



DECISION

Nourison Industries, Inc. v. Rachel Kestenbaum
Claim Number: FA1907001851280

PARTIES

Complainant is **Nourison Industries, Inc.** (“Complainant”), represented by **Yuval H. Marcus** of **Leason Ellis LLP**, New York, USA. Respondent is **Rachel Kestenbaum** (“Respondent”), New York, USA.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is **<nouri-son.com>**, registered with **NameSilo, LLC**.

PANEL

The undersigned certifies that he has acted independently and impartially and to the best of his knowledge has no known conflict in serving as Panelist in this proceeding.

Paul M. DeCicco, as Panelist.

PROCEDURAL HISTORY

Complainant submitted a Complaint to the FORUM electronically on July 9, 2019; the FORUM received payment on July 9, 2019.

On July 9, 2019, NameSilo, LLC confirmed by e-mail to the FORUM that the **<nouri-son.com>** domain name is registered with NameSilo, LLC and that Respondent is the current registrant of the name. NameSilo, LLC has verified that Respondent is bound by the NameSilo, LLC registration agreement and has thereby agreed to resolve domain disputes brought by third parties in accordance with ICANN’ s Uniform Domain Name Dispute Resolution Policy (the “Policy”).

On July 9, 2019, the FORUM served the Complaint and all Annexes, including a Written Notice of the Complaint, setting a deadline of July 29, 2019 by which Respondent could file a Response to the Complaint, via e-mail to all entities and persons listed on Respondent’ s registration as technical, administrative, and billing contacts, and to postmaster@nouri-son.com. Also on July 9, 2019, the Written Notice of the Complaint, notifying Respondent of the e-mail addresses served and the deadline for a Response, was transmitted to Respondent via post and fax, to all entities and persons listed on Respondent’ s registration as technical, administrative and billing contacts.

Having received no response from Respondent, the FORUM transmitted to the parties a Notification of Respondent Default.

On August 5, 2019, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the FORUM appointed Paul M. DeCicco as Panelist.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the FORUM has discharged its responsibility under Paragraph 2(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") "to employ reasonably available means calculated to achieve actual notice to Respondent" through submission of Electronic and Written Notices, as defined in Rule 1 and Rule 2. Therefore, the Panel may issue its decision based on the documents submitted and in accordance with the ICANN Policy, ICANN Rules, the FORUM's Supplemental Rules and any rules and principles of law that the Panel deems applicable, without the benefit of any response from Respondent.

RELIEF SOUGHT

Complainant requests that the domain name be transferred from Respondent to Complainant.

PARTIES' CONTENTIONS

A. Complainant

Complainant contends as follows:

Complainant offers a full range of floor coverings.

Complainant has rights in the NOURISON mark through its registration of the mark with the United States Patent and Trademark Office ("USPTO").

Respondent' s **<nouri-son.com>** domain name is confusingly similar to Complainant' s mark as Respondent incorporates the NOURISON mark and merely add a hyphen and the ".com" generic top-level domain ("gTLD").

Respondents has no rights or legitimate interests in the **<nouri-son.com>** domain name as Respondent is not commonly known by the disputed domain name nor has Respondent been licensed, authorized, or otherwise permitted by Complainant to use Complainant' s mark. Furthermore, Respondent' s use is not a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use, as Respondent is merely passively holding the disputed domain name.

Finally, Respondent' s **<nouri-son.com>** domain name was registered and is being used in bad faith, as the Respondent inactively holding the disputed domain name. Additionally, Respondent engages in typosquatting.

B. Respondent

Respondent failed to submit a Response in this proceeding.

FINDINGS

Complainant has trademark rights in the NOURISON mark.

Respondent is not affiliated with Complainant and had not been authorized to use Complainant's trademark in any capacity.

Respondent registered the at-issue domain name after Complainant acquired rights in the NOURISON trademark.

Respondent holds the at-issue domain name inactively.

DISCUSSION

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (1) the domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (2) Respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered and is being used in bad faith.

In view of Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations set forth in a complaint; however, the Panel may deny relief where a complaint contains mere conclusory or unsubstantiated arguments. See WIPO Jurisprudential Overview 3.0 at ¶ 4.3; see also *eGalaxy Multimedia Inc. v. ON HOLD By Owner Ready To Expire*, FA 157287 (FORUM June 26, 2003) ("Because Complainant did not produce clear evidence to support its subjective allegations [. . .] the Panel finds it appropriate to dismiss the Complaint").

Identical and/or Confusingly Similar

The at-issue domain name is identical to a trademark in which Complainant has rights.

Complainant's USPTO trademark registration for NOURISON is conclusive evidence of its rights in a mark under Policy ¶ 4(a)(i). See *Microsoft Corp. v.*

Burkes, FA 652743 (FORUM Apr. 17, 2006) (“Complainant has established rights in the MICROSOFT mark through registration of the mark with the USPTO.”).

Additionally, Respondent’ s **<nouri-son.com>** domain name contains Complainant’ s NOURISON trademark with a hyphen inserted between the mark’s “l” and “s” followed by the top-level domain name “.com.” The differences between Complainant’ s trademark and Respondent’ s at-issue domain name fail to distinguish the domain name from the mark under Policy ¶ 4(a)(i). Therefore, the Panel finds that Respondent’ s **<nouri-son.com>** domain name is confusingly similar to Complainant’ s NOURISON trademark. See *Pirelli & C. S.p.A. v. Tabriz*, FA 921798 (Apr. 12, 2007) (finding that the addition of a hyphen between terms of a registered mark did not differentiate the <p-zero.org> domain name from the P ZERO mark under Policy ¶ 4(a)(i)).

