

DISPUTE RESOLUTION SERVICE

DRS 14372

Decision of Independent Expert

Société des Produits Nestlé S.A.

and

Liu Weihong

1. The Parties:

Lead Complainant: Société des Produits Nestlé S.A.
55 Avenue Nestlé
Vevey
1800
Switzerland

Respondent: liu weihong
nanmazhenliangyoulu8hao
dongyangshi
zhejiangsheng
322100
China

2. The Domain Name: nestleskinhealth.co.uk

3. Procedural History:

18 June 2014 11:32 Dispute received
18 June 2014 14:03 Complaint validated
18 June 2014 14:08 Notification of complaint sent to parties
07 July 2014 02:30 Response reminder sent
10 July 2014 09:25 No Response Received
10 July 2014 09:25 Notification of no response sent to parties
15 July 2014 10:53 Expert decision payment received

Expert Declaration

I confirm that I am independent of each of the Parties. To the best of my knowledge and belief there are no facts or circumstances, past or present, or that could arise in the

foreseeable future, that need be disclosed as they might be of a such a nature as to call in to question my independence in the eyes of one or both of the Parties.

4. Factual Background

The Complainant is a Swiss limited liability company founded in 1866. It is active in over 200 countries and is the world's largest food consumer products company in terms of sales. The Complainant is ranked 69th on Fortune Magazine's annual ranking of the world's 500 largest companies.

The Complainant owns trademark registrations for NESTLE, in many national jurisdictions worldwide and has registered the word NESTLE in numerous gTLDs and ccTLDs. It operates the website www.nestle.com as its primary web portal.

The Complainant sells products and services in various sectors, including medical skin treatments through its subsidiary Nestlé Skin Health S.A. This entity had entered into a joint venture with the French company L'Oréal, who subsequently transferred its 50% stake to the Complainant. This was announced at a widely reported press conference, held on 11 February 2014.

On 12 February 2014 Mr Shen Chaoyong registered the Domain Name as well as <nestleskinhealth.com>, <nestleskin.com>, <nestleskinhealth.ch> <nestleskinhealth.cn> and <nestleskinhealth.com.cn>. The Domain Name has since been transferred to the Respondent but it continues to redirect to the web site at www.kuaigang.com. The email address indicated on this web site is scy1216@outlook.com, very similar to the email address indicated by Shen Chaoyong when he registered the Domain Name, namely scy1216@gmail.com. It is apparent from this and other factors that Shen Chaoyong has maintained control over the registration. References to "the Respondent" should therefore be taken to include the registrant and/or Mr Chaoyong.

The Complainant emailed the Respondent, requesting the transfer of the Domain Name together with the five other domain names listed above. An exchange of emails followed in the course of which the Respondent set an initial price of \$3500 for their transfer, subsequently reduced to \$1000 before negotiations were terminated.

5. Expert's summary of the Parties' submissions

5.1. The Complainant

5.1.1 The Complainant's Rights

The Domain Name is confusingly similar to trademarks in which Complainant has registered rights.

The Respondent chose the Domain Name in bad faith to profit from the Complainant's reputation.

The descriptive terms 'skin' and 'health' do not distinguish the Domain Name from the Complainant's trademark.

The 'co.uk' suffix is discounted as merely instrumental to the use in Internet.

5.1.2 The Domain Name is an Abusive Registration

The Respondent has no rights or legitimate interests in the Domain Name.

The Respondent is not a licensee or an authorized agent of Complainant or in any way legally permitted to use the Complainant's mark.

The Respondent is not commonly known by the Domain Name as an individual, business, or other organization.

The Respondent has not provided evidence of use of, or demonstrable preparations to use, the Domain Name in connection with a bona fide offering of goods or services before or after any notice of this dispute.

It is inconceivable that the Respondent was unaware of the existence either of the registered trademark NESTLE or the company name Nestlé Skin Health S.A.

The Domain Name redirects to a site managed by the Respondent, <kuaigang.com>, attempting to attract users to it by creating confusion with the Complainant's mark and diverting users looking for sites associated with the Complainant.

