

## **ADMINISTRATIVE PANEL DECISION**

Infratil Limited v. Mukib Mukib

Case No. D2023-0760

### **1. The Parties**

The Complainant is Infratil Limited, New Zealand, represented by A. J. Park, New Zealand.

The Respondent is Mukib Mukib, Chile.

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

The disputed domain name <infratil-nz.com> (the “Disputed Domain Name”) is registered with NameCheap, Inc.

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 21, 2023. On February 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On February 21, 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 (Andrew Young, Infratil NZ) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 28, 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 March 1, 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 March 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 29, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 3, 2023.

The Center appointed Gabriela Kennedy as the sole panelist in this matter on April 11, 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

Founded and listed in New Zealand in 1994, the Complainant is an infrastructure investment company, which owns and/or invests in airports, electricity generation, electricity retail, renewable energy, telecommunication networks and data centers. It operates primarily in New Zealand, Australia and the United States of America.

The Complainant holds a number of trademark registrations for the word “INFRATIL” in class 36 in various jurisdictions. The relevant trademarks include, *inter alia*, New Zealand Trademark Registration No. 269250 registered on May 22, 1997, and Australian Trade mark Registration No. 740714 registered on May 18, 1998 (“the Complainant’s Trademark”).

The Complainant’s Trademark is also fully incorporated in the Complainant’s domain name <infratil.com> registered on June 24, 1997. The Complainant’s domain name links to a website where the Complainant applies the Complainant’s Trademark and promotes its investment and related services.

The Disputed Domain Name was registered by the Respondent on December 30, 2022, which is over 25 years after the Complainant’s first trademark registration. The Disputed Domain Name resolves to an inactive webpage. However, it has been found out that the Disputed Domain Name has been used in connection with a phishing scheme that targets prospective job applicants of the Complainant via the Respondent’s email address “[...]@infratil-nz.com”.

#### 5. Parties’ Contentions

##### A. Complainant

The Complainant’s primary contentions can be summarized as follows:

- (a) The Disputed Domain Name is identical or confusingly similar to the Complainant’s Trademark. The Complainant’s Trademark is reproduced in its entirety in the Disputed Domain Name. Apart from the Complainant’s Trademark, the only element in the Disputed Domain Name is the geographic term “nz”, which does not prevent a finding of confusing similarity between the Disputed Domain Name and the Complainant’s Trademark.
- (b) The Respondent has no rights or legitimate interests in the Disputed Domain Name. The Respondent has no right to use the Complainant’s Trademark as part of a domain name or otherwise. There is no evidence that the Respondent has operated an active website or is prepared to use the domain name in connection with a *bona fide* offering of services. The only purpose of the domain name and associated emails is scamming or phishing.
- (c) Both the Respondent’s registration of and its use of the Disputed Domain Name establish its bad faith. Given that Complainant has been using its INFRATIL mark since 1994, the Respondent must have been fully aware of the existence of the Complainant’s rights in the Complainant’s Trademark when the Respondent registered and used the Disputed Domain Name. The Respondent uses an email address linked to the disputed domain name for the purpose of perpetrating fraud by offering jobs to applicants. Apart from applying the INFRATIL mark in the email address, the Respondent also incorporated the same company address, telephone number and a misleading trade name “Infratil NZ” in its email signature to disguise as the Complainant. Therefore, the Respondent has registered and is using the Disputed Domain Name in bad faith.

## B. Respondent

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

## 6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements:

- (i) The Disputed Domain Name is identical or confusingly similar to a trademark or service mark 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 by the Respondent in bad faith.

### A. Identical or Confusingly Similar

The Complainant is the owner of various INFRATIL trademark registrations, as well as a domain name formed with INFRATIL trademark, all registered and used in relation with financial services.

The Disputed Domain Name incorporates the Complainant's Trademark in its entirety with the addition of a hyphen and the geographical term "nz" at the end of the Complainant's Trademark. Where the relevant trademark is recognizable within the Disputed Domain Name, the addition of a geographical term would not prevent a finding of confusing similarity under the first element. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). Furthermore, it is well established that the generic Top-Level Domain ("gTLD"), ".com" in this case, may be disregarded. See section 1.11 of the [WIPO Overview 3.0](#).

Consequently, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's Trademark, and accordingly, paragraph 4(a)(i) of the Policy is satisfied.

