Decision for dispute CAC-UDRP-106540

Case number	CAC-UDRP-106540
Time of filing	2024-05-20 14:28:40
Domain names	notinooutlets.shop

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	NOTINO EUROPE LTD

Respondent

Name	fawf fwf

OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the domain name <notinooutlets.shop> ('the disputed domain name').

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade marks, amongst others:

- EU trade mark registration no. 015221815, filed on 16 March 2016, for the word mark NOTINO, in classes 16, 35, 38, and 39 of the Nice Classification; and

- EU trade mark registration no. 015944127, filed on 17 October 2016, for the figurative mark NOTINO, in classes 16, 35, 38, and 39 of the Nice Classification.

(Hereinafter referred to as 'the Complainant's trade mark').

The disputed domain name was registered on 24 November 2023. At the time of writing of this decision, the disputed domain name resolves to an active website, the particulars of which are discussed in the section 'Principal reasons for the decision' below (for present purposes, 'the Respondent's website').

FACTUAL BACKGROUND

A. Complainant's Factual Allegations

The Complainant's statements of fact can be summarised as follows:

The Complainant is a Cypriot company and the sole shareholder of Notino, a company registered in the Czech Republic ('the

Complainant's subsidiary').

The Complainant's subsidiary, founded in 2004, runs an e-commerce business of perfume and beauty products operating across nearly all European countries and beyond, serving 20 million customers worldwide. The Complainant's subsidiary achieved a turnover in excess of EUR 1bn in the 2022 financial year, and is considered Europe's largest online beauty retailer.

In addition to the trade mark mentioned in the section 'Identification of Rights', the Complainant's subsidiary also owns multiple domain names bearing the term 'notino', most notably <notino.com> (registered in 2015), from which it runs e-shops.

B. Respondent's Factual Allegations

The Respondent has failed to serve a Response in this UDRP administrative proceeding. Hence, the Complainant's factual allegations are uncontested.

PARTIES CONTENTIONS

A. Complainant's Submissions

The Complainant's contentions can be summarised as follows:

A.1 The disputed domain name is confusingly similar to trade marks in which the Complainant has rights

The Complainant submits that the disputed domain name is confusingly similar to the Complainant's trade mark NOTINO, to the extent that it wholly incorporates the trade mark NOTINO and that the disputed domain name string has no distinctive character in and of itself.

A.2 The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name, in so far as the Respondent is not entitled to use the trade mark NOTINO in the disputed domain name.

A.3 The Respondent registered and is using the disputed domain name in bad faith

The Complainant submits that this is a clear case of cybersquatting, such that the disputed domain name was registered with the intention to target the Complainant. This is further evidenced by the use of the disputed domain name associated with an e-shop which offers cosmetics, perfumes and other related goods to Internet users.

In addition, the Complainant submits that the Respondent has intended to create an impression of affiliation with the Complainant, and that this parasitic behaviour is however difficult to detect owing to the technical structure of the Respondent's website. The Complainant further explains that the Respondent has built its website with the use of a technology that retrieves and facilitates end-user interaction with web content. Therefore, the Respondent's website is not ordinarily visible using a computer browser, but can be accessed via a mobile phone.

B. Respondent's Submissions

The Respondent has failed to serve a Response in this UDRP administrative proceeding. Hence, the Complainant's submissions are uncontested.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the UDRP 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 UDRP 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

A. General

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy sets out the grounds which the Complainant must establish to succeed:

i. The disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;

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.

It is incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP proceedings is the balance of probabilities and, on that basis, the Panel will now proceed to determine each of the three UDRP Policy grounds in turn.

B. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has UDRP-relevant rights in the registered trade mark NOTINO since 2016.

The disputed domain name <notinooutlets.shop>, registered in 2023, incorporates the Complainant's trade mark NOTINO in its string. The adjacent word 'outlets' has no bearing on the recognisability of the Complainant's trade mark. On the contrary, this generic word heightens the risk of affiliation with the Complainant given that it is a word readily associated with the Complainant’s business segment.

Moreover, whilst generic Top-Level Domains ('TLDs') are typically immaterial to the assessment of identity or confusion under this UDRP Policy ground, the TLD in this case (<.shop>) may well enhance the link with the Complainant's trade mark and business activities.

The Panel therefore finds that the Complainant has met the requirement under paragraph 4(a)(i) of the UDRP Policy.

C. Rights or Legitimate Interests

The Panel notes that the Respondent does not appear to carry out any activity for, or have any business or relationship of any nature with, the Complainant. There is no evidence of any contractual arrangement/endorsement/sponsorship between the parties to that effect, nor has the Complainant otherwise authorised the Respondent to make any use of the Complainant's trade marks or to register the disputed domain name on the Complainant's behalf. In addition, nothing on the record suggests that the Respondent (as an individual, business, or other organisation) has been commonly known by the disputed domain name.

The Panel is likewise unconvinced that, before any notice of the dispute, the Respondent used, or made demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services.

The Respondent defaulted in this UDRP administrative proceeding, and has failed to refute the Complainant's prima facie case that it has met its burden under the second UDRP Policy ground. Instead, there is indicium that the Respondent has attempted to impersonate, and take advantage from the goodwill and reputation associated with, the Complainant, as discussed in section D below.

In view of the above, the Panel finds that the Complainant has succeeded under paragraph 4(a)(ii) of the UDRP Policy.

D. Registered and Used in Bad Faith

The Panel notes a number of factors which point towards a finding of bad faith registration.

Firstly, the Complainant's trade mark NOTINO predates the registration of the disputed domain name by seven years. Secondly, the disputed domain name bears the trade mark NOTINO in its string, coupled with a generic word which is immaterial to affect the recognisability of the Complainant's trade mark. The Panel additionally views the provision of false contact information as an indication of bad faith. In this instance, the Respondent appears to have adopted a false name and address. Therefore, the Panel

has no hesitation in finding that the Respondent registered the disputed domain name with knowledge of, and intention to target, the Complainant.

As regards the use in bad faith, the Complainant submits that the Respondent would appear to have engaged in any of the following abusive conducts set forth in paragraph 4(b) of the UDRP Policy:

> '(i) circumstances indicating that the respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
>
> [...]
>
> (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
>
> (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to your 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 your web site or location or of a product or service on your web site or location'.

The Panel notes that the disputed domain name resolves to an e-commerce for beauty products, which prominently displays the Complainant's trade mark NOTINO, and mimics general features and the look and feel of the Complainant's own website. It is clear to the Panel that the Respondent's website commercialises products in direct competition with the Complainant.

Having considered the available record, the Panel finds that the Respondent has attempted to impersonate the Complainant through the use of the disputed domain name. The Respondent's behaviour would therefore fall into the remit of circumstance (iv) of paragraph 4(b) of the UDRP Policy.

Accordingly, the Panel finds that the Complainant has succeeded under paragraph 4(a)(iii) of the UDRP Policy.

E. Decision

For the foregoing reasons, in accordance with paragraph 4(a) of the UDRP Policy and Rule 15 of the UDRP Rules, the Panel orders that the disputed domain name <notinooutlets.shop> be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **notinooutlets.shop**: Transferred

PANELLISTS

Name	**Gustavo Moser**

DATE OF PANEL DECISION 2024-06-12

Publish the Decision