The Respondent has requested payment for transfer of the Domain Name which exceeds the out-of-pocket costs of transfer.

The Respondent has engaged in a pattern of registrations pursuant to Paragraph 3(a)(iii) of the Policy.

Besides the Domain Name, the Respondent has registered at least five additional domain names confusingly similar to the trademark NESTLE. The Respondent is or was also the owner of several other domain names containing trademarks of third parties such as Amazon and Prada.

5.2 The Respondent

No Response was submitted.

6. Discussions and Findings

The Complaint has been written as if it were a complaint under the UDRP, containing references to UDRP panel decisions. I have however applied Nominet's DRS Policy only. No Response has been received, but Paragraph 2 of the DRS Policy nevertheless requires that the Complainant must make its case that:

2.a.i. The Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and

2.a.ii. The Domain Name, in the hands of the Respondent, is an Abusive Registration.

Under Paragraph 2.b of the Policy, the Complainant is required to prove to the Expert that both elements are present on the balance of probabilities.

Paragraph 1 of the DRS Policy defines Rights as:

“rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning;”

Elsewhere in Paragraph 1 of the Policy, “Abusive Registration” is defined as a Domain Name which either:

- i. was registered or otherwise acquired in a manner which, at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the Complainant's Rights; or*
- ii. has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights;*

6.1 Complainant’s Rights

The Complainant has submitted evidence of its registered trademark rights in the name NESTLE. I agree with the proposition that the additional words “skin” and “health” are descriptive terms which do not differentiate the Domain Name from the protected mark. I therefore find that the Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name.

6.2 Abusive Registration

The Complainant’s allegations against the Respondent fall within the contemplation of Paragraph 3 of the DRS Policy, which provides a non-exhaustive list of factors which may be evidence that the Domain Name is an Abusive Registration. I am satisfied, on the balance of probabilities that the registration date of the Domain Name, together with correspondence between the Parties shows that paragraph 3.a.i. applies in this case, in that the Respondent has

registered or otherwise acquired the Domain Name primarily:

A. for the purposes of selling, renting or otherwise transferring the Domain Name to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly associated with acquiring or using the Domain Name;

B. as a blocking registration against a name or mark in which the Complainant has Rights; or

C. for the purpose of unfairly disrupting the business of the Complainant;

Paragraph 3.a.iii of the DRS Policy provides that evidence of an Abusive Registration will be present where

iii. The Complainant can demonstrate that the Respondent is engaged in a pattern of registrations where the Respondent is the registrant of domain names (under .uk or otherwise) which correspond to well known names or trademarks in which the Respondent has no apparent rights, and the Domain Name is part of that pattern.

The Complainant has provided evidence that the Respondent also registered at least five additional domain names similar to the trademark NESTLE, namely <nestleskinhealth.cn>, <nestleskinhealth.com.cn>, <nestleskinhealth.com>, <nestleskinhealth.ch> and <nestleskin.com>, thus preventing the owner of the trademark from registering 'nestleskinhealth' as a domain name in relevant gTLDs. The Respondent is or was also the owner of several other domain names containing well-known trademarks of third parties, such as <pradasphere.com>, <facebooksupplier.com>, <facebooksuppliers.us>, <facebook.com.hk>, <amazonkindlefirehd.us>, <amazonlending.net>, <nokiamusicplus.com>, <googlebable.org> and <googlebable.net>, amongst others.

I find no grounds to show that the Respondent can rely upon any of the factors in paragraph 4 of the DRS Policy, which might show that the registration is not Abusive. I conclude that the Domain Name was registered or otherwise acquired in a manner which, at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the Complainant's Rights.

7. Decision

For the reasons set out above I find that the Complainant has Rights in a name or mark which is identical or similar to the Domain Names and that the Domain Name in the hands of the Respondent is an Abusive Registration. I direct that The Domain Name be transferred to the Complainant.

Signed: Peter Davies

Dated: 11 August, 2014