



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2301797
Complainant:	Ninebot (Tianjin) Tech. Co., Ltd.
Respondent:	UK NINEBOT LTD/Chris K
Disputed Domain Name(s):	<ninebot-fr.com>

1. The Parties and Contested Domain Name

The Complainant is Ninebot (Tianjin) Tech. Co., Ltd., of Room 3092, 3/F, Block 3, No.3 Tianrui Road, Automobile Industrial Park, Wuqing District, Tianjin, China.

The Respondent is UK NINEBOT LTD/Chris K, of 1 Judd House, Ripple Road, Essex, IG11 0TP, England, GB.

The domain name at issue is <ninebot-fr.com> (“Disputed Domain Name”), registered by the Respondent with HOSTINGER operations, UAB, of Jonavos str. 60C, 44192, Kaunas, Lithuania (“Registrar”).

2. Procedural History

On 25 August 2023, the Complainant filed a Complaint with the Hong Kong Office of Asian Domain Name Dispute Resolution Centre (“ADNDRC”), pursuant to the Uniform Domain Name Dispute Resolution Policy (“Policy”), approved by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on 24 October 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (“Rules”), approved by ICANN Board of Directors on 28 September 2013, and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (“Supplemental Rules”), effective from 31 July 2015. The Complainant chose to have a sole panelist to handle the dispute.

On 25 August 2023, the ADNDRC sent to the Complainant by email an acknowledgment of the receipt of the Complaint and transmitted by email to the Registrar the request for registrar verification in connection with the Disputed Domain Name. On the same day, the Registrar transmitted by email to the ADNDRC its verification response providing, among others, the WHOIS information for the registrant.

On 11 September 2023, the ADNDRC notified the Complainant of the deficiencies in the Complaint. On 12 September 2023, the Complainant filed an amended Complaint. The ADNDRC formally notified the Respondent of the Complaint and the proceedings commenced on 13 September 2023. No administratively compliant Response has been filed by the Respondent.

On 4 October 2023, the ADNDRC informed the Respondent of his default. On the same day, the ADNDRC appointed Ivett Paulovics as sole Panelist in this matter. The Panelist accepted the appointment and has submitted a statement to the ADNDRC that she is able to act independently and impartially between the parties.

3. Factual background

The Complainant was jointly founded by Gao Lufeng and Wang Ye in 2013. The Complainant is the first intelligent short-distance transportation equipment operator integrating research and development, production, sales and service in China. Segway Inc. is the world leader in personal transportation. Founded in 1999 by famed inventor Dean Kamen, Segway has always strived to provide high quality, safe and reliable products to its customers. In 2015, the Complainant merged with Segway, which is based in Bedford, USA. The new company immediately focused on research and development, design, manufacturing, distribution and sales of short-distance travel products. The new company has strategic locations in the United States, the Netherlands and Beijing, and has production facilities in the United States and China.

The Complainant has 1,000+ global industry-based core patents. Its products include balance vehicles, scooters, robots, all-terrain, electric vehicles, balance wheels, karts, etc., and are widely used in innovative short transportation, robots, cool entertainment, etc. To meet the diverse and personalized needs of users, it continues to lead the development of the industry.

The Complainant's first product, the Windrunner series, was launched in the year the company was founded. At the end of 2013, the Ninebot No. 9 series, widely known to the consumers, came out. By August 2014, the third Ninebot One series of unicycles was launched. At the beginning of the product launch, the Complainant opened the balance bike market with a preferential price and stunning product experience, subtly changing the consumers' perception of short-distance travel.

The Complainant shines in the capital market by virtue of its complete business model. The main information is as follows:

In July 2013, the Complainant received an angel investment of 12 million yuan from Zhonglu Capital. In October 2014, Xiaomi, Sequoia Capital, Shunwei Capital, and Huashan Capital jointly injected more than 80 million US dollars into the Complainant. The Complainant became a new member of the Xiaomi ecological chain and launched the "No. 9 balance car" product in cooperation with Xiaomi. In January 2016, it received a strategic investment from Yarui Capital, the amount has not been disclosed. In October 2017, it received 100 million U.S. dollars in Series C financing, and SDIC participated in the investment in innovation.

