Decision for dispute CAC-UDRP-102285

Case number	CAC-UDRP-102285
Time of filing	2019-01-02 09:32:38
Domain names	nebo.app

Case administrator

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

Complainant

Organization	MyScript (SAS)

Respondent

Name	Ned Bobo

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the registered owner of international word trademarks:

(a) “Nebo”, reg. no. 1287660, registered on 3 December 2015, registered for goods in class 9; and

(b) "Nebo", reg. no. 1351848, registered on 22 May 2017, for goods in class 9.

(“Complainant’s Trademarks”).

The disputed domain name <nebo.app> was registered on 8 May 2018.

FACTUAL BACKGROUND

As the Respondent did not file any response to the complaint, the Panel took into account the following facts asserted by the Complainant (and supported by the documentary evidence submitted by the Complainant) and unchallenged by the Respondent:

(a) the Complainant is a company specialized in handwriting recognition and digital ink management technology was founded in 1998. Complainant has earned recognition and acclaim as the core technology powering the industry’s most advanced handwriting recognition engines;

(b) In 2016, the Complainant launched Nebo, its notetaking application available on the Windows store, Apple App Store and Google Play Store, and which currently has well over 1 million downloads. Nebo enables tablet or smartphone users with active pens to write and edit their handwritten notes in real-time and has been named the winner of the 2017 Mobile Apps Showdown competition at the Consumer Electronics Show in Las Vegas (CES) and as such has now gained a certain

notoriety;

(c) the Complainant is the owner of the Complainant's Trademarks;

(d) the disputed domain name was registered on 8 May 2018; and

(e) under the disputed domain name there is no webpage, i.e. disputed domain name is inactive.

PARTIES CONTENTIONS

THE COMPLAINANT:

In addition to the above factual assertions, the Complainant also contends the following:

(i) disputed domain name is identical to the Complainant's Trademarks;

(ii) Respondent has not been permitted or licensed to use Complainant's trademarks. Respondent is not affiliated with him nor authorized by him in any way to use its trademarks in a domain name or on a website. The Complainant does not carry out any activity for, nor has any business with the Respondent;

(iii) the Respondent is not affiliated with the Complainant nor authorized by it in any way to use Complainant's Trademark. The Complainant does not carry out any activity for, nor has any business with the Respondent;

(iv) Respondent's lack of rights or legitimate interests in the disputed domain name can be proved by the fact that the disputed domain name points to an inactive website since its registration. It does not constitute a bona fide offering of goods or services or for a legitimate non-commercial or fair use. Complainant contends that Respondent's holding of the disputed domain name without using it for any website or other purpose indicates that it does not have rights or legitimate interests in the disputed domain name;

(v) Given the reputation of Complainant's application Nebo, as well as the prior registration of the trademarks, Complainant states that the Respondent was aware of the existence of the prior rights of Complainant at the time of the registration of the disputed domain name;

(vi) the choice of the new gTLD extension "app" is even more likely to increase the likelihood of confusion with the Complainant's trademark, since it suggests that the disputed domain name leads to the Compainant's note taking application; and therefore

(vii) the disputed domain name has been registered and is being used in bad faith.

THE RESPONDENT:

The Respondent did not provide any response to the complaint.

RIGHTS

The Panel concluded that the disputed domain name is identical to the Complainant's Trademark within the meaning of paragraph 4(a)(i) of the Uniform Domain Name Dispute Resolution Policy ("Policy").

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) 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.

PRINCIPAL REASONS FOR THE DECISION

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

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

(ii) the respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

The Panel will proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied in this proceeding.

RIGHTS

The disputed domain name is identical to the Complainant’s Trademarks.

For sake of completeness, the Panel asserts that the top-level suffix in the domain name (i.e. the ".app") must be disregarded under the identity / confusing similarity test as it is a necessary technical requirement of registration.

Therefore, the Panel concludes that the Complainant satisfied the requirement under paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (please see, for example, WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

The disputed domain name points to an inactive website. As asserted by the Complainant (and unchallenged by the Respondent), the Respondent is not commonly known by the disputed domain name. Neither is the Respondent in any way related to the Complainant. The Respondent failed to provide any information and evidence that it has relevant rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a) (ii) of the Policy).

Therefore, the Panel concludes that the Respondent did not establish any right or legitimate interest in the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The disputed domain name points to an inactive website. However in the light of the facts that:

(a) the Complainant's Trademark no. 1287660 is registered also in the United States of America where the Respondent

(allegedly) resides;

(b) the term "Nebo App" which corresponds to the disputed domain name is clearly distinctive to Nebo application developed by the Complainant which is apparent from simple Google search; and

(c) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the disputed domain name.

The Panel believes that it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark laws. Please also see WIPO Case n° D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows, <telstra.org>.

As a result, the Panel found that the disputed domain name has been registered and used by the Respondent in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **NEBO.APP**: Transferred

PANELLISTS

Name	**Michal Matějka**

DATE OF PANEL DECISION 2019-02-06

Publish the Decision