

## **ADMINISTRATIVE PANEL DECISION**

Nighthawk Custom LLC v. Poliano Agbor  
Case No. D2023-0332

### **1. The Parties**

The Complainant is Nighthawk Custom LLC, United States of America (“United States”), represented by Eversheds Sutherland (US) LLP, United States.

The Respondent is Poliano Agbor, United States.

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

The disputed domain name <nighthawkcustomgun.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 January 24, 2023. On January 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 25, 2023, 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 January 31, 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 February 5, 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 February 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 28, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 2, 2023.

The Center appointed Evan D. Brown as the sole panelist in this matter on March 10, 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 in the firearms business. It owns the mark NIGHTHAWK CUSTOM, for which it obtained registration in the United States (Reg. No. 3,078,532, registered on April 11, 2006). The disputed domain name was registered on registered on March 12, 2022. The Respondent used the disputed domain name to set up a website that imitates the Complainant, purporting to offer the Complainant's firearms for sale, and going so far as to use exact copies of the Complainant's product photographs.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant's trademark; that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights, (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. The Panel finds that all three of these elements have been met in this case.

##### **A. Identical or Confusingly Similar**

This first element under the Policy functions primarily as a standing requirement. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7. This element requires the Panel to consider two issues: first, whether the Complainant has rights in a relevant mark; and second, whether the disputed domain name is identical or confusingly similar to that mark.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#). The Complainant has demonstrated its rights in the NIGHTHAWK CUSTOM mark by providing evidence of its trademark registration.

The disputed domain name is confusingly similar to the NIGHTHAWK CUSTOM mark. The addition of the word "gun" does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's NIGHTHAWK CUSTOM mark. See [WIPO Overview 3.0](#), section 1.8. The NIGHTHAWK CUSTOM mark is recognizable for a showing of confusing similarity under the Policy.

The Panel finds the Complainant has established this first element under the Policy.

## B. Rights or Legitimate Interests

The Panel evaluates this element of the Policy by first looking to see whether the Complainant has made a *prima facie* showing that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. If the Complainant makes that showing, the burden of production of demonstrating rights or legitimate interests shifts to the Respondent (with the burden of proof always remaining with the Complainant). See [WIPO Overview 3.0](#), section 2.1; *AXA SA v. Huade Wang*, WIPO Case No. [D2022-1289](#).

On this point, the Complainant asserts, among other things, that: (1) it has not authorized the Respondent to use the NIGHTHAWK CUSTOM mark in the disputed domain name, (2) use of the NIGHTHAWK CUSTOM mark in the disputed domain name is not a noncommercial or fair use, (3) the Respondent has not been known by the disputed domain name, and (4) the Respondent has not used the disputed domain name in connection with any *bona fide* offering of goods or services. Instead, the Complainant asserts, the Respondent has used the disputed domain name to establish a website that imitates the Complainant by using the Complainant's marks and purporting to offer the Complainant's products for sale.

The Panel finds that the Complainant has made the required *prima facie* showing. The Respondent has not presented evidence to overcome this *prima facie* showing. And nothing in the record otherwise tilts the balance in the Respondent's favor. The Panel finds the Complainant has established this second element under the Policy.

## C. Registered and Used in Bad Faith

The Policy requires a complainant to establish that the disputed domain name was registered and is being used in bad faith. The Policy describes several non-exhaustive circumstances demonstrating a respondent's bad faith registration and use. Under paragraph 4(b)(iv) of the Policy, a panel may find bad faith when a respondent "[uses] the domain name to intentionally attempt to attract, for commercial gain, Internet users to [respondent's] website or other online location, by creating a likelihood of confusion with complainant's mark as to the source, sponsorship, affiliation, or endorsement of [respondent's] website or location or a product or service on [the respondent's] website or location".

In this case, the Respondent's bad faith registration and use of the disputed domain name is shown from how the Respondent chose a domain name that is confusingly similar to the Complainant's mark, and then used that domain name in an effort to clearly seek to deceive Internet users. This conduct is an example of clear bad faith registration and use.

Accordingly, the Panel finds that the Complainant has met this third element under 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 <nighthawkcustomgun.com> be transferred to the Complainant.

/Evan D. Brown/

**Evan D. Brown**

Sole Panelist

Date: April 3, 2023