

## **ADMINISTRATIVE PANEL DECISION**

Société des Produits Nestlé S.A. v. Tere Alpizar  
Case No. D2022-3897

### **1. The Parties**

The Complainant is Société des Produits Nestlé S.A., Switzerland, represented by Studio Barbero, Italy.

The Respondent is Tere Alpizar, Mexico.

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

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 18, 2022. On October 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 18, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 19, 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 October 20, 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 October 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 10, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 11, 2022.

The Center appointed Archibald Findlay S.C. as the sole panelist in this matter on November 15, 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 following facts and circumstances are to be found in the Complaint and its Annexures and, in the absence of challenge, may be accepted as background.

The Complainant put up schedules recording details of trademark registrations in various countries, including the two Mexican registrations, namely, Mexican Trademark Registration No. 953955 for NESCAFE (wordmark) of September 21, 2006, in class 11; and Mexican Trademark Registration No. 706282 for NESCAFE (word mark) of June 29, 2001, in class 9.

Part of the Nestlé company founded in 1866 by Henri Nestlé, the Complainant is wholly owned by Nestlé S.A. The Complainant is the registered owner of the majority of the trademarks of the Nestlé Group and sells products and services worldwide in various industries, particularly in the food industry, including baby foods, breakfast cereals, chocolate & confectionery, coffee & beverages, bottled water, dairy products, ice-cream, prepared foods, food services as well as pet food.

The Nestlé Group has about 270,000 employees and it is present in 79 countries with more than 350 production centers worldwide. The Complainant contends that it markets its products worldwide in 186 countries, including Mexico, where the Respondent is apparently situated or from where it trades.

The Complainant contends that it is the world's largest food consumer products company in terms of sales with sales metrics of the group in 2019 standing at 92.6 billion Swiss Francs (CHF) worldwide.

According to Fortune Magazine's annual ranking of the world's 500 largest companies, the "Fortune Global 500", the Complainant was positioned as the 76th company in 2019.

The Complainant's presence in Mexico goes back to 1930 and Nestlé group's subsidiaries manufacture and market NESTLÉ chocolate and confectionary products in the country, with various subsidiaries and operating 12 factories (one of which – named Planta Nestlé Toluca- is based in Av. Paseo Tollocan, Delegación Sta Ana Tlapaltitlán, Toluca de Lerdo, México). NESTLÉ México, S.A. de C.V. is based in Av. Ejército Nacional No. 453 Col. Granada Delegación Miguel Hidalgo, DF 11520 Mexico, while another subsidiary, "Nestlé Servicios Corporativos, S.A de C.V.", is based in "Boulevard Miguel de Cervantes Saavedra, número 301, Torre Sur, Planta Baja, Col. Granada, en la Ciudad de México, C.P. 11520".

The Complainant produces and distributes coffee all over the world under well-established brands, including NESCAFE, which is one of the Complainant's leading brands.

The NESCAFE brand was initially launched in Switzerland on April 1, 1938, and then exported in France, the United Kingdom, and the United States of America ("United States" or "U.S."). When the United States entered World War II in 1941, the entire production of NESCAFE facilities in the U.S. – approximately one million cases per year – was dedicated to the servicemen. Since then, the NESCAFE product spectrum has continued to expand. In 1955 NESCAFE launched the distinctively continental taste of Blend 37. The milder Fine Blend appeared in 1972, followed in 1984 by Gold Blend, the world's first premium freeze-dried coffee.

The Complainant has continued to innovate, launching decaffeinated and reduced-caffeine varieties in 1986 and unveiled its first "fair trade" certified coffee, NESCAFE Partners' Blend. The Complainant has also referred volumes of sales of NESCAFE products present in the market, with sales metrics at the end of 2015 of about CHF 294 Million.

According to Interbrand's annual Best Global Brands ranking for 2021, the trademark NESCAFE – that has been included in the list since 2001 – is worth USD 14,466 million, making it the 40<sup>th</sup> most valuable trademark in the world. In 2003, it was at its highest ranking, when it was 21<sup>st</sup> in the world.

Furthermore, the trademark NESCAFE was and presently is strongly supported by global advertising campaigns through television and other media. Besides the traditional advertising channels, NESCAFE has been also widely promoted via the internet, in particular with a strong presence online across the most popular social media with channels and pages specifically dedicated to this brand on Facebook, Twitter, Instagram and YouTube.

