

AMERICAN ARBITRATION ASSOCIATION

ADMINISTRATIVE PANEL DECISION

NCC Group plc and Mischenko Oleg
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1. **Parties**

Complainant: NCC Group, PLC of Manchester, England.

Represented by: Nick Moss, Senior Solicitor (In-House Counsel)

Respondent: Mischenko Oleg of the Russian Federation

2. **Domain Name and Registrar**

The disputed domain name is <www.ncgroup.us> and the registrar is Online, Inc. d/b/a China-Channel.com

3. **Procedural History**

The Complaint was brought pursuant to the usTLD Dispute Resolution Policy (the "Policy"), which was approved by the US Department of Commerce on February 1, 2002, and in accordance with the Rules for usTLD Dispute Resolution Policy (the "Rules") and the American Arbitration Association ("AAA") Supplemental Rules for Domain Name Disputes ("Supplemental Rules").

The Complaint was filed online with the AAA on July 20, 2005, with a hard copy received by the AAA on July 27, 2005. Complainant sent a copy of the Complaint to Respondent at the address contained in the WhoIs database, both by post and by e-mail prior to, or at the time of, submitting its Complaint to the AAA.

On July 27, 2005, the AAA sent a notification letter by e-mail to Respondent at rippa@bk.ru, based on the information provided in the

WhoIs database, notifying Respondent of the filing of the Complaint and setting a deadline of August 16, 2005 for Respondent to file a Response. By virtue of the receipt of the hard copy of the Complaint and forwarding it to Respondent, under paragraph 4(c) of the Rules, this Administrative Proceeding is deemed to have commenced on July 27, 2005.

Respondent failed to provide any response to the Complaint. On August 17, 2005, the AAA sent a list of potential arbitrators to Respondent by e-mail. Again, Respondent did not respond.

On August 26, 2005, pursuant to Complainant's request to have the dispute decided by a single member panel, the AAA appointed Michael H. Diamant as sole Arbitrator. From a review of the communications records, the undersigned finds that the AAA has discharged its responsibility under Paragraph 2(a) of the Rules. Therefore, this Arbitrator may issue his Decision based upon the documents submitted in accordance with the Policy, the Rules, the AAA's Supplemental Rules, and the rules and principles of law which this Arbitrator deems applicable, without the benefit of any Response from Respondent.

5. Relief Sought

Complainant requests that the domain name be transferred from Respondent to Complainant.

6. Parties' Contentions

A. Complainant makes the following assertions:

- (1) Respondent's <nccgroup.us> domain name is identical to Complainant's common law trademark and service mark **NCCGROUP** and Respondent's various domain names, including:
<www.nccgroup.co.uk>
<www.ncc-group.co.uk>
<www.nccgroupltd.com>
<www.nccgroupplc.com>
<www.thenccgroup.co.uk>
<www.thenccgroup.com>
<www.thenccpic.com>

- (2) Respondent fails to demonstrate any rights or legitimate interest in the <nccgroup.us> domain name.
- (3) Respondent registered the <nccgroup.us> domain name in bad faith.

B. Respondent failed to submit a Response in this proceeding.

7. **Findings**

Based upon the submissions of Complainant, unopposed by a Response from Respondent, the Arbitrator finds that Complainant has acquired common law rights, the full extent of which is not necessary to discuss in this Decision, to the mark **NCCGROUP**, under which it has done business and built goodwill for a period in excess of six years. Complainant's mark is, and has been, used with respect to its business of providing IT services including software escrow, IT consulting, penetration testing, and security testing. Complainant trades internationally with customers throughout the world, including many in the U.S. Complainant trades its stock and publishes brochures and other materials using the mark **NCCGROUP**. Complainant is the registered owner of, and operates its website from, the domain name <www.nccgroup.com>, which it acquired and began using in July 2004. Prior to that, it operated its website using the name <www.nccglobal.com>. The domain name in question, <nccgroup.us>, is identical to the mark **NCCGROUP** to which Complainant has acquired rights through use.

Respondent registered the <nccgroup.us> domain name on June 28, 2005, and has yet to articulate a purpose for its use or for its website. Rather, its registration shows the reason for its registration as "personal."

Based on the screen shots of Claimant's and Respondent's websites, Claimant has demonstrated that Respondent created a website which is almost identical in look and feel to that of Complainant. Claimant submitted an e-mail that it received from a third party with a copy of an unsolicited e-mail directed to that third party from Respondent directing him to Respondent's website offering what appeared to be job opportunities with Claimant. It would appear that Respondent's purpose, for obtaining the subject domain name and creating its website, was to solicit employment applications and personal information from persons who would believe that they were communicating with Complainant.

Respondent's domain name bears no relation to Respondent's information contained in the WhoIs database. Respondent has no connection whatsoever to Complainant.

Based on the submissions of Complainant, the essential duplication of Complainant's website look and feel, and the unsolicited e-mail by Respondent to at least one recipient passing itself as Complainant, directing the recipient to Respondent's website and seeking personal and financial information about the recipient, purportedly relating to an alleged job application for a position with Complainant, this Arbitrator finds that the registration by Respondent was in bad faith and in all likelihood for fraudulent purposes.

