

ADMINISTRATIVE PANEL DECISION

OTP Bank Nyrt v. Aniko Netrebenka
Case No. D2023-2942

1. The Parties

The Complainant is OTP Bank Nyrt, Hungary, represented by DANUBIA Patent and Law Office LLC, Hungary.

The Respondent is Aniko Netrebenka, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <otpbank.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 10, 2023. On July 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 12, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 13, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on July 14, 2023.

The Center verified that the Complaint together with the amendment to 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 July 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 14, 2023. On August 1, 2023, the Respondent requested an extension to the due date for Response of 10 days. On August 8, 2023, the Respondent requested an extension to the due date for Response of four days. On August 9, 2023, the Respondent issued an informal email to the Center. On August 10, 2023, the Respondent repeated its request for a four day extension to the due date for Response. On August 10, 2023, the Center noted that the automatic four day extension request was granted, and that the due date for Response was therefore August 18, 2023. The Center also

requested the Complainant's comments on the Respondent's request for a 10 day extension to the due date to file a Response. On the same day, the Complainant indicated that it opposed the Respondent's request for an extension to the due date. On August 11, 2023, the Respondent issued a further informal email to the Center noting that it had not received documentation pertaining to the Complaint. The Center granted the Respondent's request for an extension to the due date on the same day. The due date for Response was therefore August 23, 2023. The Response was filed with the Center on August 21, 2023.

The Center appointed Andrew D. S. Lothian, Petra Pecar, and Alfred Meijboom as panelists in this matter on September 20, 2023. The Panel finds that it was properly constituted. Each member of 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 commercial bank, founded in Hungary in 1949. According to the Complainant, its banking group is a major player in Central and Eastern Europe, and serves more than 19 million clients. Said group provides universal banking services in 12 countries through over 1,700 branches. To the Complainant, the acronym "otp" stands for "Országos Takarékpénztár" which it says means "National Savings Bank" in English.

The Complainant is the owner of several figurative marks for designs incorporating the stylized words "OTP BANK", the earliest of which appears to be Hungarian Registered Trademark Number 134843, registered on May 17, 1993, in Class 36. Among others, the Complainant is also the owner of International Registered Trademark Number 910030 in respect of the word mark OTP BANK, registered on December 4, 2006, and designated in respect of some 13 countries, not including the location where the Respondent is based. The Complainant is the registrant of the domain names <otpbank.hu>, registered on February 5, 1998, and <otpbank.eu>, registered on August 5, 2006. The Complainant asserts, but does not evidence, that it is the holder of almost all "otpbank" country code Top-Level Domains ("ccTLD") in relation to Europe along with several "otpbank" generic Top-Level Domains ("gTLD"). It does not specify when these particular domain names were registered.

The disputed domain name was registered on February 14, 2000. According to the Complainant's screenshot, the website associated with the disputed domain name features the statement "OTP Bank is an international war sponsor. Please take your money elsewhere!" in several different languages. The Panel's machine translation of these suggests that the languages are (in the order in which they appear) Hungarian, Albanian, Bulgarian, Croatian, Romanian, Russian, Slovenian, Serbian, and Ukrainian. The Respondent's case is that this content results from the website being hacked by a third party. The Complainant provides evidence showing that, as of June 26, 2023, the disputed domain name was being offered for sale at a price of USD 4,700,000.18 on a website provided by the Registrar.

The Respondent describes itself as an enthusiast for piggy banks who "sought to stake her claim in the world of online piggy bank commerce" at the "dawn of the 21st century". This suggests that the Respondent maintains that it was the original registrant of the disputed domain name in 2000. The Respondent produces historic screenshots for the website associated with the disputed domain name dated August 10, 2018, June 15, 2021, and December 19, 2021. The former two of these depict a website built in Wordpress with images of piggy banks entitled "Old Timer Piggy Bank / Your Vintage Piggy Bank Destination" while the latter is a page produced by the Registrar stating that the disputed domain name is for sale.

5. Parties' Contentions

A. Complainant

In summary, the Complainant contends as follows:

Identical or confusingly similar

The Complainant's OTP BANK trademark is the distinctive element of the disputed domain name. The reference to the gTLD is not sufficient to distinguish the disputed domain name from said trademark.