### B. Rights or Legitimate Interests

The Panel accepts that the Complainant has not authorized the Respondent to use the Complainant's Trademark. There is no relationship between the Complainant and the Respondent, which would otherwise entitle the Respondent to use the Complainant's Trademark. Accordingly, the Panel is of the view that a *prima facie* case has been established by the Complainant and it is for the Respondent to show rights or legitimate interests in the Disputed Domain Name.

Once a complainant establishes a *prima facie* case in respect of the lack of rights or legitimate interests of a respondent in a disputed domain name, the respondent then carries the burden of demonstrating that it has rights or legitimate interests in the disputed domain name. Where the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. See section 2.1 of the [WIPO Overview 3.0](#).

The Respondent did not submit a formal Response. The fact that the Respondent did not submit a formal Response does not automatically result in a decision in favor of the Complainant. However, the Respondent's failure to file a formal Response may result in the Panel drawing appropriate inferences from such default. The Panel may also accept all reasonable and supported allegations and inferences flowing from the Complainant as true (see *Entertainment Shopping AG v. Nischal Soni, Sonik Technologies*, WIPO Case No. [D2009-1437](#); and *Charles Jourdan Holding AG v. AAIM*, WIPO Case No. [D2000-0403](#)).

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish rights or legitimate interests in the Disputed Domain Name by demonstrating any of the following:

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

The Panel agrees with the Complainant that there is no evidence to show that the Respondent has trademark rights corresponding to the Disputed Domain Name, or that the Respondent has been known by the Disputed Domain Name.

There is no evidence to suggest that the Respondent's use of, or demonstrable preparations to use the Disputed Domain Name or a name corresponding to the Disputed Domain Name, is in connection with a *bona fide* offering of goods or services. The Disputed Domain Name resolves to an inactive website and was used to send fraudulent emails. Accordingly, the Panel agrees with the Complainant that the Respondent's use of the Disputed Domain Name cannot constitute a *bona fide* offering of goods or services, or be regarded as legitimate noncommercial or fair use. The Panel also notes the nature of the Disputed Domain Name, which incorporates the Complainant's Trademark in its entirety with the addition of the geographical term "nz" meaning New Zealand, where the Complainant is based and operates, tends to suggest sponsorship or endorsement by the Complainant. See Section 2.5.1 of the [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name and the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

### **C. Registered and Used in Bad Faith**

UDRP panels have consistently found that the mere registration of a domain name that is confusingly similar to a widely known trademark by an unaffiliated entity can already by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

After reviewing the supporting evidence submitted by the Complainant, the Panel agrees with the Complainant that the Complainant's Trademark appears to be well-known. A quick Internet search conducted by the Panel shows that the top search results returned for the keyword "infratil" are the Complainant's websites and third-party websites providing information about the Complainant and/or its business. Therefore, the Panel agrees that the Respondent must have been aware of the Complainant and its rights in the Complainant's Trademark when registering and using the Disputed Domain Name.

The Panel also agrees with the Complainant that the following factors support a finding that the Disputed Domain Name was registered and has been used by the Respondent in bad faith:

- (i) The Respondent made the choice of associating the Complainant's Trademark with "nz", which is the Complainant's origin and major place of business. It is obvious that the Respondent had the Complainant's Trademark in mind when it registered the Disputed Domain Name and intended to impersonate the Complainant;
- (ii) The Respondent has intentionally attempted to create a likelihood of confusion with the Complainant's Trademark by incorporating it into the Disputed Domain Name that was used to send phishing emails to oblivious job seekers and impersonating personnel of a purported "Infratil NZ"; and

- (iii) The Respondent has misappropriated the Complainant's company address and telephone number in its phishing emails which demonstrate its intention to defraud using the goodwill of the Complainant's Trademark.

The Panel also notes that the Respondent had failed to respond to the Complainant's contentions and has provided no evidence of any actual or contemplated good faith use of the Disputed Domain Name. This further supports a finding of bad faith registration and use of the Disputed Domain Name.

In the circumstances, the Panel finds that the Respondent registered and has been using the Disputed Domain Name in bad faith, and paragraph 4(a)(iii) of the Policy has been satisfied.

## **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, <infratil-nz.com> be cancelled.

*/Gabriela Kennedy/*

**Gabriela Kennedy**

Sole Panelist

Date: April 25, 2023