

Decision for dispute CAC-UDRP-107193

Case number	CAC-UDRP-107193
Time of filing	2024-12-23 09:40:37
Domain names	lovenestle.com, lovenestleforum.com, lovenestlesupport.com, lovenestledoll.com, lovenestledolls.com

Case administrator

Name	Olga Dvořáková (Case admin)
------	-----------------------------

Complainant

Organization	Société des Produits Nestlé S.A
--------------	---------------------------------

Complainant representative

Organization	Thomsen Trampedach GmbH
--------------	-------------------------

RESPONDENTS

Organization	Domains By Proxy, LLC
Name	Love Nestle

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 names.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the international trademark registration for the trademark NESTLE, registration number 793804, designating (inter alia) China, registered in Classes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, with the registration date on December 10, 2002.

The disputed domain names have been registered:

- <lovenestle.com> on November 4, 2023;
- <lovenestleforum.com> on July 6, 2023;
- <lovenestlesupport.com> on July 6, 2023;
- <lovenestledoll.com> on November 10, 2024;
- <lovenestledolls.com> on November 10, 2024.

FACTUAL BACKGROUND

The Complainant is a wholly owned subsidiary of Nestlé S.A., the main operating company in the Nestlé Group founded by Henri Nestlé in 1866. The Complainant owns the majority of the trademarks held by the Nestlé Group. The Nestlé Group is active in the sale of food products and related services worldwide, with the largest product categories including coffee and beverages, pet food, confectionery, baby foods, bottled water, dairy products and breakfast cereals. The Nestlé Group markets its products in 188 countries, has about 270 000 employees worldwide, and has a physical presence in 80 countries. The Nestlé Group is the largest publicly traded food and nutritional products company in the world and has been since 2014. The Group ranks 106th in Fortune magazine's 2024 Fortune Global 500 list. The NESTLE brand has been recognized as the most valuable food brand in the world by independent publications such as Forbes and Brand Finance.

According to WHOIS information provided by the registrar, the Respondent is identified as "Love Nestle". However, the Complainant believes the Respondent to be the Chinese company Nanjing Aizhichao Technology Co., Ltd, or is an entity or person affiliated with that company. This company has applied for figurative trademarks incorporating the term "LoveNestle" in the United States, the European Union, the United Kingdom, Canada and China. The figurative trademark featured on these trademark applications is prominently displayed on the lovenestle.com landing site, confirming that the Respondent, or the controlling entity behind the registrant of the disputed domains, is likely Nanjing Aizhichao Technology Co., Ltd. The Respondent appears to operate a business marketing and selling a large variety of sex dolls, which it does under the LoveNestle brand and using notably lovenestle.com, one of the disputed domains. The landing page of lovenestle.com states that the main address of LoveNestle is in Hong Kong.

The disputed domain names appear to have been registered in 3 batches, with <lovenestle.com> having been registered in March 2023, <lovenestlesupport.com> and <lovenestleforum.com> in June 2023, and <lovenestledoll.com> and <lovenestledolls.com> in October 2024. The disputed domain name <lovenestledolls.com> has been used for pay-per-click advertising, while the other domains have not been used to display content. The Complainant became aware of the Respondent's registrations in 2024 and proceeded to send a cease-and-desist letter to the Respondent. This led to prolonged correspondence regarding a potential settlement of the issues between the two parties, which was ultimately unsuccessful. Specifically, the Respondent's demand for financial assistance in sourcing alternative disputed domain names and rebranding their products cannot be accepted by the Complainant, as it would mean the Complainant having to compensate the Respondent for choosing to use the disputed domain names and to sell products that infringe the NESTLE trademark.

