



**CANADIAN INTERNATIONAL INTERNET DISPUTE RESOLUTION CENTRE**  
**DOMAIN NAME DISPUTE**  
**ADMINISTRATIVE PANEL**  
**DECISION**

CIIDRC case number:	<b>22633-UDRP</b>	Decision date: <b>February 28, 2024</b>
Domain Name:	<b>TSMSUPPLY.COM</b>	
Panel:	<b>David L. Kreider</b>	
Complainant:	<b>DNOW L.P.</b>	
Respondent:	<b>Nut-Nae Art/ Tareina Hunt</b>	

**1. PROCEDURAL HISTORY**

The procedural history of this case was set out in a letter from the Canadian International Internet Dispute Resolution Centre to the Panel:

1. On January 25, 2024, Amy Fong filed a Complaint on behalf of DNOW L.P. via email pursuant to the UDRP and the UDRP Rules. The required commencement fee was paid on the same date.
2. On January 25, 2024, the Registrar of the disputed domain name was notified of this proceeding.
3. On January 25, 2024, the Registrar transmitted by email to CIIDRC its verification response informing who is the Registrant, Respondent, in this administrative proceeding. The Registrar also confirmed that the TSMSUPPLY.COM domain (hereinafter the "**Domain Name**") was placed on a Registrar LOCK.
4. On January 29, 2024, CIIDRC notified the Respondent of this administrative proceeding and forwarded a Written Notice via email.
5. The deadline for the response was set for February 20, 2024.
6. On February 23, 2024, the Respondent, Tareina Hunt, filed a late Response to the Complaint.

7. The Complainant and Respondent in this administrative proceeding have elected for a Panel consisting of a single-member.

8. CIIDRC has appointed, David L. Kreider, as a single-member Panel, who has completed and signed a Statement of Acceptance and Declaration of Impartiality and Independence.

9. Absent exceptional circumstances, and pursuant to Rule 15 (b), the decision is due by March 11, 2024.

The Domain Name was registered on August 15, 2006.

This matter is conducted pursuant to the Uniform Domain Name Dispute Resolution Policy (the Policy) and the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules) of the Internet Corporation for Assigned Names and Numbers (ICANN).

## 2. FACTS ALLEGED BY THE PARTIES

The Complainant alleges that the Respondent operates a web and graphic design business under the name "Nut-Nae Art Website & Graphics". Webpages of the Respondent's Nut-Nae Art Website & Graphics website found at the URL: <<https://wedowebsites.ca>> offer web design, hosting, and domain name services. The Client page shows "TS&M Supply" as one of its clients.

In 2006, the Complainant's predecessor hired the Respondent to design, host and maintain websites under the Domain Name <[tsmsupply.com](https://tsmsupply.com)> among other domains on behalf of the Complainant's predecessor and, subsequently, the Complainant's licensee DNOW Canada ULC (including its affiliates, subsidiaries, and related entities). The Respondent continued to provide web hosting services to the Complainant's predecessors and subsequently to the Complainant's licensee DNOW Canada ULC, until the Respondent's services were formally terminated in November 2023 and the relationship ended.

In November 2023, the Complainant's licensee DNOW Canada ULC formally terminated the Respondent's services and requested that the Respondent transfer the domain names, including the Domain Name, to DNOW. The Respondent has refused to transfer the domain names. DNOW's content previously at these domains has now disappeared and the domains now redirect to the Respondent's web and graphic design business website indicating that the domains are for sale. Being prevented from accessing its websites and having its web content erased by its former service provider (i.e. the Respondent) has disrupted the Complainant's business, namely, advertising and providing information about its products and services online to current and prospective customers.

The Complainant requests the Domain Name be transferred to it.

The Respondent alleges (reproduced below *verbatim*):

Firstly, I apologize that I missed this email. I am a working single mom. I am busy. I receive 60+ emails a day.

**Domain Name: TSMSUPPLY.COM**  
22633-UDRP

I have owned this [Domain Name] since 2006 (18 years). I have no contract or relationship with “DNow Canada ULC”. My previous client, TS&M neglected to pay for their domain. I carried them for over 4 months. I received an email from someone from DNow saying that they no longer required the services that I had been providing for TS&M and requested that three domains be transferred over to them. Two of those domains I had no connection to, (i.e., tsmfiberglass.com). I get many fake emails requesting domain transfers.

