

ADMINISTRATIVE PANEL DECISION

National Federation of State High School Associations v. Erwin Nirwana Case No. D2022-4427

1. The Parties

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

The Respondent is Erwin Nirwana, Indonesia.

2. The Domain Name and Registrar

The disputed domain name <4knfhsusahd.com> is registered with CV. Jogjacamp (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 18, 2022. On November 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 22, 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 January 11, 2023, 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 January 11, 2023.

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 January 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 1, 2023. The Center received an informal communication from the Respondent on January 19, 2023. Accordingly, the Center notified the Parties with Commencement of Panel Appointment Process on February 2, 2022.

The Center appointed Kaya Köklü as the sole panelist in this matter on February 15, 2023. 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 non-profit corporation incorporated in the State of Illinois, United States. It was founded in 2013 and consists of 51 member state associations, mainly promoting amateur sports participation and athletics programs at high school level. It is a provider of live streaming and on demand high school sports.

The Complainant is the owner of the United States Trademark No. 6,165,456 for NFHS NETWORK, registered on September 29, 2020, covering protection for certain film and video production and distribution services in class 41, with a claim of first use in commerce on August 1, 2013 (Annex 5 to the Complaint).

Also, the Complainant operates its official website at <nhfsnetwork.com> (Annex 6 and 7 to the Complaint).

The Respondent is reportedly located in Indonesia.

The disputed domain name was registered on October 16, 2022.

At one time, the disputed domain name resolved to a website allegedly offering live streaming of high school sports events by prominently using the NFHS NETWORK trademark. Also, the Respondent apparently configured and activated an email server associated with the disputed domain name, which enables the Respondent to send and receive emails using the disputed domain name (Annex 13 to the Complaint).

At the time of the decision, the disputed domain name resolves to a passive website only (Annex 12 to the Complaint).

5. Parties' Contentions

A. Complainant

The Complainant requests the transfer of the disputed domain name.

The Complainant is of the opinion that the disputed domain name is confusingly similar to its NFHS NETWORK trademark.

It further argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

In addition, the Complainant is convinced that the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

The Respondent did not substantively reply to the Complainant's contentions. In his brief and informal email communication to the Center on January 19, 2023, the Respondent mainly stated that he is "not aware of any problems with this domain" and he "can't talk about this anymore".

6. Discussion and Findings

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

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

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not formally replied to the Complaint. See *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See *Belupo d.d. v. WACHEM d.o.o.*, WIPO Case No. [D2004-0110](#).

For the evaluation of this case, the Panel has further taken note of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") and, where appropriate, will decide consistent with the consensus views stated therein.

A. Identical or Confusingly Similar

To begin with, the Panel confirms that the Complainant has satisfied the threshold requirement of having trademark rights in NFHS NETWORK (Annex 5 to the Complaint).

The Panel further finds that the disputed domain name is confusingly similar to the Complainant's registered trademarks, as it is incorporating the distinctive part of the Complainant's NFHS NETWORK trademark.

As stated at section 1.7 and 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms would generally not prevent a finding of confusing similarity. In the present case, the use of "nfhs" as the significant (and recognizable) part of the Complainant's trademark in combination with commonly known abbreviations for digital broadcasting and television, like "4K" (for a display resolution of 4,000 pixels), "HD" (for "high definition television") and the country indication "USA" does, in view of the Panel, not serve to avoid a finding of confusing similarity between the disputed domain name and the Complainant's NFHS NETWORK trademark.

Accordingly, the Panel finds that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

While the burden of proof remains with the Complainant, the Panel recognizes that this would often result in the impossible task of proving a negative, in particular as the evidence needed to show the Respondent's rights or legitimate interests is primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name to meet the requirements of paragraph 4(a)(ii) of the Policy. *Croatia Airlines d.d. v. Modern*

Empire Internet Ltd., WIPO Case No. [D2003-0455](#).

With its Complaint, the Complainant has provided *prima facie* evidence that the Respondent has no rights or legitimate interests, particularly no license or alike to use the Complainant's NFHS NETWORK trademark in a confusingly similar way within the disputed domain name.

In the absence of a formal Response, the Respondent has failed to demonstrate any of the nonexclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c) or provide any other evidence of a right or legitimate interest in the disputed domain name.

Quite the opposite, the Panel has no doubt that the Respondent was well aware of the Complainant and its NFHS NETWORK trademark before registering and using the disputed domain name. The Panel is convinced that the Respondent deliberately has chosen the disputed domain name to cause confusion with the Complainant and its live broadcasting services of high school sports in the United States among Internet users. Also, the Panel notes that the nature of the disputed domain name carries a risk of implied affiliation or association, as stated in section 2.5.1 of the [WIPO Overview 3.0](#), particularly, as such implied affiliation was apparently the intent of the Respondent. In view of the Panel, it is most likely that the disputed domain name is being used to impersonate the Complainant, which results in an illicit use that *per se* can never confer rights or legitimate interests upon the Respondent. [WIPO Overview 3.0](#), section 2.13.

Bearing all this in mind, the Panel does also not see any basis for assessing a *bona fide* offering of goods or services by the Respondent.

Consequently, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel believes that the Respondent deliberately attempted to create a likelihood of confusion among Internet users for illegitimate purposes, particularly for the following reasons.

At the date of registration of the disputed domain name, the Respondent was apparently well aware of the Complainant and its NFHS NETWORK trademark. It is obvious to the Panel, that the Respondent has deliberately chosen the inherently misleading disputed domain name to target and mislead Internet users. Consequently, the Panel is convinced that the Respondent has registered the disputed domain name in bad faith.

Additionally, the Panel finds that the Respondent is using the disputed domain name in bad faith. The Panel particularly notes that the disputed domain name resolved to a website offering live streaming of high school sport events in the United States and prominently featuring the Complainant's NFHS NETWORK trademark (Annex 11 to the Complaint). By doing so, the Respondent is purporting that the website associated to the disputed domain name is operated at least authorized by the Complainant. In addition, the Respondent has not published any visible disclaimer on the website associated to the disputed domain name to explain that there is no existing relationship between the Respondent and the Complainant. The Panel finds that the Respondent's attempt to impersonate the Complainant is *per se* considered as evidence of bad faith.

The fact that the disputed domain name does currently resolve to a passive website only does not change the Panel's findings in this respect.

Taking all facts of the case into consideration, the Panel believes that this is a typical cybersquatting case, which the UDRP was designed to stop. The Panel therefore concludes that the disputed domain name was registered and is being used in bad faith and that the Complainant consequently has satisfied the third element of the Policy, namely, 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 <4knfhsusahd.com> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: March 1, 2023