

ADMINISTRATIVE PANEL DECISION

Nelly NLY AB v. Chunmei Yang
Case No. D2024-5150

1. The Parties

The Complainant is Nelly NLY AB, Sweden, represented by Abion GmbH, Switzerland.

The Respondent is Chunmei Yang, China.

2. The Domain Names and Registrar

The disputed domain names <nlynelly.com> and <nlytrend.com> are registered with Gname.com Pte. Ltd. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 13, 2024. On December 13, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On December 16, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names 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 December 17, 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 December 20, 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 December 23, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 12, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 13, 2025.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on January 17, 2025. 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 Swedish company founded in 2004 that provides clothing, shoes, and fashion accessories online, catering to young adults and marketing its products internationally under the brands NLY, NELLY, and NLY BY NELLY. The Complainant owns many domain names incorporating these marks, including <nelly.com> (registered in June 1997), which resolve to the Complainant's website at "www.nelly.com". This ecommerce website is published in the English language with a drop-down menu for versions designed for different countries and regions, with the prices quoted in the relevant currencies. The Complainant's website features photos of models wearing the Complainant's clothing and offers shipping throughout the European Union, United Kingdom, and "Rest of World".

The Complainant's website offers products branded NELLY, NLY, and NLY BY NELLY, as well as products with other brand names such as LEVI'S and BIRKENSTOCK. A feature at the bottom of every page of the website highlights links under the heading, "Trending now". The Complainant's website is linked to social media sites that also advertise the NLY, NELLY, and NLY BY NELLY marks.

The Complainant holds relevant trademark registrations including the following:

Mark	Jurisdiction	Registration Number	Registration Date	Goods or Services
NELLY (word)	European Union	006509699	June 3, 2010	International Class 35
NELLY (word)	International (multiple designations, including China)	1111014	February 15, 2012	International Class 35
NLY (word)	International (multiple designations, including China)	1134265	February 15, 2012	International Classes 25, and 35
NLYBYNELLY (word)	International (multiple designations, including China)	1472072	February 26, 2019	International Classes 18, 25, and 35

The Registrar reports that the disputed domain names were both created on November 15, 2022, and are both registered to the Respondent, showing no company affiliation and a postal address in Hunan province, China, with a contact email address using the domain name <officess.online> (which is not associated with an active website). The postal and email addresses furnished with the registration of the disputed domain names appear to be invalid, according to courier and email delivery records.

At the time of this Decision, the disputed domain names do not resolve to active websites. The Complaint attaches screenshots of the websites formerly associated with the disputed domain names (the "Respondent's former websites"). The Respondent's former websites were headed "NELLY" with the name "NLY BY NELLY" underneath on some pages, with a typeface and color scheme similar to the Complainant's website. Both marks were repeated throughout the websites. The Respondent's websites imitated fashion images from the Complainant's website and displayed discounted prices in GBP, offering to accept payment by credit card and provide shipping "to virtually any address in the world". The copyright notices on the Respondent's websites were simply in the name of the disputed domain names, and the "About Us" pages did not identify the website operator or its relationship, if any, with the Complainant. The Terms and Conditions and Privacy pages referred, respectively, to "nlynelly.com Store LLC" and "nlytrend.com Store LLC", without indicating where those supposed entities are located.

The Complainant successfully obtained the takedown of the Respondent's websites by the Registrar company and initiated this Policy proceeding.

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 names.

Notably, the Complainant contends that both disputed domain names are confusingly similar to its registered NLY and NLY BY NELLY marks, and that the disputed domain name <nlynelly.com> is also confusingly similar to its registered NELLY mark. The Complainant asserts that the Respondent has no permission to use these marks, and there is no evidence that the Respondent is known by a corresponding name or otherwise has rights or legitimate interests in the disputed domain names. Instead, the Respondent used them for imitative websites that falsely suggested an association with the Complainant, which cannot be a legitimate use under the Policy. The Complainant argues that these facts, along with the Respondent's efforts to hide its identity, support a conclusion of bad faith in the registration and use of the disputed domain names. The Complainant urges a finding that the Respondent attempted to use confusingly similar domain names to misdirect Internet users for commercial gain, an instance of bad faith as defined by the Policy.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. 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. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark (here, the registered marks NLY, NELLY, and NLY BY NELLY) for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the NLY mark is reproduced within both disputed domain names. The entirety of the NELLY mark is reproduced within the disputed domain name <nlynelly.com>. Accordingly, the disputed domain names are confusingly similar to the marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, "trend" in the disputed domain name <nlytrend.com>) may bear on assessment of the second and third elements, the Panel finds the addition of such a term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel also finds the mark NLY BY NELLY is recognizable within both of the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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

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.

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 names. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise. Although the Respondent published what appear to be commercial websites associated with the disputed domain names, the Respondent did not come forward to confirm that these websites were actually used to conduct a legitimate business, and there is substantial evidence indicating that they did not, as discussed further in the following section on bad faith. There is no evidence on this record that the Respondent is known by a corresponding name or has done anything with the disputed domain names other than create a false association with the Complainant with imitative websites displaying the Complainant’s marks, which would not be deemed a bona fide commercial offering. The Respondent has not demonstrated, for example, that it was making nominative fair use of the Complainant’s mark in reselling the Complainant’s products, with an accurate description of its (lack of) relationship to the Complainant, as required under the fair use criteria set out in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#), and following decisions. [WIPO Overview 3.0](#), section 2.8. It cannot be known on this record whether consumers even received goods that they attempted to purchase through the Respondent’s websites.

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

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent was evidently aware of the Complainant’s marks, which have been in use online for twenty years and which the Respondent repeated on its websites imitative of the Complainant’s website, offering similar products. The disputed domain names meet the example of bad faith given in paragraph 4(b)(iv) of the Policy, intentionally attempting to attract Internet users for commercial gain by creating a likelihood of confusion with the Complainant’s mark. Moreover, the Respondent’s domain name registrations and websites indicate efforts to obscure the identity of the Respondent, heightening the likelihood of confusion. The Respondent has not come forward to offer a legitimate reason for choosing these disputed domain names and using them in this fashion. The Panel finds bad faith in the registration and use of both disputed domain names on this record.

The Panel finds that the Complainant has 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 names <nlynelly.com> and <nlytrend.com> be transferred to the Complainant.

/W. Scott Blackmer/

W. Scott Blackmer

Sole Panelist

Date: January 24, 2025