Rights or legitimate interests

The Respondent has no rights or legitimate interests as the Complainant has not licensed or otherwise permitted the Respondent to use any of its OTP BANK trademarks, nor has it licensed or otherwise permitted the Respondent to use any domain name incorporating any such marks. There is infringing and malicious content on the Respondent's website, meaning that the Respondent has no justified intention in using and any legitimate interest in keeping the disputed domain name. The Respondent cannot be established as commonly known by the disputed domain name. Neither the Whois record nor the website associated with the disputed domain name indicate the name of the holder of the disputed domain name, meaning that the Complainant cannot demonstrate that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

As the Complainant is widely known in the Central and Eastern Europe region, and it determines to grow further and reach new countries, the Respondent's ownership of the disputed domain name tarnishes the Complainant's trademarks and reputation. It is highly important to the Complainant, as with other banks, to have every domain name which is related to its brand name, otherwise Internet users can be misled, and there is the risk of cyber and banking crimes arising from domain names that copy its name. The disputed domain name provides the possibility to use email addresses "[...]@otpbank.com". This represents a risk and may cause the Complainant's customers to send a message to such an email address, compromising their personal data.

The Complainant owns many trademarks and domain names containing the mark OTP BANK, used around the world, and the word "otp" is invented by the Complainant.

Registered and used in bad faith

The Complainant has not authorized the Respondent to register a domain name containing the Complainant's trademark in its own name. The Complainant has been present in the Hungarian market since 1949 and is a well-known bank in the region and in Europe. The content of the website associated with the disputed domain name is defamatory, infringes the Complainant's rights and causes damage to it in bad faith. The content refers unquestionably to the Complainant and starts on the language of the Complainant's origin country, meaning that the Respondent knows the Complainant and uses the disputed domain name in bad faith. The Complainant's trademarks have a strong reputation and are widely known in Hungary and many countries of the Central and Eastern Europe region. The Respondent has taken active steps to infringe the Complainant's rights and cause damage by providing untrue information under the disputed domain name, which is visited by consumers of the Complainant. The Respondent offers the disputed domain name for sale at an unrealistic price that is driven by earning as much money as possible from the rightful owner of the identical trademark.

B. Respondent

In summary, the Respondent contends as follows:

Identical or confusingly similar

When the Respondent registered the disputed domain name, a majority of succinct piggy bank-themed domain names were already registered. The Respondent eventually registered the disputed domain name to stand for “Old Timer Piggy Bank”, derived from an amalgamation of the acronym “otp” for “Old Timer Piggy” appended with the generic term “bank”. This incidental alignment should not be misconstrued as an intentional infringement.

The Complainant states that its own acronym is a translation of “Országos Takarékpénztár” but this appears inaccurate as the translation for the words “savings bank” in English requires the unified word “takarékpénztár” in Hungarian, thus casting doubt on the Complainant’s assertion.

Prior to year 2000, the Complainant possessed only three figurative trademarks localized to Hungary. At the inception of the disputed domain name, the potential for confusion was virtually non-existent. The figurative elements bear little resemblance to the disputed domain name. Such elements are traditionally set aside when evaluating identity or confusing similarity. The Complainant’s inaugural word trademark dates from six years after the registration of the disputed domain name. As of 2006, there were two OTP BANK trademarks, one relating to antiques and the other to financial services. The prospect of competition was moot. Subsequent domain name registrations by the Complainant were later than the registration of the disputed domain name. The Complainant’s delay in raising this issue, spanning two decades, despite the Respondent’s active website operations, raises pertinent questions. There is a growing consensus that intellectual property should be regarded in parallel with the legal tenet of adverse possession.

Rights or legitimate interests

The disputed domain name was registered on February 14, 2000, with the *bona fide* intention of establishing a digital platform for the trade of antique piggy banks. The Respondent was married the following year. The Respondent’s children were born in 2004, 2006, and 2008. The ensuing responsibilities deferred the proposed Internet enterprise until 2018, when the Respondent organized a hosting package at the Registrar together with a search engine visibility service, verifiable from the invoices produced. The site gained international interest and many New Yorkers familiar with antique piggy banks would readily refer to it. Most clients were local enthusiasts who wanted to inspect items in person, such meetings frequently being arranged at Manhattan flea markets.

