

ADMINISTRATIVE PANEL DECISION

NetScout Systems, Inc. v. Name Redacted

Case No. D2022-4223

1. The Parties

Complainant is NetScout Systems, Inc., United States of America (“United States”), represented by CSC Digital Brand Services Group AB, Sweden.

Respondent is Name Redacted.¹

2. The Domain Name and Registrar

The disputed domain name <netscoutsy.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 November 8, 2022. On November 8, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 8, 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 Complainant on November 9, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on November 14, 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”).

¹ Respondent appears to have used the name of a third party when registering the disputed domain name. In light of the apparent identity theft, the Panel has redacted Respondent’s name from this Decision. However, the Panel has attached as Annex 1 to this Decision an instruction to the Registrar regarding transfer of the disputed domain names which includes the name of Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this Decision shall not be published due to the exceptional circumstances of this case. See *ASOS plc. v. Name Redacted*, WIPO Case No. [D2017-1520](#); *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on November 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 6, 2022. Respondent did not submit any response. Accordingly, the Center notified the Parties of Respondent's default on December 7, 2022.

On November 30, 2022, the Center received an email message from a third party stating that it had received the Written Notice in relation to these proceedings, and that it had been named in part as Respondent but has no connection with the disputed domain name.

The Center appointed Ingrida Karina-Berzina as the sole panelist in this matter on December 13, 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

Complainant offers products and services for application performance management and network performance management and cybersecurity. It is the proprietor of several registrations for its NETSCOUT mark, including the following:

- United States Trademark No. 1764154 for NETSCOUT (word mark), registered on April 13, 1993, for goods in class 9;
- European Union Trade Mark No. 000410050 for NETSCOUT (word mark), registered on October 20, 1998, for goods in class 9.

Complainant operates its primary business website at the domain name <netscout.com>.

The disputed domain name was registered on June 12, 2022. It resolves to a Registrar parked page. The record contains copies of Complainant's cease-and-desist letters to Respondent dated October 10, 13, and 17, 2022. The record does not reflect Respondent's response thereto. The record contains evidence that MX records have been configured for the disputed domain name.

5. Parties' Contentions

A. Complainant

Complainant's contentions may be summarized as follows:

Complainant states that it was founded in 1984 and offers cybersecurity, DDoS mitigation, network, and application performance monitoring and security tools and solutions for global networks. For the fiscal year ended March 31, 2022, Complainant reports net income of USD 35.9 million. Complainant states that it is the recipient of various industry awards and that its NETSCOUT mark, first used in 1991, is well recognized. It registered the domain name <netscout.com> on May 2, 1997.

Under the first element, Complainant states that the disputed domain name is identical to its NETSCOUT mark, except for the addition of the generic term "sy," which can be an abbreviation for the term "system".

Under the second element, Complainant states that Respondent is not sponsored by or affiliated with Complainant in any way. Nor has Respondent received a license, authorization or permission to use Complainant's trademarks in any manner, including in domain names. Respondent has been identified using the name of a person and an organization that have no relation to the disputed domain name. Respondent has established MX records for the disputed domain name, which indicates that Respondent is likely to use or intends to use the email addresses hosted by the <netscoutsy.com> domain name, taking the

general form <[...]@netscoutsy.com>, to confuse Internet users into believing they are dealing with Complainant's when they are not.

Under the third element, Complainant states that Complainant and its NETSCOUT trademark are known internationally, with trademark registrations across numerous countries. Complainant has marketed and sold its goods and services using this trademark since 1991, which is well before Respondent's registration of the disputed domain name. Complainant was included in Forbes magazine's annual list of the 200 Best Small Companies in America, which demonstrates Complainant's fame. The disputed domain name consists of Complainant's NETSCOUT trademark along with the related term "sy", there is no plausible good-faith reason or logic for Respondent to have registered the disputed domain name. The disputed domain name resolves to a parking page. MX records have been configured for it. Respondent ignored Complainant's cease-and-desist letters, and concealed its identity when registering the disputed domain name.

Complainant requests transfer of the disputed domain name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

6.1 Procedural Issue: Identify of Respondent

The Panel has reviewed an email message from a third party stating that it received the Written Notice in relation to these proceedings, and that it had been named in part as registrant but had no connection whatsoever with the disputed domain name. The Panel finds it more likely than not that Respondent has provided false contact information. To avoid involving an unrelated third party, the Panel has ordered redaction of the name of Respondent.

