

ADMINISTRATIVE PANEL DECISION

NW1 Partners UK LLP v. will Jane

Case No. DCO2023-0074

1. The Parties

The Complainant is NW1 Partners UK LLP, United Kingdom, represented by CMS Cameron McKenna Nabarro Olswang LLP, United Kingdom.

The Respondent is will Jane, United States of America ("United States" or "US").

2. The Domain Name and Registrar

The disputed domain name <nw1partners.co> is registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 30, 2023. On August 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 31, 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 (the Registrant) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 4, 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 September 14, 2023. In response to the Center's notification regarding the annexes to the Complaint, the Complainant re-submitted the annexes to the Complaint on September 20, 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 September 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 11, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 13, 2023.

The Center appointed Kiyoshi Tsuru as the sole panelist in this matter on October 18, 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

In January 2017, the Complainant was incorporated as a Limited Liability Partnership under its current name. The Complainant claims to have been using the term “NW1 PARTNERS” to promote its activities since then. The Complainant also operates the website “www.nw1partners.com” using the term “NW1” or “NW1 PARTNERS” on it.

The Complainant has become a leading global real estate investment firm that manages institutional investor equity and invests in targeted, niche investment strategies across all property types in the United States, United Kingdom, and other countries in Europe. For example, in 2018 the Complainant raised USD 175 million to invest in retail assets in Washington DC and in 2020 it received a USD 100 million commitment from a US investor to invest in assets like industrial, multifamily and distressed hotel properties in the United States and Europe.

Owing to its activities under the term “NW1 PARTNERS”, the Complainant claims that NW1 PARTNERS has become a distinctive identifier which consumers associate exclusively with the Complainant and its services. Therefore, the Complainant has established rights to the common law trademark NW1 PARTNERS since at least 2017.

The disputed domain name was registered on July 20, 2023, and it currently resolves to an inactive website. The Complainant has provided evidence showing that the disputed domain name has been used to send false invoices to one of the Complainant’s suppliers requesting for payments.

5. Parties’ Contentions

A. Complainant

The Complainant argues the following:

Identical or Confusingly Similar

That the disputed domain name is identical or confusingly similar to its trademark NW1 PARTNERS, in relation to which it holds common law rights.

That when comparing the Complainant’s domain name and the disputed domain name, they are identical save for the country code Top-Level Domain (“ccTLD”) “.co” which is to be ignored when assessing identity or similarity.

Rights or Legitimate Interests

That there is no evidence which indicates that the Respondent is or was ever commonly known by the disputed domain name.

That the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, as the disputed domain name was set up on the same day when the email of an employee of the Complainant was hacked, and when two email addresses linked to the disputed domain name were used to encourage a supplier of the Complainant to pay a falsified invoice (which had been sent from the hacked email of the Complainant’s employee). That subsequent emails associated to the disputed domain name were sent, as part of the same fraudulent scheme.

Registered and Used in Bad Faith

That the disputed domain name was created to perpetrate a fraud against a supplier of the Complainant. That it was used to pose as the Complainant. That two email addresses using the disputed domain name were created to fraudulently impersonate executives of the Complainant, to mislead said supplier to pay a forged invoice. That said supplier actually paid the invoice, thinking that it had been issued by the Complainant. That additional emails linked to the disputed domain name were subsequently sent to the Complainant's supplier, encouraging it to pay other falsified invoices.

B. Respondent

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

6. Discussion and Findings

Given the Respondent's failure to submit a Response, the Panel may decide this proceeding based on the Complainant's undisputed factual allegations under paragraphs 5(f), 14(a), and 15(a) of the Rules (see *Joseph Phelps Vineyards LLC v. NOLDC, Inc., Alternative Identity, Inc., and Kentech*, WIPO Case No. [D2006-0292](#), and *Encyclopaedia Britannica, Inc. v. null John Zuccarini, Country Walk*, WIPO Case No. [D2002-0487](#)).

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.

Based on the available record, the Panel finds that the Complainant has established unregistered trademark rights in NW1 PARTNERS for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3.

The Panel finds that the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The addition of the ccTLD ".co" to the disputed domain name constitutes a technical requirement of the Domain Name System ("DNS"), and therefore has no legal significance in the present case (see *CARACOLITO S SAS v. Nelson Brown, OXM.CO*, WIPO Case No. [D2020-0268](#); *SAP SE v. Mohammed Aziz Sheikh, Sapteq Global Consulting Services*, WIPO Case No. [D2015-0565](#); and *Bentley Motors Limited v. Domain Admin / Kyle Rocheleau, Privacy Hero Inc.*, WIPO Case No. [D2014-1919](#)).

Based on the available record, 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.

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP panels have recognized that proving that a respondent lacks rights or legitimate interests in a domain name may result in the often impossible 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. 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.