With the completion of the acquisition of Segway, the originator of global balance cars, in 2015, the Complainant became a Titan of the industry. After unremitting efforts, since its establishment, the Complainant's products have been sold in more than 60 countries and regions including the United States and Hong Kong, and sales and service centers have been established in more than 200 provinces and cities in mainland China. The Complainant has won various awards for his excellent product design and exquisite user experience. For example, it won two awards at the 11th Golden Toucan Award in 2018 and the German IF Design Award multiple times.

Therefore, the Complainant has a high level of popularity and influence. As the Complainant's corporate name and core product trademark, Ninebot has been in actual use and promotion for many years and has become highly recognizable in the world. By searching "Ninebot" on Google, all results point to the Complainant. It follows that Ninebot has a unique correspondence with the Complainant.

The Complaint has rights in several trademarks registered worldwide, including:

- Chinese trademark (figurative) NINEBOT no. 13447329 filed on 29 October 2013, in Class 12;
- Chinese trademark (figurative) NINEBOT no. 14632325 filed on 25 June 2014, in Class 7;
- Chinese trademark (figurative) NINEBOT no. 14632327 filed on 25 June 2014, in Class 9;
- Chinese trademark (figurative) NINEBOT no. 14632342 filed on 25 June 2014, in Class 42;
- Chinese trademark (figurative) NINEBOT no. 14632345 filed on 25 June 2014, in Class 28;
- Chinese trademark (figurative) NINEBOT no. 22369026 filed on 23 December 2016, in Class 12;
- Chinese trademark (figurative) NINEBOT no. 25931738 filed on 18 August 2017, in Class 35;
- Chinese trademark (figurative) NINEBOT no. 25931739 filed on 18 August 2017, in Class 28;
- Chinese trademark (figurative) NINEBOT no. 25931742 filed on 18 August 2017, in Class 9;
- International trademark registration (figurative) NINEBOT no. 1235414 since 25 November 2014, based on the Chinese trademark no. 13447329 filed on 29 October 2013, in Class 12;
- European Union trademark registration (word) NINEBOT no. 018336633 since 11 March 2021 in Classes 9, 12, 28.

The above-mentioned trademarks are hereinafter collectively referred to as "NINEBOT trademark".

The Respondent is UK NINEBOT LTD/Chris K, residing in 1 Judd House, Ripple Road, Essex, IG11 0TP, England, GB. The company dissolved on 17 May 2016.

The Disputed Domain Name was registered with privacy / proxy service on 1 April 2023. It resolves to an e-commerce site in French displaying the Complainant's NINEBOT trademark and offering for sale the Complainant's products at much lower prices of the original products.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

- i. The Disputed Domain Name fully contains the Complainant's NINEBOT trademark.
- ii. The Complainant has no business relations with the Respondent and has not given any permission or authorization to the Respondent to use its NINEBOT trademark or register the Disputed Domain Name.

- iii. Considered the notoriety of the Complainant and its prior NINEBOT trademark, the Respondent should have been aware of the Complainant and its well-known mark at the time of registration of the Disputed Domain Name.
- iv. The Respondent is using the Disputed Domain Name for a copycat site displaying the Complainant's trademark and products and having the look and feel of the Complainant's official website. Therefore, the Respondent by impersonating the Complainant is misleading the relevant public which might believe that the Disputed Domain Name is the official website or closely connected to or licensed by the Complainant.

B. Respondent

The Respondent has not filed any Response.

5. Findings

The ICANN Uniform Domain Name Dispute Resolution Policy ("Policy") provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

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

If all three elements are met, the domain name registration is ordered to be cancelled or transferred to the Complainant. If one or more elements are not met, the Complaint is denied, and the domain name registration remains intact.

A) Identical / Confusingly Similar

The first UDRP element functions primarily as a standing requirement. Where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the standing requirement of having trademark rights for purposes to initiate a UDRP dispute (see paragraph 1.2 of WIPO Overview 3.0).

The test for identity or confusing similarity involves comparing the alpha-numeric domain name and the textual components of the relevant mark to assess whether the mark is recognizable within the domain name. When a domain name wholly incorporates the complainant's trademark or at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name is considered confusingly similar (see paragraph 1.7 WIPO Overview 3.0).