6.2 Substantive Issues

Paragraph 4(a) of the UDRP requires Complainant to make out all three of the following:

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

Under paragraph 15(a) of the Rules, "[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

A. Identical or Confusingly Similar

Complainant has provided evidence establishing that it has trademark rights in the NETSCOUT mark through registrations in the United States and the European Union. Complainant thereby satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2.1.

In comparing Complainant's marks with the disputed domain name, the Panel finds that the disputed domain name is confusingly similar to Complainant's mark. The disputed domain name reflects Complainant's

NETSCOUT mark in its entirety, followed by the letters “sy”. It is the consensus view of UDRP panels that, where a domain name incorporates the entirety of a trademark, the domain name will normally be considered confusingly similar to that mark. Moreover, where the relevant trademark is recognizable within the disputed domain names, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. See [WIPO Overview 3.0](#), sections 1.7 and 1.8.

It is the well-established view of UDRP panels that the generic Top-Level Domain (“gTLD”) “.com” is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test (see [WIPO Overview 3.0](#), section 1.11.1, and cases cited thereunder).

Accordingly, the Panel finds that Complainant has established the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in a domain name by demonstrating any of the following:

- (i) before any notice to it of the dispute, respondent’s use of, or demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel finds that there is no evidence that Respondent is commonly known by the disputed domain name nor is using the NETSCOUT mark with the permission of Complainant. The nature of the disputed domain name, which reflects Complainant’s mark in its entirety together with the letters “sy”, which can be an abbreviation for the term “system”, cannot constitute fair use since it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. See [WIPO Overview 3.0](#), section 2.5.1.

The Panel therefore finds that the evidence submitted by Complainant establishes a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name.

Pursuant to [WIPO Overview 3.0](#), section 2.1, and cases thereunder, where Complainant makes out a *prima facie* case that Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

Respondent, in failing to file a response, has not submitted any evidence or arguments demonstrating such rights or legitimate interests, nor has it rebutted any of Complainant’s contentions. The disputed domain name does not resolve to an active website. There is no evidence that the disputed domain name has been registered or is being used for legitimate noncommercial purposes. See [WIPO Overview 3.0](#), section 2.1, and cases cited thereunder.

Accordingly, the Panel finds that Complainant has established the second element under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Pursuant to paragraph 4(b) of the Policy, the Panel finds that Complainant has demonstrated Respondent’s bad faith registration and use of the disputed domain name. Complainant’s rights in its NETSCOUT mark

predate the registration of the disputed domain name by more than 25 years. The disputed domain name reflects Complainant's NETSCOUT mark together with the letters "sy", which can be an abbreviation for the term "system". The disputed domain name is therefore nearly identical to Complainant's NETSCOUT mark and inherently misleading. The Panel finds that, by registering such a domain name, Respondent has attempted to create an association with Complainant's well-established mark.

The disputed domain name resolves to a Registrar parked page, which essentially equates to passive holding. The Panel further finds that Respondent has, on balance, demonstrated bad faith by passive holding of the disputed domain name. Such a finding is consistent with previous UDRP decisions, such as *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). See also [WIPO Overview 3.0](#), section 3.3. In particular, the disputed domain name reflects Complainant's registered NETSCOUT mark. Respondent failed to provide any evidence of a connection to a legitimate business related to Complainant's marks, and, in using a third-party name when registering the disputed domain name, has engaged in identity theft. Respondent has failed to provide any evidence of actual or contemplated good-faith use of the disputed domain name. Under the circumstances, the Panel does not find any such use plausible.

The Panel also notes that Respondent's configuration of MX records in respect of the disputed domain name means that Respondent could potentially use the email addresses hosted by the disputed domain name to confuse Internet users into believing they are dealing with Complainant's when they are not.

The Panel therefore finds that Complainant has established the third element under paragraph 4(a) 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 <netscoutsy.com> be transferred to Complainant.

/Ingrīda Kariņa-Bērziņa/
Ingrīda Kariņa-Bērziņa
Sole Panelist
Date: December 27, 2022