

ADMINISTRATIVE PANEL DECISION

ORPEA S.A v. Yunkook Jung, Beats4

Case No. D2022-3704

1. The Parties

The Complainant is ORPEA S.A, France, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Yunkook Jung, Beats4, Republic of Korea.

2. The Domain Name and Registrar

The disputed domain name <orpeagroup.com> (the “Domain Name”) is registered with DropCatch.com 526 LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 4, 2022. On October 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On October 5, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on October 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 8, 2022. The Respondent sent an email to the Center on October 21, 2022, regarding its preferred contact details but did not submit any formal response. On November 14, 2022, the Center informed the Parties of the commencement of panel appointment process.

The Center appointed Gregor Vos as the sole panelist in this matter on November 21, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is an operator of retirement homes and care clinics across France and Europe and was founded in 1989. The Complainant is listed on Euronext Paris and employs approximately 71,600 people worldwide.

The Complainant is the owner of *inter alia* the following trademark registrations (hereinafter jointly referred to as the "Trademarks"):

- European Union trademark registration No. 010337558 for ORPEA registered on March 9, 2012; and
- United Kingdom trademark registration No. UK00910337558 for ORPEA registered on March 9, 2012; and
- Chinese trademark registration No. 12370472 for ORPEA registered on September 14, 2014.

Further, it is undisputed that the Complainant operates *inter alia* the domain names <orpea.com>, <orpea-group.com> and <orpea-groupe.com>.

The Domain Name was registered on February 18, 2022 and resolved at the time of the filing of the Complaint to a website on which pay-per-click ("PPC") links were displayed.

5. Parties' Contentions

A. Complainant

With the Complaint, the Complainant seeks that the Domain Name is transferred to the Complainant. The Complaint is based on the following factual and legal grounds: the Domain Name is identical or confusingly similar to the Complainant's Trademarks, the Respondent has no rights or legitimate interests in the Domain Name, and the Domain Name has been registered and is being used in bad faith.

Firstly, according to the Complainant, the Domain Name is confusingly similar to its Trademarks. The Domain Name incorporates the Trademarks in their entirety with the mere addition of the generic, descriptive term "group" and the generic Top-Level Domain ("gTLD") ".com", which does not prevent confusing similarity. Also, the Domain Name is identical or confusingly similar to the domain names <orpea-group.com> and <orpea-groupe.com> that are registered by the Complainant.

Secondly, according to the Complainant, the Respondent has no rights or legitimate interests in the Domain Name. The Respondent has never received permission from the Complainant to use the Trademarks and is not sponsored by or affiliated with the Complainant in any way. The Respondent is not commonly known by the Domain Name. Further, the Respondent is using the Domain Name to redirect Internet users to a website featuring links to third-party websites, some of which directly compete with the Complainant's business. Such use does not constitute a *bona fide* offering of goods or services by the Respondent. In addition, the Respondent registered the Domain Name shortly after the Complainant inadvertently allowed the Domain Name registration to lapse after a previous Panel ordered the transfer of the Domain Name to the Complainant (*ORPEA v. Chevarin Herve*, WIPO Case No. [D2021-0777](#)). This evidences a lack of rights or legitimate interests from the Respondent. Also, the Respondent offers the Domain Name for sale for an amount that far exceeds its out-of-pocket expenses.

Finally, according to the Complainant, the Respondent has registered and is using the Domain Name in bad faith. In light of the well-known character of the Complainant's Trademarks and the online presence of the Complainant, it is inconceivable that the Respondent registered the Domain Name, which is closely connected to the Complainant's domain names, without knowledge of the Complainant and its Trademarks. Also, according to the Complainant, the Domain Name is being used in bad faith. The Respondent creates a likelihood of confusion with the Complainant and its Trademarks, which demonstrates that the Respondent is

using the Domain Name to mislead Internet users as to the source of the Domain Name. Finally, the Respondent has not responded to the Complainant's attempts to resolve the matter amicably, the Respondent has been involved in numerous UDRP proceedings and currently holds several other domain names that misappropriate trademarks of well-known brands.

B. Respondent

The Respondent did not formally reply to the Complainant's contentions.

6. Discussion and Findings

In view of the lack of a response filed by the Respondent as required under paragraph 5 of the Rules, this proceeding has proceeded by way of default. Hence, under paragraphs 5(f), 14(a) and 15(a) of the Rules, the Panel is directed to decide this administrative proceeding on the basis of the Complainant's undisputed factual presentations.

