

ADMINISTRATIVE PANEL DECISION

OBAGI Holdings Company Limited v. Le Xuan Khanh
Case No. D2023-2822

1. The Parties

The Complainant is OBAGI Holdings Company Limited, United Kingdom, represented by MSA IP – Milojevic Sekulic & Associates, Serbia.

The Respondent is Le Xuan Khanh, Viet Nam.

2. The Domain Name and Registrar

The disputed domain name <obagimedical.net> is registered with iNET Corporation (the “Registrar”).

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 30, 2023. On July 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 4, 2023, 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.

On July 5, 2023, the Center sent an email communication regarding the language of the proceeding in English and Vietnamese. The Complainant submitted a request to proceed in English on July 6, 2023. The Respondent did not submit any response to the Center’s communication.

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 both in English and in Vietnamese languages, and the proceedings commenced on July 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 2, 2023.

The Center appointed John Swinson as the sole panelist in this matter on August 3, 2023. 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 a global skincare products company that was founded in 1988. It provides, for example, acne treatment preparations and medical services for skin treatment.

The Complainant owns registered trademarks for OBAGI in over 60 countries, including Viet Nam. One of these registered trademarks is Viet Nam Trademark Registration No. 4-0106470-000 for OBAGI, registered on August 4, 2008.

The Complainant uses the domain name <obagi.com> to promote its products and services.

The disputed domain name was registered on June 4, 2021.

The Respondent did not file a response, so little information is known about the Respondent.

The website at the disputed domain name is titled “OBAGI Medical” and advertises and purportedly sells OBAGI products. It includes a link to <obagichinhhang.vn> which appears to be a mirror of the website at the disputed domain name. The website includes text, in Vietnamese, which can be translated as “OBAGI MEDICAL - Genuine Obagi Cosmetics” and “HELLO LADIES AND GENTLEMEN! WE ARE OFFICIAL DISTRIBUTORS OF OBAGI COSMETICS IMPORTED BY DUONG MINH IMPORT-EXPORT CO., LTD (OBAGI VIETNAM)”.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the Respondent registered the disputed domain name knowing of the Complainant and to attract Internet users who were looking for the Complainant. According to the Complainant, this is evidenced by the choice of a confusingly similar domain name, as well as by the content of the website to which it resolves. The website not only displays the Complainant’s trademarks, but also falsely presents the existence of a commercial relationship with the Complainant by stating on the website that it is connected with OBAGI brand, and also by stating that the website offers genuine OBAGI cosmetics.

B. Respondent

The Respondent did not reply to the Complainant’s contentions.

6. Discussion and Findings

A. Principles

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

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

The onus of proving these elements is on the Complainant.

Paragraph 15(a) of the Rules directs the Panel to decide the complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

B. Language of the Proceedings

The Complaint has been submitted in English. Pursuant to the Rules, Paragraph 11, in the absence of an agreement between the parties, or specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement, subject to the authority of the Administrative Panel (once appointed) to determine otherwise. According to information received by the Center from the Registrar, the language of the registration agreement for the disputed domain name is Vietnamese.

On July 5, 2023, the Center wrote to the parties concerning this issue, in both English and Vietnamese. The Complainant requested that English be the language for the proceedings. The Complainant submitted that the Complainant had no knowledge of the Vietnamese language, that the disputed domain name included a word in English, and that some parts of the website at the disputed domain name are in English. The Respondent did not respond or object to this request.

Based on all relevant factors known to the Panel, the Panel determines that the language of the proceedings is English. See also, *Philip Morris USA Inc. v. Cong ty CP dau tu phat trien Heng Leong*, WIPO Case No. [D2021-1204](#).

C. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the OBAGI mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the first element of the Policy has been established.

D. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible

task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

The Complainant does not allege that the website at the disputed domain name is selling fake or pirated products.

The disputed domain name resolves to a website displaying what is purported to be an authorized OBAGI reseller or distributor, but, according to the Complainant, is not one of the Complainant’s official resellers or distributors, nor is it an authorized representative of the Complainant.

The website at the disputed domain name has the heading “OBAGI Medical” and no other clear branding.

On one page of the website at the disputed domain name, there is information about the Complainant and its history. This page states, in Vietnamese, “CAREER OPPORTUNITIES AT OBAGI. It’s a new era for Obagi. We are proud of the portfolio we helped create. But we look forward to redefining it. Join us as we create a future-oriented industry with excitement – and help consumers do the same”. This page gives the strong (but false) impression that the website at the disputed domain name is operated by the Complainant.

The Panel has considered whether the test set out in *Okí Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#), may apply here. The “minimum” requirements to satisfy this test include that the site must accurately disclose the registrant’s (lack of) relationship with the trademark owner; it may not, for example, falsely suggest that it is the trademark owner, or that the website is the official site, if, in fact, it is only one of many sales agents. The Respondent’s website does not include any statement clearly setting out the (lack of) relationship between the Complainant and the Respondent. Rather, also noting the composition of the disputed domain name, it gives a misleading impression as to ownership of the Respondent’s website and the relationship between the parties. Thus, *Okí Data* does not assist the Respondent in the present circumstances. See *Công ty Cổ phần Công nghiệp Vĩnh Tường (Vinh Tuong Industrial Corporation) v. Vinh Tuong, Công ty TNHH TM - DV Vinh Tuong*, WIPO Case No. [D2022-0105](#); *Instagram, LLC v. Privacy service provided by Withheld for Privacy ehf / Fan Reap*, WIPO Case No. [D2022-1225](#).

Based on the available record, the Panel finds the second element of the Policy has been established.

E. Registered and Used in Bad Faith

For the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by the complainant.

The Complainant provided evidence of its long-standing trademark registration in Viet Nam (where the Respondent is located). Additionally, it is clear that the Respondent was and is aware of the Complainant – the Respondent is purportedly selling the Complainant’s products and provides the history of the Complainant on its website.

The disputed domain name includes the Complainant's OBAGI trademark and, as stated above, the website at the disputed domain name is misleading as to the (lack of) relationship between the Complainant and the Respondent.

The Panel finds, based on the evidence before the Panel, that the Respondent has intentionally attempted to attract for commercial gain Internet users to its website by creating likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the website under paragraph 4(b)(iv) of the Policy. See *The Consumer Goods Forum v. Robert Burgh, Nexcor Technologies, Inc.*, WIPO Case No. [D2021-3918](#).

Based on the available record, the Panel finds the third element of the Policy has been established.

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 disputed domain name <obagimedical.net> be transferred to the Complainant.

/John Swinson/

John Swinson

Sole Panelist

Date: August 15, 2023