The addition of letters or other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) to the relevant trademark, recognizable within the disputed domain name, would usually not prevent a finding of confusing similarity under the first element (see paragraph 1.8 of WIPO Overview 3.0).

UDRP panels have consistently found that the TLD is to be disregarded for the purpose of determination of identity or confusing similarity between the disputed domain name and the Complainant's trademark, as it is a technical requirement of the registration.

The Complainant has established that it has rights in the NINEBOT trademark since 2013.

The Disputed Domain Name consists of the word “ninebot” and the letters “fr” divided by a hyphen, plus the TLD <.com>. It, therefore, contains the entirety of the Complainant’s NINEBOT trademark. The letters “fr” refer to France. The addition of the non-distinctive and descriptive (geographic) letters “fr” neither affects the attractive power of the Complainant’s trademark, nor is it sufficient to prevent the finding of confusing similarity between the Disputed Domain Name and such mark.

The content of the website associated with the domain name is usually disregarded by UDRP panels when assessing confusing similarity under the first element. In some instances, panels have however taken note of the content of the website associated with a domain name to confirm confusing similarity whereby it appears prima facie that the respondent seeks to target a trademark through the disputed domain name (see paragraph 1.9 of WIPO Overview 3.0).

In the present dispute, considered that the Disputed Domain Name resolves to an e-commerce site, displaying the Complainant's mark, containing the copyrighted images of the Complainant’s products, and offering for sale scooters, it is evident that the Respondent had in his mind the Complainant, its activities and its NINEBOT trademark, and intended to create confusion with such mark by registering and using the Disputed Domain Name.

Therefore, the Panel finds that the Complainant has proven the first element of the paragraph 4(a) of the Policy and the Disputed Domain Name is confusingly similar to the Complainant's trademarks.

B) Rights and Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the complainant has the burden of establishing that the respondent has no rights or legitimate interests in respect of the disputed domain name. If the complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (see paragraph 2.1 of WIPO Overview 3.0).

But, by virtue of paragraph 4(c) of the Policy, any of the following circumstances, in particular but without limitation, if found by the panel to be proved based on its evaluation of all evidence presented, shall demonstrate the respondent's rights or legitimate interests to the domain name:

- i. before any notice to the respondent of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the 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 domain name, even if it has acquired no trademark or service mark rights; or
- iii. the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Thus, if a respondent proves any of these elements or indeed anything else that shows that it has a right or legitimate interest in the domain name, the complainant will have failed to

discharge its onus and the complaint will fail. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

In this case, the Panel considers that the Complainant has made out a sufficient prima facie case.

The Complainant has no relationship with the Respondent whatsoever and has never authorized the Respondent to use its NINEBOT trademark or to register the Disputed Domain Name.

The Disputed Domain Name was registered by UK NINEBOT LTD/Chris K, residing in 1 Judd House, Ripple Road, Essex, IG11 0TP, England, GB. Such registration data appears inconsistent and fake, considered that at the address used by the Respondent for the registration of the Disputed Domain Name there is no office or other place of business of the Complainant. The Complainant also provided documentary evidence showing that the company UK NINEBOT LTD had dissolved since 17 May 2016. Accordingly, there is no evidence that the Respondent has been commonly known by the Disputed Domain Name or has acquired any rights in a trademark or trade name corresponding to the Disputed Domain Name.

The Respondent registered the Disputed Domain Name, incorporating the entirety of the Complainant's mark with the addition of non-distinctive elements (the letters "fr" referring to France and a hyphen), and, thus confusingly similar to the Complainant's trademark.

UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation. Even where a domain name consists of a trademark plus an additional term or letters (at the second- or top-level), UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner (see paragraph 2.5.1 of WIPO Overview 3.0).

Furthermore, the Disputed Domain Name resolves to an e-commerce site related to the Complainant's products, displaying its trademark and copyrighted images. The text is in French, targeting the French-speaking markets.

