

Decision for dispute CAC-UDRP-103560

Case number CAC-UDRP-103560

Time of filing 2021-02-09 09:40:44

Domain names **neboapp.com**

Case administrator

Organization **Denisa Bilík (CAC) (Case admin)**

Complainant

Organization **MyScript (SAS)**

Respondent

Name **Ross McGarvey**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several trademarks "Nebo", such as the international trademarks Reg. No 1287660, registered on December 3, 2015 and Reg. No 1351848, registered on March 22, 2015.

The Complainant also owns the domain name <NEBO.APP>, registered since May 8, 2018.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant is a company founded in 1998 that is specialized in handwriting recognition and digital ink management technology. It has earned recognition as the core technology powering advanced handwriting recognition engines. 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 over 1 million downloads. This application enables tablet or smartphone users with active pens to write and edit their handwritten notes in real-time. It 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 awareness. The Complainant uses the domain name <NEBO.APP> and its trademarks "Nebo" to promote and distribute the "Nebo"-App.

The Respondent is an entrepreneur and CEO of a full-service digital agency based in the US. The disputed domain name <NEBOAPP.COM> has been registered by the Respondent on November 7, 2018 and points to a parking page with commercial links.

No administratively compliant response was filed but within the deadline for Response a nonstandard communication was

received by the CAC on February 12, 2021, indicating that the Respondent applied for the disputed domain name on behalf of a client, who also applied for a trademark "Nebo" and that the Respondent wished to cooperate "with whatever the next steps are". The Complainant returned a Standard Settlement Form by way of a nonstandard communication on February 22, 2021, which was not answered by the Respondent until this decision.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown 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

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

The Respondent did not file an administratively compliant response. As result – and pursuant to paragraph 14(b) of the Rules – the Panel may draw such inferences there-from as it considers appropriate. Thus, the Panel considers the contentions of the Complainant as conceded by the Respondent.

A. The disputed domain name is confusingly similar to the trademark "Nebo" of the Complainant.

The Complainant has, to the satisfaction of the Panel, shown that it has valid trademark rights in "Nebo".

The disputed domain name includes the Complainant's trademark in its entirety and merely adds the word "app" and the gTLD ".COM". Firstly, the word "app" is usually perceived to be an abbreviation of the word "application" meaning "application software". As the Complainant offers its own "app" called "Nebo" (i.e. the name of the app is identical to the trademarks) for download by its customers and has a registered domain name <NEBO.APP>, the inclusion of the word "app" serves to heighten confusion. Secondly, the addition of the gTLD suffix ".COM" is not sufficient to escape the finding that the disputed domain name is confusingly similar to the Complainant's trademarks and does not change the overall impression of the designation as being connected to the trademarks of the Complainant.

B. The Respondent has no rights or legitimate interests in respect of the disputed domain name within the meaning of the Policy.

The Complainant has established a prima facie proof that the Respondent has no rights or legitimate interests in the disputed domain name, since the Respondent is not a licensee of the Complainant nor has the Complainant granted any permission or consent to use its trademark in a domain name. Furthermore, the disputed domain name does not correspond to the name of the Respondent and the Respondent is not commonly known as "Nebo".

In addition, conflicting rights of the Respondent or a client of the Respondent are not evident in the absence of a successful

registration of the trademark "NEBO" with the USPTO or any corresponding active business activities. Much more, the Respondent has not provided any proof of its connection with the client for whom, supposedly, he registered the disputed domain name.

Also, the fact that the disputed domain name links to a parking page with commercial links shows, that it is not a bona fide offer of goods or services or a legitimate non-commercial or fair use.

C. The disputed domain name has been registered and is being used in bad faith within the meaning of the Policy.

Firstly, the Complainant's trademarks "Nebo" are widely known. Given the distinctiveness of the Complainant's trademarks and reputation, it can be concluded that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademarks.

Further, it can be inferred that the Respondent is trying to attract Internet users to its page in order to generate click-through commission on the parking page through the creation of a false link with the Complainant. Besides, the Respondent should have sufficient knowledge about this kind of "Pay Per Click" advertising through the digital agency of which he is the CEO.

Also, the absence of further replies can be seen as a sign of bad faith use of a disputed domain name (see f.e. WIPO Case No. D2002-0674 Six Continents Hotels, Inc. v. Damir Kruzi-cevic). In addition, it must be noted again that the Respondent has not provided any proof of its connection with the alleged client for whom he might have registered the disputed domain name. This lack of evidence results in the finding that the supposed order by the client to register the disputed domain name cannot invalidate bad faith.

Thus, the Complainant has, to the satisfaction of the Panel, shown, that the Respondent has registered and used the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **NEBOAPP.COM**: Transferred

PANELLISTS

Name	Dominik Eickemeier
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DATE OF PANEL DECISION 2021-03-22

Publish the Decision
