

ADMINISTRATIVE PANEL DECISION

Oculus Technologies, LLC v. Super Privacy Service LTD c/o Dynadot /
代振生 (Zhen Sheng Dai) / Neo Yao / Ya Ke / Kristy Sodaro / Shanwang
Chen / Feifei Lin
Case No. D2022-0888

1. The Parties

The Complainant is OCULUS Technologies, LLC, United States of America (“United States”), represented by Hogan Lovells (Paris) LLP, France.

The Respondent is Super Privacy Service LTD c/o Dynadot, United States of America / 代振生 (Zhen Sheng Dai), China / neo yao, United States of America / Ya Ke, China / Kristy Sodaro, United States of America / shanwang chen, China / feifei lin, China.

2. The Domain Names and Registrars

The disputed domain names <clearanceoculus.store>, <factoryoculus.shop>, <oculus-headset.shop>, <oculus-headsets.shop>, <oculusheadsets.shop>, <oculusheadsets.store>, <oculus-headset.store>, <oculusonline.store>, <oculus-sales.store>, <oculussales-usa.shop>, <oculusset.store>, <oculusstore.online> and <oculus-vr.fit> are registered with Dynadot, LLC; and the disputed domain names <oculusofficial.ltd>, <oculus-official.shop> and <official-oculus.shop> are registered with Chengdu West Dimension Digital Technology Co., Ltd. (collectively, the “Registrar(s)”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on March 14, 2022. On March 15, 2022, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On March 16, 2022, the Registrars transmitted by email to the Center their verification responses disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on March 16, 2022 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 amended Complaint in English on March 25, 2022.

On March 25, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On March 27, 2022, the Complainant submitted a request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint together with the 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 in English and Chinese of the Complaint, and the proceeding commenced on April 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 24, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 25, 2022.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on May 3, 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

A. Complainant

The Complainant is a company incorporated in the United States and a leading provider, since 2014, of virtual reality software and apparatus, under the trade mark OCULUS (the “Trade Mark”).

The Complainant is the owner of numerous registrations in jurisdictions worldwide for the Trade Mark, including Chinese registration No. 15098478, registered on July 21, 2015; United States registration No. 4891157, registered on January 26, 2016; and International registration No. 1219324, registered on June 12, 2014.

The Complainant is the owner of numerous domain names comprising the Trade Mark, under generic Top-Level Domain (“gTLD”) and country code Top-Level Domain (“ccTLD”) extensions, including for example <oculus.com>, <oculus.org.cn>, <oculus.co>, <oculus.co.in>, <oculus.my> and <oculus.tw>.

The Complainant and its Trade Mark have received widespread coverage in Chinese press (including China’s state media People’s Daily).

B. Respondent

The Respondents are apparently an individual or individuals with addresses in China and the United States.

C. The Disputed Domain Names

The disputed domain names <oculusheadsets.shop>, <oculusheadsets.store> and <oculus-vr.fit> were registered on November 12, 2021; <oculus-headset.shop>, <oculus-headset.store> and <oculusset.store> on November 14, 2021; <oculusofficial.ltd> and <oculus-official.shop> on November 18, 2021; <clearanceoculus.store> on October 30, 2021; <factoryoculus.shop> on October 24, 2021; <oculus-headsets.shop> on November 15, 2021; <oculusonline.store> on November 13, 2021; <oculus-sales.store> on October 14, 2021; <oculussales-usa.shop> on October 18, 2021; <oculusstore.online> on November 16, 2021 and <official-oculus.shop> on November 17, 2021.

D. The Websites at the Disputed Domain Names

The disputed domain names were previously resolved to English language websites which copied the “look and feel” of the Complainant’s official website, including featuring prominently the Trade Mark and the Complainant’s Oculus logo, and offering for sale the Complainant’s products at heavily discounted prices.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain names are confusingly similar to the Trade Mark, the Respondent has no rights or legitimate interests in respect of the disputed domain names, and the disputed domain names were registered and are being used in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1. Consolidation of Respondents

According to the information provided by the Registrars, the registrant of the disputed domain names <oculus-official.shop>, <official-oculus.shop> and <oculusofficial.ltd> is 代振生 (Zhen Sheng Dai); the registrant of the disputed domain names <oculusonline.store>, <oculusheadsets.shop> and <oculusheadsets.store> is Neo Yao; the registrant of the disputed domain name <oculus-headsets.shop> is Ya Ke; the registrant of the disputed domain names <oculus-headset.store>, <oculusset.store>, and <oculus-headset.shop> is Kristy Sodaro; the registration of the disputed domain names <oculussales-usa.shop> and <oculusstore.online> is Shanwang Chen; and the registrant of the disputed domain names <oculus-vr.fit>, <clearanceoculus.store>, <factoryoculus.shop> and <oculus-sales.store> is Feifei Lin.