Therefore, the Panel finds that the use of the Disputed Domain Name by the Respondent before any notice of the present dispute is clearly not a bona fide offering of goods or services or legitimate noncommercial or fair use, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's mark under the Policy. To the contrary, as per the evidence on record, it is apparent that the Respondent not only lacks rights or legitimate interests in the Disputed Domain Name, but is instead trading off the Complainant's reputation and goodwill, impersonating the Complainant and misleading the Internet users.

While the Complainant has established its prima facie case, the Respondent has not submitted a Response and, thus, has failed to invoke any of the circumstances, which could demonstrate any rights or legitimate interests to the Disputed Domain Name.

The Panel is satisfied that the Complainant has met the second requirement of the paragraph 4(a) of the Policy and finds that the Respondent lacks rights or legitimate interests to the Disputed Domain Name.

C) Bad Faith

The Disputed Domain Name has been registered and is being used by the Respondent in bad faith for the following reasons.

The Respondent has used a privacy or proxy service when registering the Disputed Domain Name. Although the use of such service is not in and of itself an indication of bad faith, the circumstances and the manner in which such service is used may however impact a panel's assessment of bad faith (see paragraph 3.6 of WIPO Overview 3.0).

The registration data disclosed by Registrar is apparently inconsistent and fake, since the company dissolved on 17 May 2016.

The Respondent registered the Disputed Domain Name, incorporating in its entirety the Complainant's well-known NINEBOT trademark. The addition of a hyphen, the non-distinctive and descriptive (geographic) letters "fr" (referring to France) and the TLD <.com> (a technical requirement of the registration) neither affects the attractive power of the Complainant's well-known trademark, nor is it sufficient to prevent the finding of confusing similarity between the Disputed Domain Name and the Complainant's mark, and, together with the website content, even enhances the risk of confusion.

UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names incorporating the mark plus a descriptive/geographic term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith (paragraph 3.1.4 WIPO Overview 3.0).

Given the distinctiveness and the reputation of the Complainant's prior NINEBOT trademark acquired over the years, it is inconceivable that the Respondent could have registered the Disputed Domain Name confusingly similar to the Complainant's mark for a mere chance without actual knowledge of the Complainant and its mark and the intention to exploit such reputation by diverting traffic away from the Complainant's website.

Even assuming that the Respondent had no knowledge of the Complainant's prior mark at the time of registration of the Disputed Domain Name (which is quite unlikely), it omitted to verify that the Disputed Domain Name would have infringed the Complainant's earlier rights or, even worse, it verified it and deliberately proceeded with the infringing registration.

Under paragraph 2 of the Policy, it is the Respondent's responsibility to determine whether a domain name registration infringes or violates third party's rights. By registering the Disputed Domain Name confusingly similar with the Complainant's well-known NINEBOT trademark, the Respondent has violated, inter alia, the cited provision of the Policy.

The Disputed Domain Name resolves to a copycat version of the Complainant's website in French, displaying the Complainant's trademark and copyrighted images and offering for sale the Complainant's product for much lower prices of the original products. Thus, it is clear that the Respondent registered and has used the Disputed Domain Name with actual knowledge of the Complainant, its business and its mark and the intention to exploit the reputation and the goodwill built by the Complainant by diverting traffic away from the Complainant's website.

Irrespective of whether the goods offered on the Respondent's website are in fact counterfeit, the reproduction of the Complainant's NINEBOT trademark on the Respondent's website without also displaying a clear disclaimer of a lack of relationship between the Respondent and the Complainant, trading off the Complainant's reputation and goodwill and impersonating the Complainant and, thus, misleading the Internet users are indicative of bad faith.

Therefore, the Panel finds that Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to source, sponsorship, affiliation, or endorsement of the Respondent's website (paragraph 4(b)(iv) of the Policy).

Taken into account all circumstances of this case, the Panel finds that the Complainant has discharged the burden of proof to show that the Disputed Domain Name has been registered and is being used in bad faith (paragraph 4(a)(iii) of the Policy).

The Disputed Domain Name is to be transferred to the Complainant.

6. **Decision**

For all the reasons above, the Complaint is accepted and the domain name <ninebot-fr.com> is to be transferred to the Complainant.



Ivett Paulovics
Panelist

Dated: 16 October 2023