

ADMINISTRATIVE PANEL DECISION

ALTILINK Real Estate Hungary KFT v. Domain Administrator, SK Creations, Inc.

Case No. D2023-5401

1. The Parties

The Complainant is ALTILINK Real Estate Hungary KFT, Hungary, represented by Laidebeur & Partners, Luxembourg.

The Respondent is Domain Administrator, SK Creations, Inc., United States of America ("US"), represented by Muscovitch Law P.C., Canada.

2. The Domain Name and Registrar

The disputed domain name <nestra.com> (the "Domain Name") is registered with Alpha Beta Domains LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 29, 2023. On January 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 5, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (PERFECT PRIVACY, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 8, 2024, and a reminder on January 15, 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 January 15, 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 January 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 5, 2024. On January 16, 2024, the Respondent requested for an extension of the Response due date pursuant paragraph 5(b) of the Rules. The Response due date was extended to February 9, 2024. The Response was filed with the Center February 7, 2024.

The Center appointed Mathias Lilleengen, Olivier E. Itéanu, and Alan L. Limbury, as panelists in this matter on March 6, 2024. The Panel finds that it was properly constituted. Each member of the Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a Hungarian real estate company. The Complainant uses the name NESTRA in its business and has registered the trademark as a word mark in Hungary on April 25, 2019 (Hungarian trademark number M1800994).

The Complainant operates the web page "www.nestra.fr", accessible in Hungarian, French and English. The domain name registration <nestra.fr> is held by the Complainant's holding company.

The Complainant acquired the Domain Name for USD 1,200 on February 19, 2018. The Complainant has used it as its main website. The Complainant renewed the registration for the Domain Name until 2023 when it forgot the annual renewal.

The Respondent is in the business of investing in domain names. On August 23, 2023, the Respondent bought the Domain Name on a domain name auction. The Domain Name was put back up for sale. At the time of drafting the Decision, the Domain Name redirects to a webpage that informs that the Domain Name is available for sale.

5. Parties' Contentions

A. Complainant

The Complainant provides evidence of a trademark registration and contends that it holds exclusive rights to the name NESTRA, through its Hungarian trademark NESTRA, but also through the domain name <nestra.fr>. As the top-level domain name identifier does not affect the determination under the first element, the Complainant argues that the Domain Name is identical to the Complainant's trademark.

The Complainant argues that the Respondent has no rights or legitimate interests in respect of the Domain Name. The Complainant asserts that it has never licensed nor otherwise permitted the Respondent to use its trademark or to apply for any domain name incorporating the trademark. There is no relationship or economic link between the Complainant and the Respondent. The Complainant argues that no other NESTRA trademark than that of the Complainant is registered in the European Union or in the US. The Respondent is not known by NESTRA and has never been known by it. There is no evidence of the Respondent's use of the Domain Name or a name corresponding to the Domain Name in connection with a bona fide offering of goods or services, as the Respondent has not used the Domain Name other than to put it up for sale. Finally, by registering the Domain Name the Respondent has not fulfilled its contractual obligation towards the hosting provider to not infringe the rights of a third party. According to the Complainant, this fact points to bad faith, but also to the Respondent's lack of legitimate interest.

The Complainant argues inter alia that the Respondent's offer to sell the Domain Name is at a price much higher than the market price, and this is evidence of bad faith. Moreover, the Complainant claims that the Respondent knew of the existence of the Complainant. The Respondent is the holder of more than 14,000 domain names and it is - in the view of the Complainant - unlikely to believe that the Respondent is reasonably exploiting all these domain names.

B. Respondent

The Respondent explains it considered price, length, meaning, syntax, usage and potential usage, and catchiness before buying the Domain Name. The Domain Name corresponds to a dictionary word in different languages such as "window" in Italian and "nest" in Hungarian. The Respondent used search tools to reveal that "nestra" was registered in over 30 extensions. Different companies have used "Nestra" for different goods and services throughout the world. The Respondent also argues that it searched without luck for the Domain Name in a database of more than 1,000 well-known or famous brands. The Respondent did not conduct a USPTO search or a Google search before registering the Domain Name. The Respondent argues that this does not change anything, as the Complainant has no registered trademark in any other country than Hungary. Based on a Google search conducted from Florida, after registering the Domain Name but before filing the Response, the Complainant did not show up in the first dozens of hits. The Respondent points out that it has done the same as the Complainant, buying the Domain Name at a premium price at an auction. The fact that "nestra" was used by various businesses all over the world (registered trademark in Spain since 2008, Botswana since 1992 and in India since 2006) did not stop the Complainant when it registered the Domain Name in 2017. The Respondent rhetorically asks why the same fact should stop it from buying the Domain Name in 2023. The Respondent clarifies that it did not register the Domain Name when the Complainant's registration lapsed in June 19, 2023, but had the winning bid at an auction in August 2023.

