

ADMINISTRATIVE PANEL DECISION

The NOCO Company v. Brittany Beatty, Brittany Beatty
Case No. D2023-5373

1. The Parties

The Complainant is The NOCO Company, United States of America (“United States”), represented by Jones Day, United States.

The Respondent is Brittany Beatty, Brittany Beatty, United States.

2. The Domain Name and Registrar

The disputed domain name <nocoevchargers.com> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 28, 2023. On December 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 28, 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 Protected, TUCOWS, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 5, 2024, 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 January 5, 2024.

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 January 8, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 28, 2024. The Respondent sent an email communication to the Center on January 10, 2024. Pursuant to paragraph 6 of the Rules, on February 2, 2024, the Center informed the Parties that it would proceed with the panel appointment process.

The Center appointed Evan D. Brown as the sole panelist in this matter on February 7, 2024.

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.

On February 7 and 13, 2024, the Respondent sent brief email communications to the Center.

4. Factual Background

The Complainant is in the business of designing and selling consumer battery chargers, jump starters, batteries, related accessories, and other products. The Complainant was established in 1914 and marketed one of the world's first battery corrosion preventatives developed by its founder, whom was inducted into the Automotive Hall of Fame in 1985/1986. The Complainant owns the trademark NOCO for which it enjoys the benefits of registration in countries throughout the world (e.g., United States Reg. No. 1,302,394, registered on October 30, 1984, and United States Reg. No. 5,238,298, registered on July 4, 2017).

According to the Whois information, the disputed domain name was registered on August 3, 2021. The Complainant provided copies of a website the Respondent published at the disputed domain name to purportedly advertise chargers for electric vehicles using the Complainant's NOCO trademark. As of the date of this decision, the website is no longer online.

The Complainant highlights a number of facts to assert that the website at the disputed domain name was fraudulent and that the Respondent has no rights or legitimate interests to the disputed domain name. For example, the website identified inconsistent addresses for the Respondent's location, including a map of London and an address at "21 jump street, 2312 Palo Alto." The Complainant asserts that "21 jump street" is presumptively a fake address based on the TV show and movie "21 Jump Street," given that there is no such address in Palo Alto, California. The Complainant also notes that the website listed conflicting phone numbers in different countries. And the contact information identified on the disputed domain name was used on other apparently fraudulent websites at different domain names.

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 file a formal response to the Complainant's contentions. On February 7, 2024, the Respondent sent two email messages to the Center, stating the following:

"Who are you guys and what do you want?"

"If you want the url [sic.] just buy it for a small price. Sheesh."

And on February 13, 2024, the Respondent sent two more email messages, stating the following:

"Do you realize that NoCo stands for northern Colorado [sic.] and my husband is an electrician? He installs ev [sic.] chargers in people's [sic.] garages in northern Colorado [sic]."

"The fact that your company is trying to take away a URL from a small business that utilizes it to gain business locally is just ridiculous."

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 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. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant’s trademark and the disputed domain name. *Id.* 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 NOCO mark by providing evidence of its trademark registrations.

The disputed domain name incorporates the NOCO mark in its entirety with the terms “ev” and “chargers” appended. The presence of these additional terms does not prevent a finding of confusing similarity between the disputed domain name and the Complainant’s NOCO mark. See [WIPO Overview 3.0](#), section 1.8. The NOCO mark remains recognizable for a showing of confusing similarity under the Policy.

Accordingly, the Panel finds that the Complainant has satisfied this first element under the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

On this point, the Complainant asserts, among other things, that: (1) there is no relationship or affiliation between the Complainant and the Respondent giving rise to any license, permission, or other right by which the Respondent could own or use any domain name incorporating the NOCO mark, (2) the Respondent is not commonly known by the disputed domain name, (3) the Respondent is not using the disputed domain name in a legitimate noncommercial or fair use manner, and (4) the Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s prima facie showing. In its email messages to the Center, the Respondent seems to assert that it has rights and legitimate interests in the disputed domain name because the disputed

domain name is being used for a website that promotes electrical services in northern Colorado. The Panel is not convinced by this, however, given the various indicators from the website that undermine the assertion. A website being used for the Respondent's asserted purpose would not likely show a map of London, list a physical address apparently in California, provide information about café/restaurant services, or have a foreign country's phone number. The fact that such misleading contact information can also be found on other third party websites further reinforces the Panel's view that such website is not connected to a legitimate business but likely template content automatically generated from a hosting or website provider (i.e., as alleged in the Complaint, Wordpress). Ultimately, the totality suggests such website is merely a pretext for misleading unsuspecting Internet users expecting to find the Complainant, as opposed to a credible pursuit of a bone fide offering of goods or services under the disputed domain name.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Policy requires a complainant to establish that a 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".

The Respondent registered the disputed domain name in bad faith. The Panel finds it implausible that the Respondent was not aware of the Complainant and its NOCO trademark when the Respondent registered the disputed domain name. The Complainant has provided evidence that the NOCO trademark has been used since 1979, is well-known in the automotive industry wherein the Respondent (or her husband) alleges to operate, and is subject to registrations in jurisdictions around the world. The Panel finds that the Respondent's decision to include the NOCO mark within the disputed domain name along with terms that are highly pertinent to the Complainant's business – "ev" (for electric vehicles) and "chargers" – indicates an intention of targeting of the Complainant. This targeting shows that the Respondent registered the disputed domain name in bad faith.

The Respondent has also used the disputed domain name in bad faith. Bad faith use is clear from the Respondent's activities of using the disputed domain name to operate a website bearing the NOCO mark and purporting to offer services that are directly related to the Complainant's business. Except for the Respondent's brief treatment of the subject as noted above in Section 6.B., the Respondent has not come forth with any credible explanation of any potential good faith use of the disputed domain name.

For these reasons, the Panel finds that the Complainant has successfully met this third UDRP element.

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 <nocoevchargers.com> be transferred to the Complainant.

/Evan D. Brown/

Evan D. Brown

Sole Panelist

Date: February 21, 2024