This was followed by the pandemic in 2020, which impeded the momentum of the Respondent’s business, leaving the website associated with the disputed domain name capable of being sustained only to mid-2021, with the site’s financial commitments being honored until August 5, 2021, when the Respondent decided to discontinue the venture and offered the disputed domain name for sale.

The disputed domain name remained uncompromised until a recent cybersecurity breach. The Respondent never had any intention to mislead consumers, or to infringe upon, or tarnish any trademark.

Registered and used in bad faith

The disputed domain name was registered in good faith with no intention to sell, rent or transfer it to any third party. At that date, the Complainant only possessed three figurative trademarks in Hungary. Subsequent trademarks were registered much later than the disputed domain name. The chronological precedence indicates that the Respondent did not intend to obstruct the Complainant from mirroring its mark in a corresponding domain name. There is no direct competition between the Parties and the disputed domain name was not procured with the malicious intent of undermining the Complainant’s business operations. A recent hacking incident on the disputed domain name was an isolated event. The Complainant discovered this hack before the Respondent had been made aware. If the Complainant had been monitoring the

disputed domain name, it would also be aware of the Respondent's piggy bank enterprise. Upon notification from the Registrar, the Respondent took corrective measures. At the completion of the UDRP process and upon removal of the registrar lock, the Registrar will be directed to reinstate the website associated with the disputed domain name to its original state.

The probable motive behind the hacking incident appears to be the inclusion of the Complainant on a website with war and sanctions database and certain comments of Hungary's foreign minister, as covered in the international press. A page on "www.wikipedia.com" erroneously cites the disputed domain name as the Complainant's official domain name, which may have made it a target. The disputed domain name is unrelated to the Complainant and primarily features decorative piggy banks. The Respondent is sincere and transparent, and has always operated the disputed domain name in good faith over a two decade history.

Reverse domain name hijacking

The disputed domain name was registered significantly before the Complainant secured any international trademark rights. It is a logical conclusion that the Complainant was fully cognizant of the absence of any malintent or bad faith on the Respondent's part. The Complainant is represented by attorneys with specific expertise and they were or should have been apprised that their claim was untenable. The Complainant therefore misuses the UDRP without cause to obtain the disputed domain name to which the Respondent has legitimate rights based on two decades of legitimate use.

6. Discussion and Findings

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

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

A. 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.

The Panel finds the entirety of the 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.

The Respondent's submissions on this particular topic are not relevant to the assessment under the first element. For example, the Respondent's reasons for registering the disputed domain name, the issue that the Respondent takes with the Complainant's reasons for selecting the "otp" acronym, and the fact that the Complainant's word trademark post-dates the registration date of the disputed domain name have no bearing on whether the Complainant has rights in that trademark as a threshold issue, or whether the disputed domain name is confusingly similar thereto. The issues described by the Respondent may however be relevant to the assessment on the second and third elements as discussed below.

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

B. Rights or Legitimate Interests

The requirements of paragraph 4(a) of the Policy are conjunctive. A consequence of this is that failure on the part of a complainant to demonstrate one element of the Policy will result in failure of the complaint in its entirety. Accordingly, in light of the Panel's finding in connection with registration and use in bad faith, discussed below, it is unnecessary for the Panel to address the issue of the Respondent's rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides four, non-exclusive, circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- “(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out of pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

A finding that a domain name has been registered and is being used in bad faith typically requires an inference to be drawn that the respondent has registered and is using such domain name to take advantage of its significance as a trademark owned by (usually) the complainant (see: *British Airways Plc v. Softline Studios*, WIPO Case No. [D2023-2188](#)). It follows that the Complainant, on whom the burden of proof lies, must show on the balance of probabilities that the Respondent registered the disputed domain name in the knowledge of and with intent to target the Complainant and/or its rights in the trademark concerned.

