

ADMINISTRATIVE PANEL DECISION

GROUPE NOCIBE v. RAMON RAFAEL, dperfume
Case No. D2024-4532

1. The Parties

The Complainant is GROUPE NOCIBE, France, represented by SCP Deprez, Guignot et Associés, France.

The Respondent is RAMON RAFAEL, dperfume, Brazil.

2. The Domain Name and Registrar

The disputed domain name <nocbefr.site> 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 5, 2024. On November 5, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 6, 2024, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 6, 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 amended Complaint on November 8, 2024.

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 November 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 2, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 9, 2024.

The Center appointed Torsten Bettinger as the sole panelist in this matter on December 13, 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.

4. Factual Background

The Complainant is a French perfume and cosmetics retailer. Founded in Lille in 1984 by Daniel Vercamer, it became a subsidiary of the German Douglas Holding group in 2014 and is now ranked No. 1 in the European selective perfume market. With 15 million customers in stores and over 60 million visitors to its website, the Complainant is one of the leaders in the selective distribution of perfumes and cosmetics.

The Complainant owns, several trademarks registrations including the word “NOCIBE”, including the following ones:

- International trademark NOCIBE, n°682885 filed and registered on October, 24, 1997, services of class 3; 42 ;
- French trademark NOCIBE, n°96643502, filed on September, 25, 1996 and registered on March 14, 1997, for services of class 3 ; 5 ; 8 ; 14 ; 18 ; 21 ; 25 ; 44;
- European union trademark n° 018461113, filed on April 27th, 2021 and registered on September 23, 2021, and covers the services of class 3; 5 ; 8 ; 14 ; 18 ; 21 ; 25 ; 26 ; 35 ; 44

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The Complainant is running the following official website: “www.nocibe.fr”

The disputed domain name <nocbefr.site> was registered on October 26, 2024 and resolves to a website which offers cosmetic and perfumery products for sale.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

The Complainant submits that its earlier trademarks enjoy a wide-spread continuous reputation, and refers to a number of previous Panelist decisions.

With regard to the requirement of identity or confusing similarity between the trademark and the disputed domain name pursuant to paragraph 4(a)(i) of the Policy, the Complainant argues that:

- the disputed domain name is highly similar to the Complainant’s trademark NOCIBE, since the disputed domain name reproduces the NOCIBE trademark entirely with the mere addition of the country identifier “fr” for France, the generic Top-Level Domain “.site” and the deletion of the letter “i”.
- the domain name uses the first three letters of the trademark NOCIBE and the last two ones in the same order;;
- the mere deletion of the letter “i” is not visually perceptible and does not significantly alter pronunciation;
- the addition of “fr” can be interpreted as a reference to “France”, reinforcing the association with the French trademark and company NOCIBE;
- as a result, an Internet user can easily confuse “NOCBE” with “NOCIBE”, especially when reading quickly.
- the deletion of a single letter is a common typosquatting technique, aimed at taking advantage of users’ typing errors, and the addition of the “fr” code may suggest that this is the official NOCIBE website for France.

With regards to the Respondent having no rights or legitimate interests in the disputed domain name, the Complainant submits that:

- the Respondent's use of the disputed domain name has never been authorized by the Complainant;
- the disputed domain name resolved to a website that imitated the Complainant's official website in its form (color, wording);
- the products marketed by the Complainant are selective products which must be authorized by selective suppliers; the Respondent does not have the authorization to sell the Complainant's products
- the Respondent intends to mislead consumers into buying products marketed by NOCIBE at an allegedly lower price;
- the nature of the disputed domain name, comprising almost identically the Complainant's trademarks carries a risk of implied affiliation;
- the Respondent uses the disputed domain name to promote cosmetic products and perfumes and therefore gives the impression that these websites belong to or are linked to the Complainant.

Finally, with regards to the disputed domain name having been registered and being used in bad faith, the Complainant argues that:

- the Respondent intended to capitalize on that confusion between the domain name and the "NOCIBE" trademarks and aimed to mislead Internet users into believing there is a form of association between the Respondent and the Complainant when there is not;
- the Respondent stole the Complainant's identity in order to use its reputation demonstrating its bad faith regarding the use of the disputed domain name;
- the products sold on the Respondent website are identical with those sold by the Complainant;
- the website to which the disputed domain name resolves constitutes an act of fraud or attempted fraud;
- the website to which the disputed domain name resolves identically reproduces NOCIBE's website and aims to mislead consumers and allegedly offer products marketed by NOCIBE at a lower price;
- the fact that the Respondent used a domain privacy company to hide its true identity is additional evidence of bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy states that the Complainant must prove each of the three following 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 in bad faith.

A. Identical or Confusingly Similar

The Complainant has demonstrated that it owns multiple trademark registrations for the mark NOCIBE prior to the registration of the disputed domain name on October 26, 2024.