1) The disputed domain names are confusingly similar to a trademark or service mark in which the Complainant has rights

- The Complainant owns registered trademarks for the term NESTLE in almost all jurisdictions worldwide. As a notable example, the Complainant owns an international trademark registration under the Madrid Protocol for the trademark NESTLE, registration number 793804, designating over 20 countries, notably China.
- The disputed domain names are confusingly similar to the Complainant's trademark. The disputed domain name <lovenestle.com> is a combination of the Complainant's mark NESTLE with the generic term "love", while the disputed domain names <lovenestledoll.com>, <lovenestledolls.com>, <lovenestleforum.com> and <lovenestlesupport.com> add the ulterior generic terms "doll", "dolls", "forum" and "support", respectively. Panels deciding under the UDRP have consistently held that where a complainant's trademark is recognizable within the domain name, the addition of other descriptive or generic terms will not prevent a finding of confusing similarity. This is particularly the case when the disputed domain name consists of a generic term such as "love" and a trademark, as the generic term will be seen as merely expressing appreciation for the trademark in question. Likewise, generic terms such as "doll", "forum" and "support" have no identifying value and do not detract from the fact that the inclusion of the NESTLE mark is the defining distinctive element in all of the disputed domain names.

2) The Respondent has no rights or legitimate interests in respect of the disputed domain names

- The Complainant submits that the Respondent has no rights or legitimate interests in the disputed domain names.
- The Respondent is not commonly known by the disputed domain names. According to WHOIS data, the registrant of the disputed domain names is identified as "Love Nestle". However, the Complainant has information and belief that the Respondent (the entity behind the registrations of the disputed domain names) is the Chinese company Nanjing Aizhichao Technology Co., Ltd. It can thus be concluded that the disputed domain names do not correspond to the Respondent's legal name, which must be taken to be the name by which they are primarily known.
- The Respondent, or parties affiliated with them, has filed trademark applications in the United States, European Union, the United Kingdom, Canada and China for wordmarks and figurative marks corresponding to "lovenestle". However, these applications have not led to registered rights, and the Complainant has opposed or is in the process of opposing these trademark applications. These trademark applications cannot find a "right" for the purposes of paragraph 4(c) of the UDRP.
- Further, the Respondent cannot establish a right or legitimate interest in the term "lovenestle" on the basis of its use of <lovenestle.com> and the associated business. An interpretation of the UDRP whereby a registrant could register a domain name in bad faith and then proceed to operate a business under that for a limited amount of time, thereby becoming commonly known by it, must be rejected as totally contrary to the aims of the Policy. This is especially the case where, as in the present dispute, the Respondent is not engaged in a long-term business practice using the disputed domain names. Only 1 year and 7 months have so far elapsed from the Respondent's first (putative) registration of <lovenestle.com>, the oldest of the disputed domain names. Further, data from the Internet Archive shows that the Respondent began operating a website related to their sex doll business at <lovenestle.com> only in July 2023, 1 year and 5 months before the filing of this Complaint.
- The Respondent is not using the disputed domain names for a bona fide offering of goods or services. While the disputed domain

name <lovenestle.com> is being used to market goods, namely sex dolls, this does not qualify as a bona fide offering under the UDRP. Prior panels deciding under the Policy have held that a bona fide offering may only be found in cases where the goods marketed through the domain do not overlap with the product classes for which a complainant's mark is registered. This is because an overlap between the respondent's and complainant's goods suggests an intent to exploit the complainant's mark for commercial gain. A respondent cannot claim legitimate rights or interests where the domain is used to capitalize on the complainant's reputation for the benefit of unaffiliated products. This is exactly the case with <lovenestle.com>, where the goods marketed (sex dolls) fall within Nice Class 10, where the Complainant has registered trademarks. Additionally, Nestlé is a globally well-known mark that has a reputation transcending specific product classes or categories, allowing the Respondent to exploit the Internet user confusion arising from the disputed domain names for the benefit of their sex doll product.

