

ADMINISTRATIVE PANEL DECISION

HI3G Denmark ApS v. Dennis joergensen

Case No. D2022-0506

1. The Parties

The Complainant is HI3G Denmark ApS, Denmark, represented by Bech-Bruun Law Firm, Denmark.

The Respondent is Dennis joergensen, Denmark.

2. The Domain Name and Registrar

The disputed domain name <oister.one> is registered with One.com A/S (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on February 14, 2022. On February 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 15, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on February 16, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. In addition, the Center sent an email communication in English and Danish to the Parties the same day regarding the language of the proceeding, as the Complaint has been submitted in English and the language of the registration agreement for the disputed domain name is Danish. The Complainant filed amendments to the Complaint in English on February 18, 2022. The Respondent did not comment on the language of the proceeding. In response to a notification by the Center that the Complaint was administratively deficient, the Complainant filed an amended Complaint on March 2, 2022.

The Center verified that the Complaint together with the amendments to the Complaint and amended 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 in both English and Danish, and the proceedings commenced on March 3, 2022. In accordance

with the Rules, paragraph 5, the due date for Response was March 23, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 25, 2022.

The Center appointed Knud Wallberg as the sole panelist in this matter on March 30, 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 through the company OISTER ApS one of the leading Danish providers of low-cost broadband and telecommunications services. OISTER ApS was established in 2008 and originally offered only mobile broadband services, however in 2010 OISTER ApS expanded to offer mobile telephone services as well as products related hereto.

The Complainant provides its telecommunication services under different brands and trademarks in Denmark, including the well-known trademark OISTER, which was registered as a word mark in Denmark under registration no. VR 2010 00081 on January 8, 2010, for goods and services in international classes 9, 35, 38, 41 and 42. The Complainant is indirectly owned by CK Hutchison Holdings Limited who is also the ultimate owner of Palmerston Limited that is the holder of the said trademark registration for OISTER and has provided an intra-group license to the Complainant to use the trademark OISTER

The Complainant is also the owner of an unregistered figurative trademark in Denmark, containing the word OISTER and the Complainant maintains a website promoting its products under the domain name <oister.dk>, on which it promotes its broadband and telecommunication services, including sale of ancillary goods such as phones.

The disputed domain name was registered on July 4, 2021, and resolved at the time of filing of the Complaint to an active website offering similar services as the Complainant. The disputed domain name is currently not used for an active website.

The Complainant sent a cease and desist letter to the Respondent on November 3, 2021.

5. Parties' Contentions

A. Complainant

The Complainant submits that the disputed domain name is confusingly similar with the Complainant's well-known OISTER trademarks.

The Complainant further submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name, nor is it used in connection with a *bona fide* offering of goods. The Complainant has not licensed or otherwise authorized the Respondent to use the Complainant's OISTER trademarks, or to apply for or register any domain name incorporating the said trademark and there is no business relationship between the Complainant and the Respondent. Moreover, on the website, which the disputed domain name resolved to, several products are being marketed including both the Complainant's products and third-party products, just as the website contained wrongful information in relation to the affiliations mentioned with the Complainant's other businesses and group companies and information on the website stating that Respondent owns a physical store namely the "Telia store" in Slagelse, Denmark, which is owned by the Telia Group, *i.e.* a third party telecommunication service provider.

The Complainant finally submits that the disputed domain name has been registered and is being used in bad faith in order to attract Internet users to its website. The trademark OISTER has been registered and used for many years prior to the registration of the disputed domain name, so it is unlikely that the Respondent was unaware of the Complainant's OISTER trademarks when registering the disputed domain

name. This is substantiated by the fact that the website at the disputed domain name mentioned partnerships with the Complainant's group companies as well as the fact the Respondent originally used the Complainant's distinctive OISTER trademark as the main brand name of the website. Consequently, it is likely that the initial intention with the registration of the disputed domain name is to profit from an illegal exploitation of the reputation related to the Complainant's well-known OISTER trademarks. By using the Complainant's trademark, the Respondent is likely to divert Internet traffic to the website under the disputed domain name and deceive the Internet users to believe the website is connected to the Complainant, and thereby potentially harm and tarnish the Complainant's reputation and the Complainant's trademarks. The Respondent has shown no evidence of any actual or contemplated good faith use of the disputed domain name. On the contrary, the disputed domain name is designed to imply that there is an affiliation between the Respondent and the Complainant even though no such affiliation or endorsement exists.

B. Respondent

The Respondent did not reply to the Complainant's contentions, but he submitted an informal email on February 16, 2022.

