Decision for dispute CAC-UDRP-108197

Case number	CAC-UDRP-108197
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Domain names	totole.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Société des Produits Nestlé S.A.

Complainant representative

Organization	Thomsen Trampedach GmbH

Respondent

Name	Yanlin Hu

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 registrant, among others, of the U.S. trademark registration No. 2882148, “TOTOLE", registered on September 7, 2004, for goods and services in class 29.

The disputed domain name was registered on August 1, 2005.

FACTUAL BACKGROUND

The Complainant is a 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. The Nestlé Group markets its products in 190 countries, has about 275,000 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.

The TOTOLE brand was first established in China in 1988 by Shanghai Totole Food Ltd, which was acquired by the Complainant in 1999. In 1999, the Complainant registered the TOTOLE trademark in China. The domain name <totole.com.cn> has been registered by the Complainant on July 28, 2001 and redirects to the TOTOLE brand’s official website. TOTOLE has been recognized in the

media as the leading brand of chicken essence flavoring on the Chinese market.

The Respondent is a natural person based in China. The disputed domain name has been used for redirecting to landing pages with notices stating that the website is non-commercial and not affiliated with any trademark while informing the public that the disputed domain name is for sale. The disputed domain name has been held by the Respondent since at least January 23, 2026.

The Complainant considers that the disputed domain name is confusingly similar to the Complainant's trademark because it reproduces in full all the textual elements of the TOTOLE figurative trademark.

Furthermore, the Complainant notes that the top-level domain is a standard element that has no impact in determining confusing similarity.

The Complainant submits that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant states that:

- the Respondent is not commonly known by the disputed domain name;

- the disputed domain name has been used only to display a "site under construction" notice and an indication that it is a non-commercial website;

- the disputed domain name is on sale;

- there is no indication that the disputed domain name is used for any meaningful activity;
- the Respondent has never had any credible plan to use the disputed domain name for a legitimate purpose.

The Complainant contends that the disputed domain name was registered and is being used in bad faith.

The Complainant points out that in 2005, when the disputed domain name was first registered, the TOTOLE trademark was registered in both China and the United States and was already widely known in China. The Complainant observes that historical screenshots of the landing page of the disputed domain name taken in 2006, 2011, 2013, 2014, 2016, 2017 and 2018 contain text in the Chinese language, and this suggests that the Respondent is familiar with the Chinese market. The Complainant considers it implausible that the Respondent has not been aware of the Complainant's rights in the TOTOLE trademark. The Complainant, taking into account the fact that the disputed domain name has never been used for any meaningful activity and that the Respondent has in the last years offered it for sale, argues that on a balance of probabilities the disputed domain name was chosen and registered by the Respondent with the intention of taking unfair advantage of the Complainant's trademark by selling it for a profit.

The Complainant adds that a simple online search would have revealed its rights in the TOTOLE trademark, and the Respondent should have carried out such a search before registering the disputed domain name.

The Complainant considers that the passive holding doctrine should be applied in this case, given that the Respondent's current use of the domain name seems to be aimed at selling the disputed domain name to interested parties for a substantial financial benefit.

PARTIES CONTENTIONS

The Complainant, relying on the arguments summarised above, contends that the requirements of the Policy have been met and that the disputed domain name 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 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

In accordance with paragraph 4(a) of the Policy, in order to obtain the transfer of the disputed domain name, the Complainant has to demonstrate that:

(i) The disputed 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 disputed domain name; and

(iii) The disputed domain name has been registered and is being used in bad faith.

IDENTICAL OR CONFUSINGLY SIMILAR

The first requirement that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to the Complainant's trademark or service mark rights.

There are two elements of this test: the Complainant must demonstrate that it has rights in a trademark or service mark and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark or service mark.

The Complainant has proven ownership of the registered trademark "TOTOLE", identified in section "Identification of rights" above.

On the question of identity or confusing similarity, what is required is simply a comparison and assessment of the disputed domain name itself to the Complainant's trademark.

The disputed domain name differs from the Complainant's trademark "TOTOLE" only by the top-level domain ".COM".

It is well established that the top-level domain may generally be disregarded in the confusing similarity test (see, for example, WIPO case No. D2016-2547).

In the light of the above, the Panel considers that the disputed domain name is confusingly similar to the Complainant's trademark "TOTOLE".

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

RIGHTS OR LEGITIMATE INTERESTS

The second requirement that the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the respondent has rights or legitimate interests in a domain name:

(i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or 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; or

(ii) [the Respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the Respondent] [has] acquired no trademark or service mark rights; or

(iii) [the Respondent] [is] making a legitimate non-commercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

This is a non-exhaustive list of circumstances in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement falls on the Complainant. UDRP panels have recognized that proving that a respondent lacks

rights or legitimate interests in a domain name may result in the often-impossible task of “proving a negative”.