- Further, the Complainant draws the Panel's attention to the pornographic and overtly sexual nature of the promotional images shown on the <lovestle.com> website. Previous panels deciding under the Policy have held that the use of a disputed domain to redirect to a website containing pornographic content fails to constitute a bona fide offering of goods under paragraph 4(c)(i). This is because the use of a domain name confusingly similar to a well-known mark in order to lure Internet users to a website that many are likely to consider offensive is not a bona fide use and tarnishes the reputation of the trademark being used. Accordingly, the Complainant submits that the Respondent should not be able to want only tarnish the reputation of Nestlé, which is a resolutely family-values oriented company, and claim that their conduct constitutes a bona fide offering.
- The disputed domain name <lovenestledolls.com> has only been used to display a parked page with pay-per-click ads. These ads refer to "baby" dolls specifically, which is a reference to the Complainant's mark and its prominent place in the baby nutrition market (notably the products sold under the Nido and Gerber brands). The use of a pay-per-click landing page with ads exploiting a complainant's landing page cannot give rise to a right or legitimate interest.
- The disputed domain names <lovenestledoll.com>, <lovenestleforum.com> and <lovenestlesupport.com> are not being used for any purpose, which excludes any argument whereby they would be used for legitimate or non-commercial purposes.

3) The disputed domain names were registered and are being used in bad faith.

- The Complainant submits that the Respondent registered and used the disputed domain names in bad faith.
- Previous panels deciding under the UDRP have held that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. This is because such domains will naturally be perceived by Internet users as being connected to the famous trademark, allowing abusive registrants to exploit the resulting confusion for commercial gain.
- As the principal identifying sign of the Complainant's business, synonymous with the largest food company in the world, the NESTLE mark is globally extremely well-known. Indeed, previous panels, have confirmed the status of NESTLE as a well-known mark throughout the world. It follows that domain names combining "nestle" with a generic term will be perceived by the majority of Internet users as being connected with the Complainant. In correspondence, the Respondent itself appeared to admit that there is an inherent likelihood of confusion between LoveNestle and NESTLE as it invited the Complainant to oppose an unrelated US trademark application for "LoveNestle" (serial number 98228379, filed by a Xiuzhen Li). Logically, the Respondent would not have seen the Complainant's potential opposition as having any potential for success were there not a likelihood of confusion between LoveNestle and the Complainant's trademarks.
- Further, it is implausible that the Respondent would have been unaware of the Complainant's rights and of the risk for consumer confusion when registering the disputed domain names. The notion that the domain "lovenestle" was conceived independently of any knowledge of the NESTLE mark must be rejected on a balance of probabilities. The fact that in their correspondence with the Complainant's representative the Respondent claims to have searched public trademark registries prior to choosing the name "LoveNestle" renders it extremely unlikely that they would not have become aware of the NESTLE mark. Accordingly, the Complainant submits that the Respondent's intention when registering the disputed domain names was to take unfair advantage of the Complainant's trademark.
- In the unlikely event the Panel should hold that the Respondent was not aware of the NESTLE mark at the time the disputed domain names were registered, the Complainant submits that the global fame of the NESTLE mark, notably in China and Hong Kong where the Respondent appears to be located, demonstrates the Respondent's willful blindness to the Complainant's established rights. Indeed, a simple Google search would have alerted the Respondent of the status of the term "NESTLE" as being primarily perceived as a reference to the Complainant. As has been reasoned by previous panels deciding under the UDRP, the Respondent should not be able to profit from intentionally remaining ignorant of the Complainant's rights in the NESTLE mark where the simplest of searches would have revealed them, especially as under paragraph 2 of the Policy any registrant must warrant that its domain name registration does not infringe any third party rights. The advantage accruing as a result to the Respondent from the use of domain names confusingly similar to the NESTLE mark is unfair in exactly the same manner as if the confusing similarity was intentional. There can thus be no doubt that the disputed domains were registered in bad faith.
- The Respondent has continued to act in bad faith in terms of the use that has been made of the disputed domain names.
- The disputed domain name <lovenestle.com> is used to display an e-commerce site selling sex dolls under the "LoveNestle" brand. It is obvious that the website operates for commercial gain and derives a clear benefit in terms of additional traffic when Internet users land on the site after typing "lovenestle.com" into their browser, thinking that they would arrive at the site belonging to the Complainant. While it is true that Internet user confusion as to the existence of an affiliation between the website and the Complainant might be dispelled due to the lack of references to the Complainant on the site and differences in branding, this is not necessarily be the case due to the very wide range of business activities in which the Complainant is engaged. Further, the question whether Internet user confusion is dispelled by the content of the landing website itself cannot be determinative for the purposes of the UDRP. Previous panels deciding under the Policy have held that the display of content unrelated to a complainant

or the use of a disclaimer will not suffice to remove confusion as traffic will have already reached the website on the basis of misapprehension. The Complainant submits that holding otherwise would contradict the fundamental aims of the UDRP, allowing bad faith registrants of the disputed domain names to benefit from Internet user confusion caused by the misleading nature of the disputed domain name itself.