8. Discussion

Paragraph 15(a) of the Rules instructs an arbitration panel to "decide a complaint on the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Since, Respondent failed to submit a Response, this administrative proceeding shall be decided on the basis of Complainant's undisputed representations and submissions pursuant to Paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences as this Arbitrator considers appropriate pursuant to Paragraph 14(b) of the Rules.

This Arbitrator notes that the Respondent's name in these proceedings is stated as Mischenko Oleg. It is possible, and even likely, that the listing is based on an Eastern European convention, and that in English, Respondent's name would be written as Oleg Mischenko. However, whichever is correct, it does not change the fact that the Complaint and follow-up correspondence were sent to Respondent at the name and address listed in the WhoIs database relating to the <nccgroup.us> domain name.

Paragraph 4(a) of the Policy requires that the Complainant must prove each of the following three elements to obtain an order that a domain name be cancelled or transferred:

- (i) the domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

- (ii) the Respondent had no rights or legitimate interests in respect of the domain name; and
- (iii) the domain name has been registered or is being used in bad faith.

Identical and/or Confusingly Similar

Respondent did not submit any Response and consequently did not rebut Complainant's *prima facie* case that Respondent's domain name contained the identical mark as Claimant's and was confusingly similar to Claimant's mark and domain names. As a result, this Arbitrator can and will assume that Respondent could not rebut Claimant's case and accepts all of Claimant's reasonable inferences.

Complainant has established common law rights to the **NCC GROUP** mark by using that mark in commerce and, in particular, with respect to its website, and as an identifying mark as to its software, escrow and security related services.

Respondent's domain name incorporates Complainant's mark in its entirety. Consequently, Respondent's <nccgroup.us> domain name is confusingly similar to Complainant's **NCC GROUP** mark.

Accordingly, this Arbitrator finds that Paragraph 4(a)(i) of the Policy has been satisfied.

Rights or Legitimate Interests

Since Respondent failed to respond to Complainants' *prima facie* case, this Arbitrator can and will accept all of Complainant's reasonable inferences, as Respondent's failure to respond implies that Respondent can assert no legitimate right to the domain name, <nccgroup.us>.

Complainant's registration of its numerous web-addresses, publication of numerous brochures and securities related documents, and operation of its corporate business and web-site using the **NCCGROUP** mark, create the presumption that Respondent cannot demonstrate rights in the subject domain name under Policy Paragraphs 4(c)(i) or (iii). As stated in Complainant's submissions, Complainant is the senior user and there is no evidence that it gave Respondent permission to use the subject domain name.

Respondent's registration states that his only purpose for registration and use is "personal." However, from the submission of Complainant, Respondent used the domain name to create a website that was a direct copy or 'knock-off' of Complainant's with the same 'look and feel' and much of the same text, and then attempted to lure third parties to enter the website to apply for jobs, that an applicant would assume to be offered by Complainant. Respondent's purpose would appear to be to obtain confidential personal and financial information from such misdirected third parties. Respondent having failed to file a Response, it is presumed that Respondent has not used the subject domain name in connection with a *bone fide* offering of goods or services. Consequently, Respondent cannot satisfy Policy Paragraph 4(c)(ii).

Upon Complainant reporting the Respondent's practices to Spaceweb, the company that hosted its website in Russia, the website was shut down on July 15, 2005. It appears that the website has not been used since. Therefore, this Arbitrator finds that Respondent's only interest in using the domain name was not legitimate and that it had neither had nor acquired any legitimate rights in the domain name <nccgroup.us>.

Finally, without a Response and since Respondent's Website appears no longer to be functioning, this Arbitrator can infer that Respondent is not "making a 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." Consequently, Respondent cannot satisfy Policy Paragraph 4(c)(iv).

Accordingly, this Arbitrator finds that Paragraph 4(a)(ii) of the Policy has been satisfied.

Registration and Use in Bad Faith

As stated above, Respondent's only use of the domain name <nccgroup.us> was to create a website that had the look and feel of Complainant's, which it used to induce unsuspecting third parties, believing that they were applying for a position with Complainant to divulge confidential personal and financial information to Respondent. Since Respondent has not submitted any arguments or documents rebutting Complainant's submissions, they are inferred to be true. Further, since Respondent's website was almost identical to Complainant's, with the same look and feel, color, and artwork and contained much of the same text, Respondent is not only presumed to have had knowledge of Complainant's rights, but to have

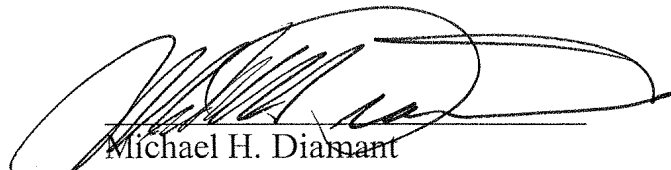
set about in bad faith to misappropriate Complainant's identity, in order to lure unsuspecting persons to assume that they were communicating with Complainant through the registration and use of the domain name <nccgroup.us>.

It is evident, therefore, that Respondent registered and used the domain name <nccgroup.us> in bad faith in violation of Paragraph 4(a)(iii) of the Policy.

9. **Decision**

Having established all three elements required by the usTLD Dispute Resolution Policy, this arbitrator concludes that relief should be hereby is **GRANTED**.

Therefore, it is hereby **Ordered** that the <nccgroup.us> domain name be **TRANSFERRED** from Respondent to Complainant.



Michael H. Diamant
Arbitrator
Dated 8/1/05