The next communication I received was from a lawyer. I responded that their bills had been unpaid for months. They argued that no money was owed, and a few weeks later they realized they had made a mistake and were in arrears for months. I tried to contact TS&M but never heard back. Any other registrar would have let the domain go immediately (with 7-10 days grace).

This domain is for sale, “DNow Canada ULC” is welcome to purchase it. I requested a fair offer was made and was sent an offer for \$10. I believe they are going to this extreme because of a personal issue their company has with my brother.

Please also see my client agreement (this is an online form that is agreed to electronically). It’s dated 2017, because I redid a new website for TS&M at that time, therefore a new agreement was signed. [Name omitted from this decision to protect privacy] was my contact with TS&M at that time.

### **3. PRELIMINARY DISPOSITIVE ISSUE – Policy Not Applicable to Disputes Between Parties with Competing Rights Acting in Good Faith**

It is well-established in UDRP jurisprudence that the scope of the procedure is limited, such that it is available only in respect of deliberate, bad faith, abusive, domain name registrations or “cybersquatting” and is not applicable to disputes between parties with competing rights acting in good faith. See, Final Report of the WIPO Internet Domain Name Process, *THE MANAGEMENT OF INTERNET NAMES AND ADDRESSES: INTELLECTUAL PROPERTY ISSUES*, <<http://wipo2.wipo.int>> (April 30, 1999), par. 135(i).

UDRP administrative proceedings are available to trademark owners to resolve disputes involving abusive trademark registrations, but not for commercial disputes, such as that between the parties in the present case, in which domain names are incidental to the real claims between the parties, or for claims of trademark infringement. “Only cases of abusive registrations are intended to be subject to the streamlined administrative dispute resolution procedure”. See, ICANN *Second Staff Report on Implementation Documents for the Uniform Dispute Resolution Policy* (October 25, 1999), paragraph 4.1(c).

Thus, the Policy’s scope is limited to abusive registrations made with bad faith intent to profit commercially from others’ trademarks. Claims for breach of contract and fiduciary duty requiring the Panel to delve into the parties’ legal relations are generally outside the scope of the Policy, although the line of demarcation separating those disputes within from those outside the scope of the Policy can be elusive. See, e.g., *Courtney Love v. Brooke Barnett*, FA0703000944826 (Forum, May 14, 2007) (dissenting panelist concurred with the

result but disagreed that the issue was beyond the scope of the Policy); see also *The Thread.com, LLC v. Jeffrey S. Poploff*, D2000-1470 (WIPO January 5, 2001).

#### 4. DISCUSSION AND FINDINGS

It is apparent from the common facts alleged by both the Complainant and the Respondent that, at the time of registration of the Domain Name in 2006 and for years thereafter, the Respondent was under contract to provide web design and hosting services to the trademark holder. The parties had a falling out some 18 years later and the Respondent's services were terminated. The Complainant concedes that the Respondent continued to provide web hosting and related services in connection with the Domain Name "to the Complainant's predecessors and subsequently to the Complainant's licensee DNOW Canada ULC", until her services were "formally terminated in November 2023 and the relationship ended".

That the dispute between the parties, at its core, is a commercial contract dispute, is supported by the Respondent's furnishing the terms of her on-line contract. The Panel notes paragraph 4 of the Respondent's on-line contract:

"If the customer's account become 30 days past due Nut-Nae Art [the Respondent] has the right to remove their website from the Internet. If the customers account becomes 90 days past due, and no communication or arrangements are made, Nut-Nae Art will remove their website from the Internet, and let their domain/s go. Hosting and domain names are an annual fee and will not be reimbursed if a client chooses to close their business / remove their website. **Please make your payments on time**". (Emphasis in original).

By pursuing the present UDRP claim, the Complainant seeks effectively to "shoehorn" a long-running commercial contract dispute over web hosting services into an alleged case of abusive registration and use of the Domain Name under the Policy, which it *prima facie* is not based on the evidence and common allegations of both parties.

#### 5. DECISION and ORDER

For the above reasons, in accordance with Paragraph 4 of the Policy, Paragraph 15 of the Rules, and Rule 10 of the Supplemental Rules, the Panel orders that relief shall be **DENIED** and the disputed domain name <tsmsupply.com> shall remain with the Respondent.

Made this 28 day of February 2024.

SIGNATURE OF PANEL