- Panels deciding under the UDRP have considered that where a respondent appears to have a right or legitimate interest to disputed domain name, a disclaimer would lend support to a finding of good faith. Under the right circumstances, panels may be inclined to extend this rationale to cases where the content of a domain's landing site could be assumed to dispel confusion as to affiliation. However, such a rationale cannot be applied to <lovenestle.com>. The Respondent's provision of sex dolls cannot be considered as a good faith offering of goods and services as it 1) competes with the Complainant's business (sex dolls falling within Nice Class 10 where the Complainant holds pre-existing trademark rights), and 2) because their marketing through sexually explicit imagery is highly tarnishing to the family-oriented image of the NESTLE trademark. Given that the Respondent does not as a result have a legitimate interest in <lovenestle.com>, it would be contradictory to allow them to benefit from the increased traffic resulting from the use of the confusing disputed domain name. Indeed, prior panels deciding under the UDRP have considered that the fact that pornographic imagery is displayed on a disputed domain name is in itself indicative of bad faith.
- The Respondent's use of the disputed domain names s <lovenestledolls.com>, <lovenestleforum.com>, <lovenestlesupport.com> likewise evince a bad-faith intent to derive financial gain from Internet user confusion.
- To the knowledge of the Complainant, the disputed domain name <lovenestledolls.com>, has only been used to direct traffic to registrar parking pages displaying pay-per-click ads. Such ads are commercial in nature and reveal an intent to gain click-through revenue from increased traffic from Internet users arriving at the site due to misapprehension. This is particularly the case where the links displayed on the domain names target the trademark value of the domain. In the case of <lovenestledolls.com>, the links displayed specifically refer to "baby dolls", which is a reference to the Complainant's activities in the baby formula and baby food sectors. While these ads may be automatically generated, panels deciding under the UDRP have consistently held that respondents cannot disclaim responsibility for content appearing on the domain name over which they have control.
- It remains unclear what use, if any, the Respondent intends to make of the disputed domain names <lovenestledoll.com>, <lovenestlesupport.com> and <lovenestleforum.com>, which are currently not used to display content. However, the current non-use or passive holding of the domain name can in itself be considered bad faith use where any future good faith use is inherently implausible, as has been confirmed by prior panels deciding under the UDRP. This is the case here. Given the use currently made by the Respondent of <lovenestle.com>, and the fact that <lovenestledoll.com> specifically includes a reference to "doll", one must assume that any future use of the disputed domain names would likely be in connection with the Respondent's sex doll business, which cannot be considered a good faith use under the UDRP.

PARTIES CONTENTIONS

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

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names (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 names have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Complainant requested the consolidation of the complaint as all five of the disputed domain names were held by "Love Nestle", located in Nanjing, Jiangsu, China, and reachable at the same telephone number. The only difference in owner information was the fact that for <lovenestle.com> the registrant e-mail was different from the e-mail used for other 4 disputed domain names. The Complainant concluded that absence of other meaningful differences in WHOIS data, as well as the fact that the registrant information of all 5 domain names was changed at almost exactly the same time means that the domain names are clearly under common control.

According to the paragraph 10(e) of the Rules of UDRP Policy "*a Panel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules*". According to Paragraph 3(c) of the UDRP Rules states that: "*The complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder*".

According to Registrar, the registrant of all the disputed domain names is the same person. The different e-mail in one domain name WHOIS records, while all other information are identical for all domain names, does not exclude the conclusion that the registrant of all five disputed domain names is one and the same person. The consolidation of all disputed domain names into one consolidated dispute is therefore allowed.

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

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

- i. The domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- ii. The respondent has no rights or legitimate interests in respect of the domain name; and
- iii. The domain name has been registered and is being used in bad faith.