Rights or Legitimate Interests

Under Policy ¶ 4(a)(ii), Complainant must first make out a *prima facie* case showing that Respondent lacks rights and legitimate interests in respect of an at-issue domain name and then the burden, in effect, shifts to Respondent to come forward with evidence of its rights or legitimate interests. See *Hanna-Barbera Prods., Inc. v. Entm’ t Commentaries*, FA 741828 (FORUM Aug. 18, 2006). Since Respondent failed to respond, Complainant’ s *prima facie* showing acts conclusively.

Respondent lacks both rights and legitimate interests in respect of the **<nouri-son.com>** domain name. Respondent is not authorized to use Complainant’ s trademark in any capacity and, as discussed below, there are no Policy ¶ 4(c) circumstances from which the Panel might find that Respondent has rights or interests in respect of the at-issue domain name.

The WHOIS information for the at-issue domain name identifies its registrant as “Rachel Kestenbaum.” The record before the Panel contains no evidence that otherwise tends to show that Respondent is commonly known by the **<nouri-son.com>** domain name. The Panel therefore concludes that Respondent is not commonly known by the at-issue domain name for the purposes of Policy ¶ 4(c)(ii). See *Coppertown Drive-Thru Sys., LLC v. Snowden*, FA 715089 (FORUM July 17, 2006) (concluding that the respondent was not commonly known by the <coppertown.com> domain name where there was no evidence in the record, including the WHOIS information, suggesting that the respondent was commonly known by the disputed domain name).

Furthermore, Respondent holds the at-issue domain name passively. Browsing to the domain name displays a webpage showing the message “There’ s nothing here, yet.” Respondent’ s inactive holding of the **<nouri-son.com>**

domain name constitutes neither a *bona fide* offering of goods or services under Policy ¶ 4(c)(i) nor a non-commercial or fair use under Policy ¶ 4(c)(iii). See *CrossFirst Bankshares, Inc. v Yu-Hsien Huang*, FA 1785415 (FORUM June 6, 2018) (“Complainant demonstrates that Respondent fails to actively use the disputed domain name as it resolves to an inactive website. Therefore, the Panel finds that Respondent fails to actively use the disputed domain name for a *bona fide* offering of goods or services or legitimate noncommercial or fair use under Policy ¶ 4(c)(i) or (iii).”).

Given the forgoing, Complainant satisfies its initial burden and conclusively demonstrates Respondent’s lack of rights and lack of interests in respect of the at-issue domain name pursuant to Policy ¶ 4(a)(ii).

Registration and Use in Bad Faith

Respondent’s <nouri-son.com> domain name was registered and used in bad faith. As discussed below without limitation, circumstance are present which compel the Panel to conclude that Respondent acted in bad faith regarding the at-issue domain name, pursuant to paragraph 4(a)(iii) of the Policy.

As discussed above regarding rights and legitimate interests, Respondent holds the <nouri-son.com> domain name passively. The at-issue domain name appears to address a parking page. Respondent’s failure to actively use <nouri-son.com> further indicates Respondent’s bad faith registration and use pursuant to Policy ¶ 4(a)(iii). See *VideoLink, Inc. v. Xantech Corporation*, FA1503001608735 (FORUM May 12, 2015) (“Failure to actively use a domain name is evidence of bad faith registration and use pursuant to Policy ¶ 4(a)(iii).”).

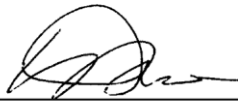
Furthermore, Respondent’s overt insertion of a hyphen into Complainant’s mark in the <nouri-son.com> domain name shows that Respondent is engaged in typosquatting. Typosquatting is a practice whereby a domain name registrant deliberately introduces typographical errors or misspellings into a trademark and then uses the resulting string in a domain name hoping that internet users will either: 1) inadvertently type the malformed string when searching for products or services related to the domain name’s target trademark; and/or 2) in viewing the domain name will confuse the domain name with its target trademark. Here, in creating the at-issue domain name Respondent misspells Complainant’s <nouri-son.com> trademark by inserting a hyphen into Complainant’s trademark and adding the top-level domain name “.com.” Typosquatting, in itself, indicates bad faith under Policy ¶ 4(a)(iii). See *Computerized Sec. Sys., Inc. v. Hu*, FA 157321 (FORUM June 23, 2003) (finding that the respondent engaged in typosquatting, which is evidence of bad faith registration and use under Policy ¶ 4(a)(iii)); see also, *Artemis Marketing Corp.*

v. ICS INC et al, WIPO Case No. D2019-0141 (Apr. 8, 2019) (“The altering of one or just a few characters is the very nature of typosquatting”).

DECISION

Having established all three elements required under the ICANN Policy, the Panel concludes that relief shall be **GRANTED**.

Accordingly, it is Ordered that the **<nouri-son.com>** domain name be **TRANSFERRED** from Respondent to Complainant.



Paul Michael DeCicco, Esq.
Arbitrator

Paul M. DeCicco, Panelist
Dated: August 5, 2019