Accordingly, it is usually sufficient for a complainant to raise a prima facie case against the respondent and the burden of proof on this requirement shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in a domain name.

The Panel finds that the Complainant has made out a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain name.

In particular, the Complainant states that:

- the Respondent is not commonly known by the disputed domain name;

- the disputed domain name has been used only to display a “site under construction” notice and an indication that it is a non-commercial website;

- the disputed domain name is on sale;

- there is no indication that the disputed domain name is used for any meaningful activity;
- the Respondent has never had any credible plan to use the disputed domain name for a legitimate purpose.

In the absence of a Response, there is no indication in the present case that the Respondent is commonly known by the disputed domain name.

Furthermore, the Respondent has failed to demonstrate any of the other non-exclusive circumstances evidencing rights or legitimate interests under paragraph 4(c) of the Policy or other evidence of rights or legitimate interests in the disputed domain name.

The Respondent, even if the landing page contains the disclaimer "This is a non-commercial website", does not appear to make any legitimate non-commercial or fair use of the disputed domain name, nor any use in connection with a bona fide offering of goods or services. Indeed, it is clear that a simple disclaimer, as such, is not sufficient to avoid a finding of lack of rights or legitimate interests in the disputed domain name (see, for example, WIPO Case No. D2025-1264).

Taking into account that the Respondent is not known as the disputed domain name, that the disputed domain name redirects users to a landing page, that the disputed domain name is available for sale, that there is no evidence that the disputed domain name has been used for any meaningful activity and that there is no evidence that the disputed domain name will be used for any legitimate purpose, the Panel cannot imagine any possible legitimate justification for this use, and the Respondent has not come forward with any explanation that demonstrates any rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

BAD FAITH

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, including:

(i) circumstances indicating that [the Respondent] [has] registered or [has] acquired the [disputed] domain name primarily for the purpose of selling, renting, or otherwise transferring the [disputed] 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 [the Respondent's] documented out-of-pocket costs directly related to the [disputed] domain name; or

(ii) [the Respondent] [has] registered the [disputed] domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that [the Respondent] [has] engaged in a pattern of such conduct; or

(iii) [the Respondent] [has] registered the [disputed] domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the [disputed] domain name, [the Respondent] [has] 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.

The Panel, on the basis of the evidence presented, agrees with the Complainant's contentions that the disputed domain name was registered in bad faith and that it has been used in bad faith.

The Panel observes that it is well established that the scenarios described in UDRP paragraph 4(b) are non-exclusive and merely illustrative. Therefore, even where a complainant is not able to demonstrate the literal application of one of the above-mentioned scenarios, evidence demonstrating that a respondent seeks to take unfair advantage of, abuse, or otherwise engage in behaviour detrimental to the complainant’s trademark would also satisfy the complainant’s burden.

The Panel points out that it is widely recognized that mere delay between the registration of a domain name and the filing of a complaint neither bars a complainant from filing such case, nor from potentially prevailing on the merits (see, for example, WIPO Case No. D2024-1431).

The Panel agrees with the Complainant's argument that the Respondent should have performed an internet search, aimed at excluding possible conflicts with third party rights. Therefore, the Respondent has failed to carry out such a search and has to be considered responsible for the resulting abusive registration under the concept of wilful blindness (see, for example, WIPO Case No. D2018-1182). Consequently, this circumstance is considered by the Panel as evidence of bad faith.

The Panel, in line with the view of other panels, considers that when it is clear from the context, it is not necessary to indicate on the respondent's website the amount requested for selling a domain name, to be considered as for valuable consideration in excess of a respondent's costs (see, for example, WIPO Case No. D2015-0379). In the present case, the Panel considers that on the balance of probabilities the Respondent has acquired the disputed domain name primarily for the purpose of selling it to the Complainant or to one of its competitors for valuable consideration in excess of its documented out-of-pocket costs directly related to the disputed domain name. The Panel underlines that, when clicking on the button "Get totole.com" on the landing page, the user is redirected to a webpage where the sale price is USD 6,000, that on the balance of probabilities is for valuable consideration in excess of the Respondent's costs.

The Panel observes that if the Respondent had legitimate purposes in registering and using the disputed domain name it would have filed a response in this proceeding.

The Panel, having taken into account the Respondent's knowledge of the "TOTOLE" trademark at the time of the disputed domain name's registration, the fact that the disputed domain name points to a landing page where it is made available for sale for valuable consideration in excess of its documented out-of-pocket costs, and that no response to the complaint has been filed considers that the disputed domain name was registered and is being used in bad faith.

Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **totole.com**: Transferred

PANELLISTS

Name	**Michele Antonini**

DATE OF PANEL DECISION 2026-03-01

Publish the Decision