

Decision for dispute CAC-UDRP-104527

Case number	CAC-UDRP-104527
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Time of filing	2022-05-23 09:10:48
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Domain names	gnhearingaid.com
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Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	GN Store Nord A/S
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Complainant representative

Organization	Coöperatieve Vereniging SNB-REACT U.A.
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Respondent

Name	Ding Jian Bing
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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 numerous trademarks worldwide, including but not limited to the following:

- Danish Trademark Registration No. VR 2005 04973 for “GN STORE NORD”, registered on December 7, 2005;
- International Trademark Registration No. 1343620 for “GN” design, registered on November 7, 2016;
- E.U. Trademark Registration No. 0887970 for “GN” design, registered on September 9, 2005; and
- U.S. Trademark Registration No. 5435446 for “GN”, registered on April 3, 2018.

FACTUAL BACKGROUND

The Complainant, GN Store Nord A/S, states that it was founded over 150 years ago and is one of the world's leaders in intelligent audio solutions. The Complainant states that it is well-known for hearing aids, hearing protection devices, medical apparatus and instruments for use in relation to hearing. The Complainant's solutions are marketed under the brands – ReSound, Beltone, Interton, Jabra and BlueParrott in 100 countries. In 2003, the Complainant introduced the first hearing aid with an open fitting under “Resound Air”. In 2016, Resound Air was selected as the best power hearing system and best mobile app by the United Kingdom Association for Independent Hearing Health Professionals. In the same year, the Complainant

announced that the Danish parent company in the hearing aid group, GN ReSound A/S, would change its name to GN Hearing A/S and the Danish parent company in the headset group, GN Netcom A/S, would change its name to GN Audio A/S. In 2021, the Complainant marked its revenue as 15.8 billion, of which 43% came from Europe, 36% from North America and 21% from the rest of the world.

The disputed domain name was registered on February 3, 2018, which resolves to an active website offering competing goods for sale.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to the GN mark on the basis that the disputed domain name which consists of the GN mark which is the dominant feature of the disputed domain name, the addition of the descriptive terms "hearing" and "aid" and the generic top-level domain name suffix ("gTLD") ".com" are insufficient to avoid the finding that the disputed domain name is confusingly similar to its GN mark.

The Complainant also argues that the Respondent does not have any rights or legitimate interests in the disputed domain name. The Respondent is not commonly known by the disputed domain name. In addition, the Respondent is not affiliated with the Complainant nor did the Complainant license or authorize the Respondent to use the GN mark.

The Complainant further asserts that the disputed domain name has been registered and is being used in bad faith as the Respondent should have known of the Complainant's GN mark at the time of registration of the disputed domain name. The Complainant also asserts that the Respondent has registered the disputed domain name and intentionally attempted to attract, for commercial gain, Internet users to the Respondent's web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or location or of a product or service on the Respondent's web site or location.

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.

Preliminary Issue: Language of Proceedings

Paragraph 11 of the Rules provides that:

“(a) Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.”

The language of the Registration Agreement for the disputed domain name is Chinese.

The Complainant requested that the language of the proceeding be English for the following reasons:

- (i) the Respondent sent an email to the Complainant on September 9, 2021, in the English language;
- (ii) the disputed domain name is in the English language;
- (iii) the content of the disputed domain name website is also in English, which shows that the Respondent’s target audience are English-speaking;
- (iv) the disputed domain name’s gTLD “.com” is international;
- (v) the disputed domain name is in the Latin script and not in Chinese;
- (vi) the Respondent owns registrations of other domain names which also Latin script and not in Chinese; and
- (vii) requiring the Complainant to translate the Complaint would cause unnecessary delays.

In addition, the Panel notes that the Respondent also sent an email to the Center on July 1, 2022, in the English language. The Respondent did not comment on the language of the proceeding.

The Panel cites the following with approval: “Thus, the general rule is that the parties may agree on the language of the administrative proceeding. In the absence of this agreement, the language of the Registration Agreement shall dictate the language of the proceeding. However, the Panel has the discretion to decide otherwise having regard to the circumstances of the case. The Panel’s discretion must be exercised judicially in the spirit of fairness and justice to both parties taking into consideration matters such as command of the language, time and costs. It is important that the language finally decided by the Panel for the proceeding is not prejudicial to either one of the parties in his or her abilities to articulate the arguments for the case.” (See *Groupe Auchan v. xmxzl*, WIPO Case No. DCC2006 0004).

Having considered the above factors, the Panel determines that English be the language of the proceeding. The Panel agrees that the Respondent appear to be familiar with the English language, taking into account the Respondent’s selection of the English-language trademark and the domain name in dispute. In the absence of an objection by the Respondent, the Panel does not find it procedurally efficient to have the Complainant translate the Complaint and evidence into Chinese.

PRINCIPAL REASONS FOR THE DECISION

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a complainant to show that a domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant has provided evidence that it owns the “GN Store Nord” word mark and the stylized GN trademarks wherein “GN” is clearly identifiable.

The differences between the disputed domain name and the Complainant’s GN trademark are the addition of a descriptive terms “hearing” and “aid” and the gTLD “.com”, which in the Panel’s view does not avoid confusing similarity with the Complainant’s trademark.