6. Discussion and Findings

According to paragraph 15(a) of the Rules the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following:

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

Paragraph 4(a) of the Policy states that the burden of proving that all these elements are present lies with the Complainant. At the same time, in accordance with paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules, or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

A. Language of the proceeding

The Panel notes that the language of the Registration Agreement is Danish. The Complaint was filed in English, and the Complainant has requested English to be the language of the proceeding mainly because it claims that "Danish people are usually very well adverse in the English language", it is owned by an English speaking company, "Respondent is presumably able to communicate in English" and translating the Complaint in Danish would be additional expense and delay.

The Panel notes that no formal Response was submitted and the Respondent sent an email communication in English. ,.

Furthermore, the Panel notes that parts of the information on the Respondent's website under the disputed domain name was in English and that although the Registration Agreement is written in Danish, it linked to the English language versions of the UDRP Policy and Rules in its reference to the Respondent's rights and obligations under the Policy.

Finally, the email communications from the Center were provided in both Danish and English, and the Respondent did not reply.

The Panel has therefore decided to render this decision in English.

B. Identical or Confusingly Similar

The disputed domain name consists exclusively of the Complainant's OISTER trademark and is thus identical to the Complainant's mark. The generic Top-Level Domain ("gTLD") ".one" is a standard registration requirement and as such is typically disregarded under the first element confusing similarity test. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.11.1.

The Panel therefore finds that the conditions in paragraph 4(a)(i) of the Policy are fulfilled in relation to the disputed domain name.

C. Rights or Legitimate Interests

It is clear from the facts of the case that the Complainant has not licensed or otherwise permitted the Respondent to use its trademark and given the circumstances of this case, the Panel finds that the Complainant has established a *prima facie* case that the Respondent has no rights to or legitimate interests in the disputed domain name.

The Respondent has not produced, and there is no evidence of the types of circumstances set out in paragraph 4(c) of the Policy that might give rise to rights or legitimate interests in the disputed domain name on the part of the Respondent in these proceedings. The Respondent has used the disputed domain name to direct Internet users to its website where it initially displayed the Complainant's logo, sold similar products as the Complainant and more importantly, offered subscriptions to the Complainant's broadband and telecommunication services. Not only does the disputed domain name itself risk an implied affiliation to the Complainant, but the content further reinforced said association when none exists. Rather than provide any disclaimer as to the relationship, or lack thereof, to the Complainant, the website at the disputed domain name thus included references to a number of alleged partners, that are partners of the Complainant, just as the Respondent used the name "Oister" as company name on the website. Accordingly, the Respondent's use of the Complainant's OISTER mark is not a *bona fide* offering of goods or services, nor does it constitute fair use.

Finally UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation (see [WIPO Overview 3.0](#), section 2.5.1).

The Panel therefore finds that the conditions in paragraph 4(a)(ii) of the Policy are fulfilled in relation to the disputed domain name.

D. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires the Complainant to prove both registration and use of the disputed domain name in bad faith. Paragraph 4(b) of the Policy provides examples of circumstances which shall be evidence of registration and use in bad faith:

- (i) circumstances indicating that the holder has registered or has 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 the holder's documented out-of-pocket costs directly related to the domain name; or
- (ii) the holder has 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 the holder has engaged in a pattern of such conduct; or

(iii) the holder has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the holder has intentionally attempted to attract, for commercial gain, Internet users to the holder's website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the holder's website or location or of a product or service on the holder's website or location.

Accordingly, for the Complainant to succeed, the Panel must be satisfied that the disputed domain name has been registered and is being used in bad faith.

Given the circumstances of the case, in particular the Complainant's well established and well-known trademark OISTER in Denmark and its exact replication in the disputed domain name, the Panel finds that the Respondent registered the disputed domain name with prior knowledge of the Complainant and the Complainant's trademark.

The Panel therefore finds that the disputed domain name was registered in bad faith.

The disputed domain name was used for a website that purported to offer the subscriptions to the Complainant's broadband and telecommunication services just as the website appeared to offer mobile phones. The website even contained a reproduction of the Complainant's registered logo at a certain point in time. The Panel therefore finds that the Respondent intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of the Respondent's website (see [WIPO Overview 3.0](#), section 3.1.4). The fact that the disputed domain name no longer resolves to an active website does not alter this finding

The Panel there finds that the conditions in paragraph 4(a)(iii) of the Policy are fulfilled in relation to the disputed domain name.

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 <oister.one> be transferred to the Complainant.

/Knud Wallberg/

Knud Wallberg

Sole Panelist

Date: April 30, 2022