In the present case, the question of the Respondent's likely knowledge of the Complainant is materially affected by whether the assessment is made at the date of registration of the disputed domain name or at some subsequent date, based upon a later acquisition of the disputed domain name. No evidence has been produced by the Complainant that would suggest that the Respondent acquired the disputed domain name at some point after its original registration date. While the Respondent itself does not state the position directly, and provides no related evidence, the wording of the Response strongly suggests that the Respondent was the original registrant of the disputed domain name and registered it on February 14, 2000. The Panel has no reason to disbelieve this assertion and, in particular, notes that the Complainant has not addressed the point. Accordingly, February 14, 2000, is the material date on which the state of the Respondent's likely knowledge of the Complainant and/or its rights should be tested.

As at February 14, 2000, the Complainant had three Hungarian figurative registered trademarks, and it had registered its corresponding domain name under the Hungarian “.hu” ccTLD some two years prior. While the Complainant has apparently been trading in Hungary since 1949, the Panel has no information as to when the Complainant expanded abroad, and when it acquired any presence in the United States in particular. The Panel has no information regarding the extent and reach of the Complainant's trademarks at the material date. The Panel has no information as to whether the Complainant had built a website for the domain name <otpbank.hu> or as to the extent and reach of any online presence that it may have developed.

Bearing in mind that the Respondent is based in the United States, the Panel has been provided with no information to suggest that the Respondent has any connection with Central and Eastern Europe, where the Complainant's business is focused, from which prior knowledge might be inferred. When the Respondent's identity was revealed to the Complainant upon registrar verification, the Complainant made no changes to the Complaint beyond directing it to the newly named Respondent. This suggests either that the Complainant did not investigate whether the Respondent had any relevant connections outside the United States, or that it did investigate this and did not find any. In short, no evidence has been presented by the Complainant, on which the burden of proof rests, that would reasonably suggest that it or its rights would more probably than not have come to the Respondent's attention at the registration date of the disputed domain name.

It is possible, nevertheless, that the Respondent's explanations and subsequent activities with the disputed domain name could have a bearing on the question of its knowledge and intent at the point of registration. Here, the evidence suggests that the disputed domain name was not used for a period of eighteen years, after which it was used for the Respondent's site advertising vintage piggy banks. Thereafter, at some indeterminate point, presumably when the Respondent discontinued the hosting for the site in August 2021, the Respondent says that the site was hacked to display the page that is critical of the Complainant. The Respondent does not deny that the disputed domain name has been offered for sale recently, as contended by the Complainant.

The Panel has some concerns regarding the Respondent's various submissions. The alleged composition of the disputed domain name, where the acronym element is described as standing for "Old Timer Piggy" added to the dictionary word "bank", seems a curious choice for someone who deals in vintage piggy banks. The Panel would have expected the Respondent to feature the term "piggy bank" as a whole in the disputed domain name rather than have one part of this phrase hidden in a non-obvious acronym. On the other hand, the explanation for the composition is so out of the ordinary that its very curiousness (coupled with the existence of the former website) goes well beyond what the Panel might have expected a typical cybersquatter to have come up with. For example, the letters "otp" give rise to an acronym with several well understood meanings, including "one time password". This fact could have been used as a much more obvious pretext for selecting the disputed domain name. In terms of the delay in using the disputed domain name, while the Respondent discusses its various family priorities which are said to have arisen shortly after the disputed domain name was registered, a period of eighteen years is a very long time for the disputed domain name to have remained undeveloped if it was intended for use with the Respondent's piggy bank business.

The Panel also has concerns about whether the related website per the 2018 historic screenshot is entirely genuine rather than pretextual, principally because while this does appear to show images of vintage piggy banks, there is no apparent ecommerce element, and no pricing is stated nor any details supplied regarding the Respondent's business. The "About Us" page on the corresponding Internet Archive version¹ shows that the Respondent claimed to have operated its business from 2005, and it did at least invite offers for the displayed piggy banks even if it did not provide a bidding or direct buying facility. However, the Respondent has not supplemented this with any independent evidence of the nature of its alleged business beyond the invoices for hosting and search engine visibility. These invoices are addressed to the Respondent as an individual and not as a business. Finally, there is the question of the disputed domain name being offered for sale in more recent times. While the Panel is in no position to opine as to the value of this or any other domain name, the asking price being in excess of USD 4.7 million can only suggest that the Respondent has potential buyers with deep pockets in its sights. It seems unlikely, for example, that such buyers would be other operators in the vintage piggy bank world. The Respondent's intended target buyer for a domain name containing "otpbank" at a multi-million dollar asking price seems more likely than not to be the Complainant. Finally, the Panel does not overlook the fact that the disputed domain name would be of interest to those with nefarious purposes who may seek to use it for phishing sites and/or emails, which could be harmful to