In light of the foregoing, NESCAFE is undisputedly famous and a well-known trademark worldwide.

In order to further support the protection of this well-known trademark on the Internet, Complainant registered the word "Nescafe" as domain name in numerous generic Top-Level Domains ("gTLDs") and country-code Top Level Domains ("ccTLDs"). The list of the domain names encompassing the NESCAFE trademark registered by Complainant was annexed to its papers.

The Complainant operates the website "www.nestle.com" as its primary web portal for global promotion, while the official website dedicated to the NESCAFE brand is "www.nescafe.com", including a section dedicated to Mexican users.

The disputed domain name was registered on July 18, 2022. The disputed domain name resolves to a website reproducing Complainant's trademarks and the contents and look and feel of the Nescafe website for Mexico and promoting the sale of second-hand cars, a business which is not carried out, nor affiliated with, Complainant.

## **5. Parties' Contentions**

### **A. Complainant**

The Complainant avers that it is the owner of hundreds of NESCAFE trademarks and wordmarks in various classes in respect of its ("Nescafe") and ("Nescafé") products, primarily in the food industry.

The Complainant contends that when it became aware of the disputed domain name it caused a cease and desist letter to be sent on August 9, 2022. Not receiving any response from the Respondent, the Complainant sent a further two cease and desist letters on August 22, 2022 and September 1, 2022. These also went unanswered.

The Complainant sets out, in detail, contentions supported by previous WIPO decisions which support its contentions as to why:

- (a) the disputed domain name is identical or confusingly similar to the trademark or service marks owned by the Complainant;
- (b) the Respondent has no rights or legitimate interests in respect of the domain name; and
- (c) the disputed domain name was registered and is being used in bad faith.

### **B. Respondent**

As stated above, the Respondent did not reply to the Complainant's contentions and by such failure is in default in terms of paragraphs 5(e) and 14 of the Rules and paragraph 8(c) of the Supplemental Rules, with the result that the Panel must now deal with the matter on the Complainant's version.

## 6. Discussion and Findings

### A. Substantive Elements of the Policy

Paragraph 15(a) of the Rules requires that:

“A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.”

Paragraph 4(a) of the Policy directs that the complainant must prove each of the following:

- (i) That the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or a service mark in which the Complainant has rights.
- (ii) That the Respondent has no rights or legitimate interests in respect of the disputed domain name.
- (iii) That the disputed domain name has been registered and is being used in bad faith.

Paragraph 4(b) of the Policy sets out four illustrative circumstances or acts which would, for the purposes of paragraph 4(a)(iii) above, be evidence of the registration of a domain name in bad faith. These are non-exclusive.

Similarly, paragraph 4(c) of the Policy sets out three illustrative circumstances which would demonstrate the Respondent's rights or legitimate interests in the disputed domain name for the purpose of paragraph 4(a)(ii).

### B. Effect of Default

Notwithstanding the fact that a respondent may be in default, a complainant bears the burden of proof in respect of each of the three main elements in terms of paragraph 4(a) of the Policy. Such default does not, *per se*, entitle a complainant to a finding in its favor by reason thereof, as failure by the complainant to discharge the burden of proof will still result in the complaint being denied (*M. Corentin Benoit Thiercelin v. CyberDeal, Inc.*, WIPO Case No. [D2010-0941](#)). It follows that such default does not, of itself, constitute an acceptance or an admission of any of the averments or contentions put forward, or of the supporting evidence put up (*Standard Innovation Corporation v. Shopintimates USA*, WIPO Case No. [D2011-0049](#)). The Panel is nevertheless not bound to accept all that has been put up by the Complainant but must evaluate it as it stands (*B Brooke Bollea, a.k.a Brooke Hogan v. Robert McGowan*, WIPO Case No. [D2004-0383](#); *San Lameer (Pty) Ltd and Sanlam Ltd v. Atlantic Internet Services (Pty) Ltd*, WIPO Case No. [D2010-0551](#)).

However, paragraph 14(b) of the Rules provides that, in the absence of exceptional circumstances, a panel shall draw such inference as it considers appropriate from the failure of a party to comply with a requirement of the Rules (*Allianz, Compañía de Seguros y Reaseguros S.A. v. John Michael*, WIPO Case No. [D2009-0942](#)).

