

Decision for dispute CAC-UDRP-104055

Case number **CAC-UDRP-104055**

Time of filing **2021-10-11 09:22:02**

Domain names **NittetsuMining.com**

Case administrator

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

Complainant

Organization **Nittetsu Mining Co., Ltd.**

Complainant representative

Organization **RODENBAUGH LAW**

Respondent

Name **nittesus mining**

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 trademark registrations for NITTETSU MINING, including but not limited to:

- Chinese Trademark Registration No. 8709595, NITTETSU MINING, registered on 21 December 2011; and
 - Chilean Trademark Registration No. 1329967, NITTETSU MINING (stylized), registered on 30 September 2020.
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FACTUAL BACKGROUND

Founded in 1939, the Complainant Nittetsu Mining Co., Ltd. is a publicly-traded Japanese multinational company offering mining products and services, including mining and distributing limestone, calcium carbonate, gravel; processing, distributing, importing, and exporting copper and other mineral products; purchasing and distributing coal and petroleum products and equipment, including machinery; real estate; power generation using renewable energy; and the supply and sale of electricity.

The Complainant is the owner of the domain name <nittetsukou.co.jp>, and maintains a public-facing website at "https://www.nittetsukou.co.jp/ (the "Complainant's website").

The disputed domain name was registered using a privacy service on 6 February 2021. The disputed domain name resolves to a website titled "NITTETSU MINING" (the "Respondent's website"), making use of a logo that closely resembles that of the Complainant, featured on the Complainant's website. The Respondent's website holds itself out as that of a mining company, and also purports to offer cryptocurrency trading and investment services. The "About" page of the Respondent's website states:

"Nittetsu Mining Ltd. is an investment management company incorporated in Tokyo, Japan. We are run by a team of trading experts who generate profits by buying and selling currencies, stocks, options and commodities on the foreign exchange market. We employ a variety of trading techniques to achieve the set goals for the client."

PARTIES CONTENTIONS

Parties' Contentions

Complainant

The Complainant asserts rights in the NITTETSU MINING trademark. The Complainant submits that the disputed domain name is confusingly similar to the NITTETSU MINING trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant contends that the Respondent is using the disputed domain name to perpetrate attempted fraud. The Complainant argues that the Respondent is not using the disputed domain name in connection with any bona fide offering of goods or services, nor is the Respondent commonly known by the disputed domain name, nor is the Respondent making legitimate noncommercial or fair use of the disputed domain name.

The Complainant submits that the Respondent registered and is using the disputed domain name in bad faith. The Complainant asserts that the Respondent has made use of false Whois information, when registering the disputed domain name. The Complainant submits that the Respondent knew of the Complainant's rights when registering the disputed domain name, and argues that the Respondent has made use of the disputed domain name in an attempt to impersonate the Complainant in the furtherance of cryptocurrency fraud, evidencing the Respondent's bad faith registration and use of the disputed domain name.

The Complainant requests transfer of the disputed domain name.

Respondent

The Respondent did not file a Response to the Complaint.

RIGHTS

The Panel finds that the Complainant has established rights in the NITTETSU MINING trademark, the registration details of which are provided above.

The disputed domain name comprises the textual elements of the Complainant's NITTETSU MINING trademark in their entirety, altered only by the omission of the space between the elements "nittetsu" and "mining", a space being incapable of representation per se in a domain name. The omission of the space does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark, which remains clearly recognizable in the disputed domain name.

The Panel finds the disputed domain name to be confusingly similar to the Complainant's NITTETSU MINING trademark. The Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

As noted above, the disputed domain name resolves to a website that holds itself out as that of a mining company, and also purports to offer cryptocurrency trading and investment services. The Respondent's website provides a physical address in Japan; however, the contents of the Respondent's website are entirely in English. The Respondent's website makes use of a logo and typeface that closely resembles the Complainant's logo and typeface that appear on the Complainant's official website. Despite claiming to support 3.1 million registered users in 159 countries, the Respondent has not come forward to submit a Response to the Complaint. There is no evidence to suggest that the Respondent's service offering is genuine. Rather, the Respondent appears to be making use of the disputed domain name in an attempt to impersonate the Complainant in what is likely to be the furtherance of a fraudulent online scheme. It is well established that use of a domain name for illegitimate activity such as impersonation or other types of fraud can never give rise to rights or legitimate interests in respect of a disputed domain name. As such, the Panel finds that the Respondent's use of the disputed domain name does not amount to a bona fide offering of goods or services as contemplated by paragraph 4(c)(i) of the Policy.

The Respondent registered the disputed domain name using a privacy service, and the underlying registrant has been revealed as "Nittesus Mining"; however, as the Complainant points out, the disputed domain name appears to have been registered using false underlying registrant details, as evidenced by what appears to be a non-existent street address, as well as a fake phone number. The Respondent's use of the disputed domain name in order to mislead Internet users, as described above, does not support any legitimate claim of being commonly known by the disputed domain name pursuant to paragraph 4(c)(ii). Nor has the Respondent made any legitimate noncommercial or fair use of the disputed domain name in accordance with paragraph 4(c)(iii) of the Policy.

The Respondent has not come forward in this proceeding with any evidence that would otherwise give rise to a finding of rights or legitimate interests.

For the above reasons, the Panel finds that Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

BAD FAITH

The Complainant's rights in the NITTETSU MINING trademark predate the Respondent's registration of the disputed domain name by several years. The Respondent's knowledge of the Complainant and its rights may be inferred from the contents of the Respondent's website, which feature the Complainant's company name, trademark, and a variation of the Complainant's logo, as well as from the degree of similarity between the Complainant's trademark and the disputed domain name itself. There being no relationship between the Parties, the Panel finds that the Respondent registered the disputed domain name, without authorization, with knowledge of the Complainant's trademark rights with a view to creating a misleading impression of association between the disputed domain name, the Respondent's website, and the Complainant. The Respondent's registration of the disputed domain name using a privacy service to mask its identity, coupled with what appear to be false underlying registrant details, further evidence the Respondent's bad faith. The Panel finds that the disputed domain name was registered in bad faith.

In light of the use to which the disputed domain name has been put, as described above, the Panel considers it more likely than not that the Respondent has used the disputed domain name in an attempt to impersonate the Complainant, in the furtherance of a cryptocurrency-based fraudulent online scheme. Such use of the disputed domain name is manifest evidence of bad faith. The Panel finds that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users its website, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of its website and the services purportedly offered therein, in bad faith pursuant to paragraph 4(b)(iv) of the Policy.

The Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) of the Policy.

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under Policy were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

The Complainant has established rights in the NITTETSU MINING trademark. The disputed domain name is confusingly similar to the Complainant's trademark. The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent appears to be using the disputed domain name in an attempt to impersonate the Complainant as part of a cryptocurrency-based fraudulent online scheme. The Respondent registered and is using 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. **NITTETSUMINING.COM**: Transferred

PANELLISTS

Name **David Taylor**

DATE OF PANEL DECISION 2021-12-07

Publish the Decision