I. Identical or Confusingly Similar

The Complainant has established the fact that it has valid rights for the trademark NESTLE with the registration date on December 10, 2002.

The only part of the trademark (NESTLE) is included in all disputed domain names.

There is also one other identical element in all disputed domain names – generic word "LOVE" in the beginning of the disputed domain names. The terms "FORUM", "SUPPORT", "DOLL" and "DOLLS" added to the end of the four disputed domain names are generic words as well.

The addition of the generic words to the main and only part of the trademark does not change the overall impression of the designation as being connected to the Complainant or its trademark and more likely could strengthen the connection between the disputed domain names and the Complainant.

The generic top-level domain ".COM" does not change the overall impression of the designation as being connected to Complainant's trademarks.

Therefore, the Complainant has, to the satisfaction of the Panel, shown the disputed domain names are confusingly similar to the Complainant's trademark "NESTLE" in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

II. Rights or Legitimate Interests

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that (ii) the respondent has no rights or legitimate interests in respect of the domain name.

The Complainant has established a prima facie case (not challenged by the Respondent who did not file any response to the complaint) that the Respondent has no rights or legitimate interests in the disputed domain names.

It has been proved, that the Respondent is not commonly known by the disputed domain names and there is no indication that the Respondent is related in any way with the Complainant.

It has not been proved, that the Respondent is using the disputed domain names in connection with a bona fide offering of goods or services – the disputed domain name <lovenestle.com> is used to market sex dolls. This good fall within the class where the Complainant's trademark is registered, and such use could not be understood as bona fide. Regarding the other disputed domain names only one of them, <lovenestledolls.com>, has only been used, but to display a parked page with pay-per-click ads only and such use (again) could not be understood as bona fide.

There is also no evidence, that the Respondent is making a legitimate noncommercial or fair use of the disputed domain names , without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel therefore considers that 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 names (within the meaning of paragraph 4(a)(ii) of the Policy).

III. Registered and Used in Bad Faith

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that (iii) the domain name has been registered and is being used in bad faith.

The Respondent has registered the disputed domain names which consists of the Complainant's trademark "NESTLE". There are no doubts that the Complainant's trademark is distinctive and well-known. It could be therefore concluded that the disputed domain names have been registered in bad faith as the Respondent had or should have the Complainant and its prior trademark rights in mind when registering the disputed domain names.

Use of such disputed domain names could, therefore, attract the internet users to the corresponding web page by creating a likelihood of confusion with the Complainant's trademarks (paragraph 4(b)(iv) of the Policy).

Moreover, use of disputed domain names in connection with the sexually explicit goods could tarnishing to the family-oriented image of the Complainant's trademark.

Considering the (i) similarity between the Complainant's trademarks and the disputed domain names, (ii) obviously intentional addition of the generic words before and after the Complainant's trademark, (iii) distinctiveness of the Complainant's trademarks, (iv) use of one of the disputed domain names for the promotion of the sexually explicit goods, (v) passive holding of the other disputed domain names without any reference to the real active website and (v) the failure of the Respondent to submit a response or to provide any evidence of good faith use, the Panel finds that the disputed domain names have been registered and are being used in bad faith.

Thus the Complainant has, to the satisfaction of the Panel, shown the disputed domain names have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

The Panel considers that the Complainant has shown that the disputed domain names <lovenestle.com>, <lovenestleforum.com>, <lovenestlesupport.com>, <lovenestledoll.com> and <lovenestledolls.com> are confusingly similar to trademark in which the Complainant has rights, the Respondent has no rights or legitimate interests in respect of the disputed domain names and the disputed domain names have been registered and are being used in bad faith. The Complainant has thus established all three elements of paragraph 4(a) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **lovenestle.com**: Transferred
2. **lovenestleforum.com**: Transferred
3. **lovenestlesupport.com**: Transferred
4. **lovenestledoll.com**: Transferred
5. **lovenestledolls.com**: Transferred

PANELLISTS

Name	Petr Hostaš
------	--------------------

DATE OF PANEL DECISION	2025-01-30
------------------------	------------

Publish the Decision
