. 3477674 in Class 5, registered on January 29, 2007.

The Complainant owns the domain names <nutrof.com> and <nutrof.fr>.

The disputed domain name was registered on June 15, 2022.

Based on screenshots provided by the Complainant, at the time of filing the Complaint, the disputed domain name resolved to a website with pornographic content. At the time of drafting of this Decision, the disputed domain name continued to resolve to the same website with pornographic content.

5. Parties' Contentions

A. Complainant

The Complainant asserts that it has prior rights in the NUTROF trade marks and that it is a leading player in its fields of business.

The Complainant further asserts that the disputed domain name is identical or confusingly similar to the Complainant's NUTROF trade marks, and the addition of the letter "e" does not affect the analysis as to whether the disputed domain name is identical or confusingly similar to the Complainant's trade marks.

The Complainant also asserts that it has not authorized the Respondent to use the NUTROF mark and there is no evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services.

The Complainant further asserts that there is no evidence suggesting that the Respondent has any connection to the NUTROF mark in any way, and that there is no plausible reason for the Respondent to have registered the disputed domain name, especially after considering the relevant circumstances. The Complainant therefore concludes that the registration and any use of the disputed domain name whatsoever must be in bad faith.

B. Respondent

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

6. Discussion and Findings

A. Language of the Proceeding

In accordance with paragraph 11(a) of the Rules:

"[...] the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding."

In this case, the language of the Registration Agreement for the disputed domain name is Chinese. Hence, the default language of the proceeding should in principle be Chinese.

However, the Complainant filed the Complaint in English, and requested that English be the language of the proceeding, asserting that:

- the disputed domain name was registered in Latin characters, rather than Chinese characters;
- the website at the disputed domain name contains some English text; and
- the Complainant is not familiar with the Chinese language and would have to incur substantial expenses if the Complainant were to submit all documents in the language of the Registration Agreement, and the proceeding would inevitably be unduly delayed.

The Respondent was notified in both Chinese and English of the language of the proceeding and the Complaint, and the Respondent did not comment on the language of the proceeding or submit any response in either Chinese or English.

After considering the relevant circumstances, the Panel determined that the language of the proceeding shall be English, and the Panel has issued this decision in English. The Panel further finds that such determination would not prejudice either Party and would ensure that the proceeding takes place with due expedition.

B. Identical or Confusingly Similar

The Panel acknowledges that the Complainant has established rights in the NUTROF trade marks in many territories around the world.

Disregarding the generic Top-Level Domain ("gTLD") ".com", the disputed domain name incorporates the Complainant's trade mark NUTROF in its entirety. The Panel further notes that the addition of the letter "e" in the initial position of the disputed domain name does not prevent a finding of confusing similarity.

The Panel therefore finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in establishing its rights in the NUTROF trade marks and in demonstrating that the disputed domain name is identical or confusingly similar to its marks.

C. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, the complainant is required to establish a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such *prima facie* case is

made out, the respondent bears the burden of producing evidence in support of its rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant may be deemed to have satisfied paragraph 4(a)(ii) of the Policy. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.1.

The Complainant asserts that it has not authorized the Respondent to use its trade marks and there is no evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services.

Thus, the Complainant has established its *prima facie* case with satisfactory evidence.

The Respondent did not file a response and has therefore failed to assert factors or put forth evidence to establish that it enjoys rights or legitimate interests in the disputed domain name. As such, the Panel concludes that the Respondent has failed to rebut the Complainant's *prima facie* showing of the Respondent's lack of rights or legitimate interests in the disputed domain name, and that none of the circumstances of paragraph 4(c) of the Policy is applicable in this case.

At the time of filing of the Complaint, the disputed domain name resolved to a website with pornographic content. It still resolves to the website with pornographic content at the time of drafting this decision.

Therefore, there is no evidence on record to prove that the Respondent, prior to the notice of the dispute, has used or has demonstrated his preparation to use the disputed domain name in connection with a *bona fide* offering of goods or services. There is also no evidence demonstrating that the Respondent has been commonly known by the disputed domain name or that the Respondent is making legitimate noncommercial or fair use of the disputed domain name.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name pursuant to paragraph 4(a)(ii) of the Policy.

D. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, may constitute evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant (the owner of the trade mark or service mark) or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the respondent registered the domain name 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 respondent has engaged in a pattern of such conduct; or
- (iii) circumstances indicating that the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its 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 the respondent's website or location or of a product or service on its website or location.

The examples of bad faith registration and use set forth in paragraph 4(b) of the Policy are not meant to be exhaustive of all circumstances in which bad faith may be found. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). The overriding objective of the Policy is to curb the abusive

registration of domain names in circumstances where the registrant seeks to profit from and exploit the trade mark of another party. See *Match.com, LP v. Bill Zag and NWLAWS.ORG*, WIPO Case No. [D2004-0230](#).

For reasons discussed under this and the preceding heading, the Panel believes that the Respondent's conduct in this case constitutes bad faith registration and use of the disputed domain name.

When the Respondent registered the disputed domain name, the NUTROF trade marks were already widely known and directly associated with the Complainant's activities. UDRP panels have consistently found that the mere registration of a domain name that is confusingly similar to a famous or widely-known trade mark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

Given the extensive prior use and fame of the Complainant's marks, in the Panel's view, the Respondent should have been aware of the Complainant's marks when registering the disputed domain name.

The Respondent has provided no evidence to justify his choice of the term "nutrof" in the disputed domain name.

Based on the foregoing, it would be unreasonable to conclude that the Respondent – at the time of the registration of the disputed domain name – was unaware of the Complainant's trade mark, or that the Respondent's adoption of the distinctive trade mark NUTROF was a mere coincidence.

The Complainant's registered trade mark rights in NUTROF for its products and services predate the registration date of the disputed domain name by at least two decades. A simple online search (e.g., via Google and Baidu) for the term "nutrof" would have revealed that it is a world-renowned brand.

The Panel is therefore of the view that the Respondent registered the disputed domain name with full knowledge of the Complainant's trade mark rights.

The use of a domain name to tarnish a complainant's trademark, including for commercial purposes in connection with pornographic content, constitutes evidence of a respondent's bad faith. [WIPO Overview 3.0](#), section 3.12. See *Red Bull GmbH v. Whois Agent, Domain Protection Services, Inc. / esco escortlar, escort sitesi*, WIPO Case No. [D2017-1639](#) (finding the respondent's use of the domain for a pornographic website constituted "a strong indication of bad faith registration and use," because it showed respondent's main purpose was "to create a likelihood of confusion among customers and/or to tarnish the Complainant's RED BULL trademark for commercial gain or any other illegitimate benefit"); *Bank of Jerusalem Ltd. v. Shek Cheung Chung*, WIPO Case No. [D2017-1153](#) (finding bad faith where the domain resolved to a website "at which adult content and links to websites at which pornographic contact [was] being offered, tarnishing Complainant and its trademark, and for which Respondent [was] likely receiving commercial gain"). Similarly, the Panel finds that the Respondent's use of the disputed domain name to resolve to a Chinese-language website with pornographic content and hyperlinks constitutes intentional tarnishment of the Complainant's NUTROF trademark for commercial gain.

Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith.

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 <enutrof.com> be transferred to the Complainant.

/Joseph Simone/

Joseph Simone

Sole Panelist

Date: November 9, 2022