It is well-established that the test of identity or confusing similarity under the Policy is confined to a comparison of the disputed domain name and the trademark alone, independent of the products for which the trademark is used or other marketing and use factors usually considered in trademark infringement cases. (See sections 1.1.2 and 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

As set forth in section 1.7 of the [WIPO Overview 3.0](#): “in cases where a domain name incorporates the entirety of a trademark [...] the domain name will normally be considered confusingly similar to that mark.” (See, e.g., *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) (“the fact that a domain name wholly incorporates a complainant’s registered mark is sufficient to establish identity or confusing similarity for purposes of the Policy”)).

In the present case, the disputed domain is identical to the Complainant's trademark NOCIBE, with the exception of the omitted letter “i” and the addition of the country code “fr”

Although the omission of the letter “i” and the addition of a different term, here “fr”, may affect the assessment of the second and third elements, the Panel considers that these differences do not prevent a finding of confusing similarity between the disputed domain name and the Complainant's NOCIBE mark within the meaning of the Policy.

Finally, it is well accepted in past UDRP decisions that a generic Top-Level-Domain (“gTLD”) such as “.site” is typically not to be taken into account when assessing the issue of identity and confusing similarity, except in certain cases where the applicable gTLD may itself form part of the relevant trademark (see section 1.11 of the [WIPO Overview 3.0](#)).

The Panel therefore concludes that the disputed domain name is confusingly similar to the Complainant's NOCIBE trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish its rights or legitimate interests in the domain name, among other circumstances, by showing any of the following elements:

- “(i) before any notice to you [the Respondent] of the dispute, your 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) you [the Respondent] (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you [the Respondent] are 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 Complainant stated that it had not been able to establish that the Respondent had any registered trademarks and that there is no evidence that the Respondent has been commonly known by the disputed domain name or as an individual, company or other organization corresponding to the name NOCIBE and that it had never granted the Respondent a license or other authorization to use the name NOCIBE.

These assertions and evidence are sufficient to establish a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

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 disputed domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See section 2.1 of the [WIPO Overview 3.0](#).

The Respondent chose not to contest the Complainant's allegations and has failed to come forward with any evidence to refute the Complainant's prima facie showing that the Respondent lacks rights or legitimate interests. The Panel therefore accepts these allegations as undisputed facts.

Based on the record the Complainant undisputedly alleges that the disputed domain name was used for a website offering products that are identical to those offered by the Complainant.

Although it remains unclear whether the products offered on the Respondent's website have been produced by the Complainant or are counterfeits the Panel notes that the goods are purportedly offered at substantially discounted prices and that the website displays the Complainant's trademarks and uses images taken from the Complainant's website. [WIPO Overview 3.0](#), section 2.13.

Such use of the disputed domain name is clearly illegitimate as it misleads Internet users into believing that the website to which the disputed domain name resolves is the Complainant's or related to an official or endorsed distributor of the Complainant and can therefore not confer rights or legitimate interests on the Respondent.

Panels have held that the use of a domain name for an illegitimate activity, here impersonating the Complainant, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides four, non-exclusive, circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of the disputed domain name in bad faith:

- (i) circumstances indicating that the Respondent has registered or has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of the Complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) the Respondent has registered the disputed domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct; or
- (iii) the Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location.

The Complainant holds multiple trademark registrations for the NOCIBE mark in various jurisdictions that predate the registration of the disputed domain name.

In view of the fact that the Respondent uses the disputed domain name to offer cosmetics and perfumery products identical to those offered by the Complainant, displaying the Complainant's trademark and using images from the Complainant's official website, it is clear that the Respondent did not register the disputed domain name by chance, but had knowledge of the Complainant's rights in the NOCIBE trademarks when registering the disputed domain name.

Further, it is also evident that the Respondent registered and used the disputed domain name with the intention to attract, for commercial gain, Internet users to the website by creating a likelihood of confusion with the Complainant's registered NOCIBE trademark as to the source, sponsorship, affiliation, or

endorsement of its website or location or of a product or service on its website or location, which constitutes registration and use in bad faith pursuant to paragraph 4(b)(iv) of the Policy.

By using a disputed domain name which, with the exception of the omitted letter “i” and the added country code “fr”, is virtually identical to the Complainant's trademark NOCIBE, the Respondent clearly suggests to any Internet user visiting the website made available under the disputed domain name that the Complainant is the source of the website. This impression is reinforced by the Respondent's unlawful use of the Complainant's copyrighted material from the Complainant's official website.

The Panel therefore finds that the use of a domain name for illegitimate activity, here impersonating the Complainant, constitutes bad faith (see [WIPO Overview 3.0](#), section 3.4.) and that the Complainant has also established the third element 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 <nocbefr.site> be transferred to the Complainant.

/Torsten Bettinger/

Torsten Bettinger

Sole Panelist

Date: December 27, 2024