¹ The Panel considered it appropriate to visit the archived website behind the Respondent's screenshot in order to expand upon the visible elements. On the topic of a panel conducting such independent research of publicly available sources, see section 4.8 of the [WIPO Overview 3.0](#).

the Complainant.

Having noted these concerns, however, the Panel does not consider that they are sufficient to impact the question of registration in bad faith. Having the intent to target the Complainant today, if that were a reasonable inference to be drawn from the offer of sale of the disputed domain name, is not the same as originally having registered the disputed domain name with any such intent. Had the Respondent registered the disputed domain name with knowledge of the Complainant (of which there is no evidence nor reasonable inference to be made) and had its primary intent been to sell the disputed domain name to the Complainant for an amount exceeding its out of pocket costs along the lines of paragraph 4(b)(i) of the Policy, the Panel would have to reach two principal conclusions. First, the Panel would have to conclude that the Respondent was playing an incredibly long game of over two decades in the making. Secondly, the Panel would have to conclude that the vintage piggy bank explanation was a complete fabrication and/or was wholly pretextual when there are at least some signs, albeit inconclusive, of genuine business activity. The record before it does not favor the Panel reaching those conclusions on the balance of probabilities.

Turning to the present use of the disputed domain name, the Respondent asserts that this results from a hacking incident, and has disavowed the content, while providing a reasonable explanation as to why third parties with the capability to carry out a cyber attack might have treated the disputed domain name (and the Complainant) as a target, believing that this would have an adverse impact upon the Complainant's business. The Panel has paid close attention to the Respondent's assertion that upon the unlocking of the disputed domain name following the administrative proceeding, the Respondent will take immediate steps to remove the content complained of and will restore the original content on the associated website. If this were not to be done (and it is not clear that it cannot be done presently, in that the Registrar lock is not supposed to prevent changes in the content of a website), it would have a considerable bearing upon the Panel's pre-existing concerns regarding the Respondent's various explanations in the Response, and if coupled with subsequent events that shed a different light on the facts presented may support grounds for a possible refiling.

In conclusion on this topic, the Panel finds that the Complainant has not proved that the disputed domain name was registered in bad faith. That finding renders the question of use in bad faith moot. Accordingly, based on the available record, the Panel finds the third element of the Policy has not been established.

D. Reverse Domain Name Hijacking

Paragraph 15(e) of the Rules provides: "If after considering the submissions the Panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the Panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding." It is generally accepted that mere lack of success of a complaint is not itself sufficient for such a finding.

Here, the Respondent asserts that the Panel should find Reverse Domain Name Hijacking because the disputed domain name was registered before the Complainant had secured international trademark rights, and the Complainant knew that there was no bad faith intent on the part of the Respondent. It should be remembered that by the time the Complaint was filed, the website associated with the disputed domain name was targeting the Complainant in the most obvious and direct fashion (and that the Complainant had existed for many decades, albeit in one country). The Complainant was not to know at that stage that the Respondent would claim that the website was hacked and would disavow the content. Equally, the Complainant did not know whether the Respondent was the original registrant of the disputed domain name or whether, as the Respondent puts it, the Respondent had "two decades of legitimate use".

In the Panel's opinion, the Complainant was entitled to put the Respondent to the proof on the issues raised by it in the administrative proceeding and the Panel does not find that that the Complaint was brought in bad faith. Accordingly, the Respondent's request for a finding of reverse domain name hijacking is denied.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Andrew D. S. Lothian/
Andrew D. S. Lothian
Presiding Panelist

/Petra Pecar/
Petra Pecar
Panelist

/Alfred Meijboom/
Alfred Meijboom
Panelist
Date: October 4, 2023