Decision for dispute CAC-UDRP-106584

Case number	CAC-UDRP-106584
Time of filing	2024-06-06 13:38:00
Domain names	notino-parfum.shop

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	NOTINO EUROPE LTD

Respondent

Name	Chris Lessly

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 bases its Complaint on several NOTINO trademarks, among which:

- European Union trademark “NOTINO”, no. 015221815, registered on 28 June 2016, for goods and services in classes 16, 35, 38, 39;
- European Union trademark “NOTINO”, no. 017471574, registered on 9 March 2018, for services in classes 35, 41;
- European Union trademark “NOTINO”, no. 018537465, registered on 11 December 2021, for goods in classes 3, 10, 21.

FACTUAL BACKGROUND

The Complainant, a company from Cyprus, is the sole shareholder of the Czech company Notino, s.r.o, and the holder of the domain name <notino.cz> and of other variations, such as <notino.sk>, <notino.it>, <notino.ro> etc., on which e-shops are run with cosmetics, perfumes, and other related goods in almost all the European Union territory and, also outside the European Union. The network of Notino e-shops achieved in the financial year 2022 a turnover of over 1 billion EUR and is considered as one of the biggest e-commerce beauty resellers in Europe.

The Complainant owns several NOTINO trademarks, among which, a few were cited above.

The disputed domain name <notino-parfum.shop> was registered on 1 December 2023 and resolved at the time when the Complaint was filed to a website that did not work when accessed via a computer, while if accessed via a mobile phone, it redirected to a fraudulent Notino website.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

The Complainant's contentions are the following:

The disputed domain name <notino-parfum.shop> is confusingly similar to the Complainant's earlier trademark NOTINO, that the Respondent lacks rights or legitimate interests in the disputed domain name for a number of reasons and that the disputed domain name was registered and is being used in bad faith.

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

1. Confusing Similarity

The Panel agrees that the disputed domain name <notino-parfum.shop> is confusingly similar to the Complainant's earlier NOTINO trademarks. The disputed domain name incorporates entirely the Complainant’s earlier NOTINO trademark and the addition of the generic term “parfum” with a hyphen in-between the trademark NOTINO and this generic term, which is closely related to the business activities carried under the trademark NOTINO, is not sufficient to escape the finding that the domain name is confusingly similar to the Complainant’s trademark and it does not change the overall impression of the designation as being connected to the trademark NOTINO.

Moreover, the extension “.shop” is not to be taken into consideration when examining the similarity between the Complainant’s trademarks and the disputed domain name (WIPO Case No. D2005-0016, Accor v. Noldc Inc.). The mere adjunction of a generic Top Level Domain (“gTLD”) such as “.shop” is irrelevant as it is well established that the gTLD is insufficient to avoid a finding of confusing similarity (WIPO Case No. 2013-0820, L’Oréal v Tina Smith, WIPO Case No. D2008-0820 Titoni AG v Runxin Wang and WIPO Case No. D2009-0877, Alstom v. Itete Peru S.A.).

Therefore, the Panel is satisfied that the first condition under the Policy is met.

2. Lack of Respondent's 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 burden of proof shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy.

Based on the available evidence, the Respondent does not appear to be known by the disputed domain name as such is not identified in the WHOIS database as the disputed domain name.

Based on the available evidence, at the time when the Complaint was filed, the disputed domain name resolved to a website that did not work when accessed via a computer, while if accessed via a mobile phone, it redirected to a fraudulent Notino website, offering cosmetics, perfumes and other related goods. Such use does not amount to a bona fide offering of goods or services, or to a legitimate noncommercial or fair use of the disputed domain name.

The Panel notes that the Respondent had an opportunity to comment on the Complaint's allegations by filing a Response, which the Respondent failed to do.

Thus, the Panel is satisfied that the Complainant has at least established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. Accordingly, the Panel takes the view that also the second requirement under the Policy is met.

3. Bad Faith

The Complainant's NOTINO trademarks predate the registration of the disputed domain name and Respondent has never been authorized by Complainant to register the disputed domain name. The Respondent has chosen to register the domain name containing entirely the Complainant's earlier NOTINO trademark with the addition of the generic term "parfum", which is closely related to the business activities carried under the trademarks NOTINO. Therefore, the Panel concludes that at the time of registration of the disputed domain name, the Respondent was well aware of the Complainant's NOTINO trademark.

In the present case, the following factors should be considered:

(i) at the time when the Complaint was filed, the disputed domain name resolved to a website that did not work when accessed via a computer, while if accessed via a mobile phone, it redirected to a fraudulent Notino website, offering cosmetics, perfumes and other related goods;

(ii) the Respondent failed to submit any response and has not provided any evidence of actual or contemplated good faith use of the disputed domain name;

(iii) the Respondent registered the disputed domain name containing entirely the Complainant's earlier NOTINO trademark with the addition of the generic term "parfum", which is closely related to the business activities carried under the trademarks NOTINO;

(iv) the Respondent was never authorised to use a domain name similar to the Complainant's trademark;

(v) there is no evidence in the file that there is any relationship or association, or connection between the Complainant and the Respondent.

In light of the foregoing, the Panel concludes that the Respondent has registered and has been using the disputed domain name in bad faith. Thus, also the third and last condition under the Policy is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **notino-parfum.shop**: Transferred

PANELLISTS

Name	**Delia-Mihaela Belciu**

DATE OF PANEL DECISION 2024-07-14

Publish the Decision