In the present instance, the Panel finds that there are no exceptional circumstances for the failure of the Respondent to submit a Response, particularly in the light of the fact that the Complainant wrote on occasions to the Respondent, as did the Center when dealing with procedural matters and advising the Respondent of time limits, as against the Respondent's failure to respond to any further correspondence after its initial response to the Complainant's "cease and desist" letter.

From this, the Panel considers that it may accept that the Respondent does not deny the facts asserted and contentions made by the Complainant based on such facts (*Reuters Limited v. Global Net 2000, Inc.*, WIPO Case No. [D2000-0441](#); *LCIA (London Court of International Arbitration) v. Wellsbuck Corporation*, WIPO Case No. [D2005-0084](#); *Ross-Simons, Inc. v. Domain.Contact*, WIPO Case No. [D2003-0994](#); *Standard Innovation Corporation v. Shop Intimates USA, Supra*; *VKR Holding A/s v. Above.com Domain Privacy/Host*

*Master, Transure Enterprise Ltd.*, WIPO Case No. [D2012-0040](#); *Knorr-Bremse AG. v. WhoisGuard Protected, WhoisGuard, Inc. / Mosco Binzu*, WIPO Case No. [D2019-0616](#)).

Thus, in the view of the Panel, it may accept asserted facts that are not unreasonable, with the consequence that the Respondent will be subjected to inferences that flow naturally from the information provided by the Complainant (*Reuters Limited v. Global Net 2000, Inc, Supra*; *RX America, LLC. v. Matthew Smith*, WIPO Case No. [D2005-0540](#); *Allianz, Compañía de Seguros y Reaseguros S.A. v. John Michael, Supra*; *Standard Innovation Corporation v. Shopintimates USA, Supra*; *VKR Holding A/s v. Above.com Domain Privacy/Host Master, Transure Enterprise Ltd., Supra*; *Groupe Auchan v. Anirban Mitra*, WIPO Case No. [D2012-0412](#); *Barclays Bank PLC v. Miami Investment Brokers Inc*, WIPO Case No. [D2012-1213](#)).

### **C. Domain Name is Identical or Confusingly Similar**

The Complainant put up an extensive list of its registered trademarks and the domain names which it owns in many countries.

The Complainant has cited several previous URDP decisions which it contends that the NESCAFE trademark is world famous. For the purposes of the Policy, the Panel finds the Complainant has rights in the trademark NESCAFE.

The fact that the word mark NESCAFE has been incorporated entirely into the disputed domain name is sufficient to establish that it is identical or confusingly similar to the Complainant's registered mark (*Quixtar Investments, Inc. v. Dennis Hoffman*, WIPO Case No. [D2000-0253](#); *Universal City Studios, Inc. v. David Burns and Adam-12 Dot Com*, WIPO Case No. [D2001-0784](#); *Lilly ICOS LLC v. John Hopking / Neo net Ltd.*, WIPO Case No. [D2005-0694](#); *Société Des Produits Nestlé SA v. Mustafa Yakin / Moniker Privacy Services*, WIPO Case No. [D2008-0016](#); *LEGO Juris A/S v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2021-4146](#)).

The fact that the term "autos" is added in the disputed domain name does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark (*Dr. Ing. h.c. F. Porsche AG v. Rojeen Rayaneh*, WIPO Case No. D2004-048 and particularly *Carvana, LLC v. Domains By Proxy, LLC. / Fundacion Comercio Electronico, Carolina Rodrigues*, WIPO Case No. [D2022-1099](#)).

The gTLD ".com" is viewed as a standard registration requirement and not an element that generally would be taken into consideration when evaluating the identity and similarity of the Complainant's trademark and the domain name (*Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson, Sr.*, WIPO Case No. [D2000-1525](#); *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. [D2000-0429](#); *Phenimedia AG v. Meta Verzeichnis Com*, WIPO Case No. [D2001-0374](#); *Qantas Airways Limited v. Minh Huynh*, WIPO Case No. [D2008-1382](#); *L'Oréal, Lancôme Parfums Et Beauté & Cie v. Jack Yang*, WIPO Case No. [D2011-1627](#); *Fry's Electronics, Inc v. Whois ID Theft Protection*, WIPO Case No. [D2006-1435](#); *Kabushiki Kaisha Toshiba d/b/a Toshiba Corporation v. Marko Tusla d/b/a/ Toshiba-Club.com*, WIPO Case No. [D2004-1066](#)).