It is established that where a trademark is recognizable within the disputed domain name, the addition of a descriptive term would not prevent a finding of confusing similarity under the first element. (See WIPO Overview 3.0, section 1.8). It is further established that gTLD is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. (See WIPO Overview 3.0, section 1.11). The addition of a gTLD to a disputed domain name does not avoid confusing similarity as the use of a TLD is technically required to operate a domain name (see *Accor v. Noldc Inc.* WIPO Case No. D2005-0016; *F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.*, WIPO Case No. D2006-0451; *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003; *L’Oréal v Tina Smith*, WIPO Case No. 2013-0820;

Titoni AG v Runxin Wang, WIPO Case No. D2008-0820; and Alstom v. Itete Peru S.A., WIPO Case No. D2009-0877).

Therefore, the Panel finds that the disputed domain name is confusingly similar to the GN mark and the element under paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the complainant to show that the respondent has no rights or interests in respect of the domain name. Once the complainant establishes a prima facie case that the respondent lacks rights or legitimate interests in the domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the domain name (see WIPO Overview 3.0, section 2.1).

In the present case, the Complainant has demonstrated prima facie that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant submitted evidence that it did not authorize or license the Respondent to use the GN mark (see OSRAM GmbH. v. Mohammed Rafi/Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org, WIPO Case No. D2015-1149; Sanofi-Aventis v. Abigail Wallace, WIPO Case No. D2009-0735). The Complainant also submitted evidence that its registrations and use of the trademarks predate the registration of the disputed domain name by at least 17 years.

In addition, the evidence submitted by the Complainant shows that the Respondent is not commonly known by the disputed domain name.

The Panel also notes that in the present case, the addition of the terms “hearing” and “aid” are within the Complainant’s field of commerce or indicating services related to the brand, as the Complainant is well-known for manufacturing and selling hearing aids and hearing protection devices, which may trigger an inference of affiliation with the Complainant even though the Respondent is in no way affiliated with the Complainant (see WIPO Overview 3.0, section 2.5.1). Further, in the circumstances of the present case, the Panel notes that the Respondent sent an email to the Center on June 1, 2022, stating, inter alia, “[i]f your party want to have our domain name, we are willing to sell it to you”. Without evidence to the contrary, it appears that the Respondent is also offering the disputed domain name for sale for its own commercial gain which does not constitute fair use of the disputed domain name (see WIPO Overview 3.0, section 2.5.2).

The Respondent did not submit a response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain name which is sufficient to rebut the Complainant’s prima facie case.

The Panel is therefore of the view that the Respondent has no rights or legitimate interests in respect of the disputed domain name and accordingly, paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

The complainant must show that the respondent registered and is using the disputed domain name in bad faith (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

In this case, the evidence shows that the Complainant’s mark has attained such goodwill and reputation such that the Respondent is unlikely to have registered the disputed domain name without sight and knowledge of the Complainant’s mark and it is implausible that there is any good faith use to which the disputed domain name may be put to. It is also the Complainant’s evidence that the Respondent could not have registered the disputed domain name without prior knowledge of the Complainant’s mark as the Respondent’s name has no connection with the Complainant’s GN mark which was registered long ago.

Further, Annex 5.10 of the Amended Complaint shows that the disputed domain name website makes reference to the Complainant, the Complainant’s GN mark and its goods, “ReSound develops hearing technology to help people rediscover the

beauty of sound again. Part of GN Store Nord and headquartered in Ballerup, Denmark, ReSound is represented globally across more than 80 different countries.” despite the Respondent not being authorized or licensed by the Complainant. This is another indicator of bad faith on the part of the Respondent (see Boursorama SA v. Estrade Nicolas, WIPO Case No. D2017-1463).

The Panel has also taken into consideration that the Respondent did not submit a Response in this proceeding and that the Respondent used a privacy service to mask its identity during registration of the disputed domain name.

In addition, the Complainant has submitted evidence that the disputed domain name resolved to a website selling competing goods with the Complainant. The Panel also notes that prior to commencement of the proceedings, the Complainant received an email presumably from the Respondent disputing that the disputed domain name belongs to the Respondent and is not the Complainant’s trademark. The said email also stated “[t]he gnhearingaid is short for our business slogan of Great hearing aid for Nice hearing and life!” and that the Respondent’s trademark is “Earsmate”. However, the evidence submitted by the Complainant shows that the Respondent operates multiple websites offering the same goods under the same contact details which strongly suggests that the same person or group is operating the websites. It is also the Complainant’s evidence that none of the related websites use the slogan “Great hearing aid for Nice hearing and life!”. In addition, the Respondent’s allegation that it is the owner of the trademark “Earsmate” is also not supported by any proof of trademark registration for the same.

In the circumstances of the present case, given the Respondent’s likely knowledge of the Complainant’s marks, the Complainant’s significant reputation and goodwill in its marks, the failure of the Respondent to respond to the Complaint and to present a credible evidence-backed rationale for registering and using the disputed domain name, and that the disputed domain name is confusingly similar to the Complainant’s mark, the Panel is of the view that the Respondent registered the disputed domain name to attract, for commercial gain, Internet users to the Respondent’s web site or other on-line location, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s web site or location or of a product or service on the Respondent’s web site or location.

Based on the evidence presented to the Panel, including the confusing similarities between the disputed domain name and the Complainant’s mark and the fact that the disputed domain name is selling competing products, the Panel draws the inference that the disputed domain name was registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **GNHEARINGAID.COM**: Transferred

PANELLISTS

Name	Mr. Jonathan Agmon
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DATE OF PANEL DECISION 2022-07-12

Publish the Decision