The Respondent describes its business of buying generic, descriptive, acronym, numeric, suggestive and brandable domain names. The Respondent owns over 100,000 such domain names. The Respondent argues that it does not register domain names that correspond to well-known brands. According to the Respondent, speculating and trading in domain names can constitute a legitimate interest under the Policy. The Complainant's list of domain names registered by the Respondent is mainly comprised of descriptive and made-up terms. It does not show any pattern of misconduct. The Respondent also clarifies that the Complainant contacted the Respondent's broker to buy the Domain Name. The Respondent argues that it was unaware of the Complainant and the Complainant's solicitation until the Respondent received the Complaint. The Respondent argues that the Complainant is not a well-known real estate agency anywhere. Moreover, the Respondent asserts that it had no intent to target the Complainant. The Respondent argues that it is entitled to offer its business asset for sale at market price and this is not bad faith.

6. Discussion and Findings

A. Identical or Confusingly Similar

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 Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

The Complainant has established that it has rights in the trademark NESTRA. In this case, the Domain Name is identical to the Complainant's trademark. For the purpose of assessing under paragraph 4(a)(i) of the Policy, the Panel may ignore the gTLD. See [WIPO Overview 3.0](#), section 1.11.1.

The Panel finds that the Domain Name is identical to a trademark in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

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

The Respondent is not affiliated or related to the Complainant in any way. There is no evidence that the Respondent has registered the Domain Name as a trademark or acquired trademark rights. There is no evidence of the Respondent's use of the Domain Name except offering it for sale.

The Respondent argues that speculating and trading in domain names may constitute a legitimate interest under the Policy. The Panel notes that such purchase may be done in good or bad faith. Therefore, and due to the conclusion under the third element, the Panel moves directly to examine potential bad faith under the third element.

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.

The Complainant argues bad faith *inter alia* based on the Respondent's alleged knowledge of the Complainant, the offer to sell the Domain Name to the Complainant for a price "much higher than the market price", and the fact that the Respondent holds more than 14,000 domain names indicates bad faith.

As to prior knowledge, the Respondent states (under penalty of perjury) it had never heard of the Complainant when it bought the Domain Name. The Complainant's trademark is not well-known outside Hungary. There is no evidence to support global fame for the trademark. The Complainant's trademark is not known or readily accessible in the Respondent's location. The Complainant's trademark is not inherently distinctive, it corresponds to a dictionary term in certain languages and may have been evaluated by the Respondent which is in the business of investing in domain names for resale as a valuable domain name for this reason. There is therefore little reason to expect that the Respondent should have known of the Complainant and its trademark when the Respondent registered the Domain Name. See WIPO Overview section 3.2.2.

The Panel notes that domain name traders buying bulk or automated registrations may have an extra obligation to avoid registration of trademark-abusive domain names, such as using online databases to avoid trademark-abusive registrations. See WIPO Overview section 3.2.3. In this case the Respondent asserts it has made such good faith efforts. Based on the case file, the Panel does not believe that the Respondent deliberately has acted under the concept of willful blindness.

The Panel notes the practice of registering domain names for subsequent resale would not by itself support a claim that the Respondent registered the Domain Name in bad faith. The Domain Name has a descriptive nature in different languages. It is not likely that the Respondent knew of the Complainant's rights, and the Complainant has not documented a pattern of abusive registrations by the Respondent. The list of the Respondent's registrations appears to contain mostly descriptive domain names. The list does not prove a pattern of bad faith in the meaning of 4 b (ii) of the Policy. Importantly, there is no evidence that the Respondent has targeted the Complainant in any way. There is no evidence of abusive use of the Domain Name. There are several stakeholders globally with an interest in "nestra". See [WIPO Overview 3.0](#) at section 3.1.1.

Accordingly, the Panel concludes the Complainant has failed to establish the third element of paragraph 4(a) of the Policy.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Mathias Lilleengen/
Mathias Lilleengen
Presiding Panelist

/Olivier E. Itéanu/
Olivier E. Itéanu
Panelist

/Alan L. Limbury/
Alan L. Limbury
Panelist
Date: March 15, 2024