In these circumstances, the Panel has no difficulty in concluding that the Complainant has established the first element in terms of paragraph 4(a)(i) of the Policy.

### **D. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy sets out three illustrative circumstances as examples which, if established by the Respondent, shall demonstrate its rights to or legitimate interests in the domain name for the purposes of Paragraph 4(a)(ii) of the Policy, namely:

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

(ii) the Respondent (as an individual, business or other organization) 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 customers or to target the trademark or service mark at issue.

Although paragraph 4(a)(ii) requires the Complainant to prove that the Respondent has no rights to or legitimate interests in the domain name, once the Complainant establishes a *prima facie* case that the Respondent has no rights or legitimate interests in the domain name, the burden of production of evidence on this factor shifts to the Respondent to rebut the showing, despite the overall burden of proof remaining upon the Complainant to prove each of the three elements of paragraph 4(a) of the Policy. (*Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#); *Universal City Studios, Inc. v. David Burns and Adam-12 Dot Co, Supra*).

Having defaulted, the Respondent has placed itself in a position that it has not produced any evidence to rebut such *prima facie* case as may have been established by the Complainant, and the enquiry must therefore focus upon what is evidenced by the Complainant in order to determine whether or not it has been so established.

The Complainant contends that it is the sole proprietor of the trademark NESCAFE and NESCAFÉ and that the Respondent has not been given any permission to register or use any domain name incorporating the trademark of the Complainant.

Apart from there being no authorization on the part of the Complainant, there is no evidence of a relationship or association between the Complainant and the Respondent, whether by license or otherwise, which also militates against the Respondent having rights or legitimate interests in or other entitlement which might fall within that purview (*Sybase, Inc. v. Analytical Systems*, WIPO Case No. [D2004-0360](#)).

In view of the facts and circumstances put up on this ground and which are unchallenged, the Panel is of the view that the Complainant should therefore succeed on this ground as well.

The Panel is therefore satisfied that, in the circumstances, the Complainant has established the second element of the Policy.

#### **E. Registration and Use in Bad Faith**

Paragraph 4(b) of the Policy provides that for the purposes of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular but without limitation, if found by the panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

“(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 on-line 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.”

The implication arising from the disputed domain name, in the mind of a would-be customer, is therefore clearly that it is either of or in some way associated with the Complainant. In turn, in the view of the Panel, leads to the inescapable conclusion that such potential customer is invited to do business with either the Complainant itself or someone authorized on its behalf. That would, by application of paragraph 4(b)(iv) of the Policy, constitute bad faith registration and use. (*Media24 Limited v. Llewellyn Du Randt*, WIPO Case No. [D2009-0699](#); *San Lameer (Pty) Ltd and Sanlam Ltd v. Atlantic Internet Services (Pty) Ltd, Supra*).

The selection of a disputed domain name that is confusingly similar to the Complainant’s trademark and the Complainant’s domain name, particularly in the absence of any explanation, leads to the conclusion, in the view of the Panel, that the Respondent must have known of the reputation of the Complainant in the market and therefore it selected the disputed domain name in circumstances where it was very well aware of the Complainant’s reputation and intended to benefit therefrom (*Deutsche Post AG v. MailMij LLC*, WIPO Case No. [D2003-0128](#); *Barclays Bank PLC v. Miami Investment Brokers Inc*, WIPO Case No. [D2012-1213](#)), particularly where it is so widely known globally. Moreover, such conduct by the Respondent implies that it intended to suggest to would be customers that it was in some way linked to or associated with the Complainant and thereby solicit business by creating that belief in the mind of consumers.

In particular, the depiction of motor vehicles by the Respondent suggests a link or arrangement between the Respondent and the Complainant in relation to such sales as endorsed by the Complainant of the suitability or good quality of the vehicles. (*Kelley Blue Book Company, Inc. v. Nikolay Golovin aka Buy-movie.net*, WIPO Case No. [D2005-0837](#).)

The Panel is therefore satisfied that the Complainant has established the third element under paragraph 4(a)(iii) of the Policy.

## **7. Decision**

For the foregoing reasons, in accordance with paragraph 4(a) of the Policy and paragraph 15 of the Rules, the Panel orders that the disputed domain name <nescafeautos.com> be transferred to the Complainant.

*/Archibald Findlay/*

**Archibald Findlay**

Sole Panelist

Date: November 24, 2022