The Complainant contends that the disputed domain names are under common control, for the following reasons:

- (i) They were all previously resolved to the (highly similar) Websites;
- (ii) They are associated with the same IP ranges and the same Autonomous System Number (ASN);
- (iii) They were registered within 35 days of each other and some were registered on the same dates;
- (iv) They were registered with the same Registrars (13 with Dynadot LLC; and 3 with Chengdu West Dimension Digital Technology Co., Ltd.);
- (v) Eight were registered using the same privacy registration service;
- (vi) All of them target the Complainant’s Trade Mark in the same manner;
- (vii) All have been registered in a similar naming pattern, *i.e.*, the Trade Mark plus various dictionary terms;
- (viii) Most have been registered using email addresses which either have no obvious connection with the registrant names or seem to have been randomly typed; and

(ix) The physical addresses used for at least four appear to be false or incomplete.

The Complainant also contends that consolidation would be fair and equitable to all the Parties as:

- (i) The Complainant's substantive arguments in relation the disputed domain names are the same; and
- (ii) To require the Complainant to file several separate Complaints would lead to the Complainant incurring substantial additional costs.

The Respondents did not file any response and did not make any submissions with respect to consolidation of the Respondents.

The Panel finds, in all the circumstances, that the Complainant has submitted sufficient evidence to demonstrate that the disputed domain names are under common control; and that consolidation would be fair and equitable to all the Parties (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2).

6.2. Language of the Proceeding

The language of the Registration Agreement for 13 of the disputed domain names is English. The language of the Registration Agreement for the remaining three disputed domain names is Chinese. Pursuant to the Rules, paragraph 11, in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

Paragraph 11(a) of the Rules allows the Panel to determine the language of the proceeding having regard to all the circumstances. In particular, it is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding, in order to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to undue burden being placed on the parties and undue delay to the proceeding.

The Complainant has requested that the language of the proceeding be English, for several reasons, including the fact the language of the registration agreements for 13 of the disputed domain names in English; and each of the Websites was an English language website.

The Respondent did not file a Response and did not file any submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs.

The Panel finds there is sufficient evidence to suggest that the Respondent is conversant in the English language.

The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner.

In all the circumstances, the Panel therefore finds it is not foreseeable that the Respondent would be prejudiced, should English be adopted as the language of the proceeding.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.3 Substantive Elements of the Policy

The Complainant must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has rights in the Trade Mark acquired through use and registration.

Each of the disputed domain names incorporates the entirety of the Trade Mark (see [WIPO Overview 3.0](#), section 1.7) together with dictionary terms; or, in the case of the disputed domain name <oculus-vr.fit>, “vr”, the abbreviation for “virtual reality”.

Where a relevant trade mark is recognisable within a disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element (see [WIPO Overview 3.0](#), section 1.8).

The Panel therefore finds that the disputed domain names are confusingly similar to the Trade Mark.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a disputed domain name:

- (i) Before any notice to the respondent of the dispute, the respondent’s use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) The respondent (as an individual, business, or other organisation) has been commonly known by the disputed domain name even if the respondent has acquired no trade mark or service mark rights; or
- (iii) The respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

The Complainant has not authorised, licensed, or permitted the Respondent to register or use the disputed domain names or to use the Trade Mark. The Panel finds on the record that there is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain names, and the burden is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that the Respondent has acquired any trade mark rights in respect of the disputed domain names or that the disputed domain names have been used in connection with a *bona fide* offering of goods or services.

To the contrary, the disputed domain names have been used in the same manner in respect of the Websites, which according to the undisputed evidence of the Complainant have been directed to websites which copied the “look and feel” of the Complainant’s official website, including featuring prominently the Trade Mark and the Complainant’s Oculus logo, and offering for sale the Complainant’s products at heavily discounted prices.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain names.

There has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain names.

In all the circumstances, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names.

C. Registered and Used in Bad Faith

In light of the manner of use by the Respondent of the disputed domain names, the Panel finds that bad faith has been made out under paragraph 4(b)(iv) of the Policy.

The Panel finds that, in light of the international repute of the Trade Mark, it is inconceivable that the Respondent was not aware of the Complainant and of its rights in the Trade Mark at the time of registration of the disputed domain names.

The Panel also finds that, in light of the repute of the Trade Mark, and on the evidence herein, there cannot be any actual or contemplated good faith use of the disputed domain names by the Respondent.

For all the foregoing reasons, the Panel concludes that the disputed domain names have been registered and are being used in bad faith.

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 names <clearanceoculus.store>, <factoryoculus.shop>, <oculus-headset.shop>, <oculus-headsets.shop>, <oculusheadsets.shop>, <oculusheadsets.store>, <oculus-headset.store>, <oculusonline.store>, <oculus-sales.store>, <oculussales-usa.shop>, <oculusset.store>, <oculusstore.online>, <oculus-vr.fit>, <oculusofficial.ltd>, <oculus-official.shop> and <official-oculus.shop> be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Dated: May 17, 2022