In the present case, the Complainant has submitted evidence (which was not challenged by the Respondent) showing that the Respondent has used the disputed domain name to impersonate the Complainant and to capitalize on the reputation and goodwill of the Complainant and the Complainant's NW1 PARTNERS trademark, by sending fraudulent emails linked to the disputed domain name to the Complainant's supplier, to encourage said supplier to pay forged invoices.

UDRP panels have held that the use of a domain name for illegal activity (e.g., phishing, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. The impersonation and fraud perpetrated by the Respondent are illegal, and thus cannot confer rights to or legitimate interests in the disputed domain name to the Respondent. [WIPO Overview 3.0](#), section 2.13.1 (see also *Salesforce.com, inc. v. Registration Private, Domains By Proxy, LLC / Doug Todd*, WIPO Case No. [D2022-2152](#): "The Panel concludes that Respondent has no rights or legitimate interests in the disputed domain name. The evidence supports Complainant's assertion that the disputed domain name is being used in connection with a phishing scheme. The use of a domain name in connection with illegal or fraudulent activity cannot establish rights or legitimate interests on a respondent.")

The Respondent's use of the disputed domain name shows that it has targeted the Complainant for soliciting payments by sending false invoices to the Complainant's supplier. Therefore, the Respondent's conduct cannot be considered as a legitimate, noncommercial, or fair use of the disputed domain name (see *Wachovia Corporation v. Peter Carrington*, WIPO Case No. [D2002-0775](#) and *Edmunds.com, Inc. v. Digi Real Estate Foundation*, WIPO Case No. [D2006-1043](#)).

In light of the above, the Panel finds that 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 and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Based on the available record, 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 fact that the Respondent chose to register the disputed domain name, which entirely comprises the Complainant's trademark, and that it has associated the said disputed domain name to a fraudulent email scheme, shows that the Respondent knew the Complainant, its trademark, and its business when registering the disputed domain name. Therefore, the Panel finds that the Respondent has targeted the Complainant, which constitutes opportunistic bad faith (see section 3.2.1 of the [WIPO Overview 3.0](#); see also *L'Oréal v. Contact Privacy Inc. Customer 0149511181 / Jerry Peter*, WIPO Case No. [D2018-1937](#); and *Gilead Sciences Ireland UC / Gilead Sciences, Inc. v. Domain Maybe For Sale c/o Dynadot*, WIPO Case No. [D2019-0980](#)).

According to the evidence submitted by the Complainant and not contested by the Respondent, the Respondent implemented a phishing scheme by linking the disputed domain name to false emails passing off as the Complainant, in an attempt to obtain the payments of falsified invoices. Therefore, the Respondent has impersonated the Complainant for commercial gain, which constitutes bad faith under the Policy. [WIPO Overview 3.0](#), section 3.1.4 (see *National Westminster Bank plc v. Sites / Michael Vetter*, WIPO Case No. [D2013-0870](#); *Instagram, LLC v. Whois privacy protection service / Olga Sergeeva / Ivan Ivanov / Privacy Protect, LLC (privacy Protect.org)*, WIPO Case No. [D2020-0521](#); *Télévision Française 1 v.*

Kenechi Arene, WIPO Case No. [D2019-1578](#): “Although there is no evidence in the case record indicating that the disputed domain name has resolved to an active website, it is clear that the Respondent has actively been using the disputed domain name to generate an email address to impersonate an employee of the Complainant in order to lure a third party to make a financial payment to the Respondent.”; see also *SwissCare Europe v. michael click, Active OutDoors LLC*, WIPO Case No. [D2022-1496](#): “This Panel considers that, in appropriate circumstances, a failure to pass the impersonation test may properly lead to a finding of registration and use in bad faith because of the fact that, at its heart, such a domain name has been selected and used with the intention of unfairly deceiving Internet users, [...]”; *Philip Morris Products S.A. v. Domain Administrator, Registrant of iqosatismaganiz.com (apiname com) / Anl Girgin, Teknoloji Sarayi*, WIPO Case No. [D2019-0466](#); *Self-Portrait IP Limited v. Franklin Kelly*, WIPO Case No. [D2019-0283](#); and *Friedman and Soliman Enterprises, LLC v. Gary Selesko, M&B Relocation and Referral, LLC*, WIPO Case No. [D2016-0800](#)).

The abovementioned facts show that not only did the Respondent register the disputed domain name in bad faith, but also that the Respondent has used the disputed domain name in bad faith (see *BHP Billiton Innovation Pty Ltd. v. Domains By Proxy LLC / Douglass Johnson*, WIPO Case No. [D2016-0364](#): “The findings above would be sufficient for the Panel to find bad faith use and registration, but the Panel further concludes that the use of an email address associated with the disputed domain name, to send a phishing email for the purposes of dishonest activity is in itself evidence that the disputed domain name was registered and is being used in bad faith.”).

Based on the available record, the Panel finds the third element of the Policy has been established.

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, <nw1partners.co>, be transferred to the Complainant.

/Kiyoshi Tsuru/

Kiyoshi Tsuru

Sole Panelist

Date: November 1, 2023