For the Complainant to succeed, it must prove, within the meaning of paragraph 4(a) of the Policy and on the balance of probabilities that:

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

Only if all three elements have been fulfilled is the Panel able to grant the remedy requested by the Complainant. The Panel will deal with each of the requirements in turn.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the Domain Name is (i) identical or confusingly similar to a trademark or service mark, (ii) in which the Complainant has rights.

With respect to having rights pursuant to paragraph 4(a)(i) of the Policy, it is noted that the Complainant is registered as the owner of the Trademarks. Consequently, the Panel finds that the Complainant has proven that it has rights in the Trademarks.

With regard to the assessment of identity or confusing similarity of the Domain Name with the Trademarks, it is generally accepted that this test involves a reasoned but relatively straightforward comparison between the Trademarks and the Domain Name (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark (see section 1.7 of the [WIPO Overview 3.0](#)).

In the present case, the Trademarks are incorporated in their entirety in the Domain Name. The addition of the term "group" and the gTLD ".com" does not prevent a finding of confusing similarity with the Trademarks (see sections 1.8 and 1.11.1 of the [WIPO Overview 3.0](#) and *Andrey Ternovskiy dba Chatroulette v. On behalf of chatroulette.com OWNER, c/o whoisproxy.com / Domain Admin, High Tech Investments LTD*, WIPO Case No. [D2019-0649](#)). Consequently, the Panel finds that the requirement under paragraph 4(a)(i) of the Policy has been satisfied.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the Domain Name. The onus of proving this requirement, like each element, falls on the Complainant. Given the difficulty in proving a negative, however, it is usually sufficient for a complainant to make out a *prima facie* case that a respondent lacks rights or legitimate interests. If a complainant does establish a *prima facie* case, the burden of production shifts to the respondent (see, e.g., section 2.1 of the [WIPO Overview 3.0](#); *Sanofi v. Cimpress Schweiz GmbH*, WIPO Case No. [D2017-0522](#)).

Paragraph 4(c) of the Policy lists three non-limitative examples of instances in which a respondent may establish rights or legitimate interests in the disputed domain name.

The Complainant has substantiated that none of these circumstances apply in this case. By defaulting, the Respondent has failed to rebut the *prima facie* case established by the Complainant. Furthermore, based on the record before it, the Panel does not see an indication that any of the circumstances of paragraph 4(c) of the Policy is present and is unable to consider any other plausible rights or legitimate interests the Respondent may have in these circumstances.

Moreover, the nature of the Domain Name, incorporating the Complainant's well-known trademark and an additional dictionary term associated with the Complainant and used in the Complainant's own domain names, carries a risk of implied affiliation and cannot constitute fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant (see section 2.5.1 of the [WIPO Overview 3.0](#)).

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name. Paragraph 4(a)(ii) is thereby fulfilled.

C. Registered and Used in Bad Faith

Under paragraph 4(a)(iii) of the Policy, a complainant must show that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy lists four non-limitative circumstances which may be considered as evidence of registration and use in bad faith of a domain name.

In the present case, the Trademarks are registered by the Complainant and have been widely used for many years. The Complainant's rights to the Trademarks predate the registration date of the Domain Name. In light of the fact that the Domain Name was registered shortly after it lapsed following another Panel decision and that the Domain Name is virtually identical to other domain names that are registered by the Complainant, the Panel agrees with the Complainant that it is not conceivable that the Respondent chose the Domain Name without knowledge of the Complainant's activities and its Trademarks under which the Complainant is doing business.

Further, the Panel has found that the Respondent lacks any rights to or legitimate interests in the Domain Name and finds that the Respondent is taking unfair advantage of the Domain Name by diverting Internet users to a website that includes PPC links of a commercial nature that compete with the Complainant's activities. Therefore, the Panel finds from the present circumstances that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's Trademarks as to the source, sponsorship, affiliation, or endorsement (see, e.g., "*Dr. Martens*" *International Trading GmbH / "Dr. Maertens" Marketing GmbH v. Joan Mitchell*, WIPO Case No. [D2018-0226](#)).

In addition, the Respondent has not responded to the cease-and-desist letter that the Complainant has sent prior to this procedure in an attempt to resolve the matter amicably (see, e.g., *WhatsApp LLC v. Registration Private, Domains By Proxy, LLC / shalih irshad*, WIPO Case No. [D2022-2236](#)).

Accordingly, the Panel finds that the Domain Name has been registered and is being used in bad faith and that the third element of paragraph 4(a)(iii) of the Policy is fulfilled.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name <orpeagroup.com> be transferred to the Complainant.

/Gregor Vos/

Gregor Vos

Sole Panelist

Date: December 7, 2022