Decision for dispute CAC-UDRP-101591

Case number	CAC-UDRP-101591
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Domain names	NTI.COM

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	NTI CADCENTER A/S

Complainant representative

Organization	Bird & Bird Advokatpartnerselskab

Respondent

Organization	Domain Admin, Ashantiplc Limited

Respondent representative

Organization	John B. Berryhill LLC

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending or decided legal proceedings relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant states that it has unregistered trademark rights according to Danish Law -which allegedly go beyond the traditional common law rights- in the trademark “NTI”, arising from alleged use in commerce (Denmark) since 1945 and allegedly proven since 2013. The Complainant does not presently own any registered trademark for the mark “NTI”, an application filed with the EUIPO on 3 May 2017 under no. 016673519 being still pending (NB: It is, in fact, currently opposed by a third entity).

FACTUAL BACKGROUND

According to the Complainant's allegations, which have not been refuted by the Respondent, the Complainant is a large European supplier of solutions and services regarding CAD, CAM, GIS, document handling and Facility Management – from advice to analysis of a company's needs via hardware and software for teaching, maintaining and supporting. The Complainant is based in Denmark and has existed since 1945, as also proven by the evidence provided by the Complainant.

According (once again) to the Complainant's allegations, which have not been refuted by the Respondent, the latter is a provider of internet services, including DSL, Hosting and VOIP, for pacific rim companies. The Respondent is based in Hong Kong.

The Complainant owns the domain name <nti.dk> since December 3, 1996, but no trademark registrations for "NTI".

The Disputed domain name <nti.com> was registered on September 26, 2000 and is currently owned by the Respondent.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:
The Complainant contends, in the sense of paragraph 4(a) of the Policy, that the Disputed domain name is confusingly similar to its NTI trademark; that the Respondent lacks rights or legitimate interests in the Disputed domain name, and; that the Disputed domain name has been registered and is being used in bad faith.

For all these reasons, the Complainant requests that the Disputed domain name is transferred to him.

RESPONDENT:
The Respondent contends, on the contrary, that the Complainant has no trademark rights on the Disputed domain name; that the Respondent has rights and legitimate interests to the Disputed domain name, and; that the Respondent has registered the Disputed domain name within the framework of its usual business practice, to register three-letter domain names for subsequent sale to third parties. The Respondent is also claiming that the Complainant has shown behavior consistent with reverse domain hijacking.

RIGHTS

Before launching itself into the usual threefold test, according to paragraph 4(a) of the Policy, the Panel needs to address the issue of the arguments filed by the Complainant and Respondent after the Complaint and the Response had been filed and even after the Panel had been selected. The Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") stipulate under Rule 10:

10 General Powers of the Panel

(a) The Panel shall conduct the administrative proceeding in such manner as it considers appropriate in accordance with the Policy and these Rules.

(b) In all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case.

(…)

(d) The Panel shall determine the admissibility, relevance, materiality and weight of the evidence.

On another occasion (Rule 12), the Rules give the Panel the right to even request on its own initiative additional information from the Parties:

12 Further Statements

In addition to the complaint and the response, the Panel may request, in its sole discretion, further statements or documents from either of the Parties.

With the above in mind, the Panel decides to admit, in its sole discretion, the additional arguments presented by the Complainant and Respondent. Such admission will enable the Panel to have a more complete appreciation of the positions of the Parties, in order to reach its decision.

Having said this, the Panel will now proceed with the examination of the substance of the matter.

Rights

The Complainant does not own any trademark registration for the mark “NTI”. It contends that it owns unregistered trademark rights, based on use.

There is no doubt to the eyes of the Panel that, on the basis of the evidence provided by the Complainant, as well as on the independent research conducted by the Panel on the web, the three letters “NTI” are an abbreviation of the full, initial name of the Complainant, NORDISK TEGNEMASKINE INDUSTRI, which was founded back in 1945. The Panel is satisfied by the evidence provided that, the Complainant seems to be quite known as “NTI” in Denmark, in its field of business. This fact is being legitimately reflected in the ownership of the Complainant’s website, www.nti.dk. The question that arises next, obviously, is whether the Complainant, through its partial reputation and market use in Denmark would be entitled to claim unregistered trademark rights on a three-letter mark, “NTI”, a fact that could benefit the Complainant’s claim of transfer of ownership of www.nti.com from the Respondent.

The Panel is comfortable to state that, three-letter marks have, in general, low distinctiveness (NB: the few exceptions that exist are confirming the rule). What is more, “NTI” can be found on the web to mean many different things in world commerce. The fact, mentioned by the Respondent, that a plethora of other domain names exist for “NTI” (nti.org, nti.net, nti.nl, nti.ch, etc.) reinforces this opinion of the Panel. It would, admittedly, be far-fetched to recognize -in the absence of at least one registered trademark- exclusive, common law rights on “NTI” to the Complainant, only on the basis of some limited use of “NTI” in the marketplace, which is clearly not enough to establish common law rights. At the same time, it would of course be also unfair to recognize any rights to the Respondent on “NTI” (especially vis-à-vis the Complainant), but that is a different matter that the Panel is not called to decide at present.

In conclusion, the Panel finds that the Complainant has not shown, to the satisfaction of the Panel, that the Disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

As a result of the above conclusion on the first requirement of paragraph 4(a) of the Policy, in light of the findings under the third element below, the Panel considers not necessary this second element. The Panel will, therefore, not examine the requirement under paragraph 4(a)(ii) of the Policy.

BAD FAITH

The final element under paragraph 4(a) of the Policy requires the Complainant to establish that the Disputed domain name was registered and used in bad faith by the Respondent. In this case, based on the limited evidence of use of the Complainant’s trademark submitted by the Complainant, even taking into account the unsolicited Nonstandard Communication submitted subsequently, it is not possible to conclude that the trademark had reached a substantial notoriety at the time of the registration of the Disputed domain name, and that the Respondent was or ought to be aware of it at the time of registration. Moreover, there is no evidence that the Respondent had the Complainant and its trademark in

mind when registering the Disputed domain name. In the absence of evidence that the Respondent intended to target the Complainant, coupled with the Respondent's use of the Disputed domain name, namely its offer for sale of the same, the Panel concludes that this does not amount to bad faith.

As a result of the above conclusion, the Panel finds that the Complainant has not satisfied the requirement under paragraph 4(a)(iii) of the Policy.

Reverse Domain Name Hijacking

Paragraph 15(e) of the UDRP Rules provides that, if "after considering the submissions the panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding". In this case, and taking into account that a finding of Reverse Domain Name Hijacking ultimately hinges on the conduct of the Complainant, the Panel in this case has found no evidence of harassment or attempt to mislead the Panel that would justify such finding.

Therefore, the Panel does not find that the Complainant attempted Reverse Domain Name Hijacking within the meaning of the Policy.

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision. On September 8, the Complainant submitted an unsolicited Nonstandard Communication and the Respondent submitted an unsolicited Nonstandard Communication on September 14. For the purposes of this Decision, the Panel will consider both these submissions under its sole discretion.

PRINCIPAL REASONS FOR THE DECISION

The Complainant has failed to prove that it has trademark rights, sufficient for the purposes of the Policy. Additionally, the Panel finds that the Complainant did not satisfy the bad faith requirement under the Policy. Finally, the Panel does not find that the Complainant attempted Reverse Domain Name Hijacking within the meaning of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **NTI.COM**: Remaining with the Respondent

PANELLISTS

Name	**Sozos-Christos Theodoulou, Luca Barbero, Rodolfo Carlos Rivas Rea**

DATE OF PANEL DECISION 2017-09-18

Publish the Decision