

ADMINISTRATIVE PANEL DECISION

OCTO Groupe v. Domain Administrator, See PrivacyGuardian.org / zjz
Case No. D2022-1720

1. The Parties

The Complainant is OCTO Groupe, France, represented by INLEX IP, France.

The Respondent is Domain Administrator, See PrivacyGuardian.org, United States of America / zjz, United States of America.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 12, 2022. On May 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 12, 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 May 13, 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 on May 17, 2022.

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 of the Complaint, and the proceedings commenced on May 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 9, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 14, 2022.

The Center appointed Dr. Clive N.A. Trotman as the sole panelist in this matter on June 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 a French company wholly owned by Octo Finances. The Complainant specialises in financial research and credit counselling services.

The Complainant owns the following trademarks, among others:

OCTO GROUPE, European Union trademark, registered May 8, 2012, registration number 010460418, in class 36;

OCTO GROUPE, United Kingdom Intellectual Property Office, registered May 8, 2012, registration number 00910460418, in class 36.

The Complainant is also the registrant of domain names including <octogroupe.fr>, <octo-groupe.com>, and <octo-groupe.fr>, all registered on July 7, 2020, and uses the website "www.octofinances.com".

Nothing is known about the Respondent, who has not provided proper contact details. The disputed domain name was registered by the Respondent on August 14, 2021 and has resolved to a website (the "Respondent's website") displaying pornography and casino adverts in Chinese.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant's trademark. The Complainant's trademark is well-known in its field; the Latin word OCTO, meaning "eight", has no meaning in French or English and is therefore distinctive.

The Complainant also contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant has not permitted the Respondent or any other party to use the Complainant's trademark in the registration of a domain name, and has no business relationship with the Respondent. The Complainant does not know the identity of the Respondent because the disputed domain name was registered with identification details comprising random letters typed on the keyboard. There has been no use of the disputed domain name in connection with a *bona fide* offering of goods or services, and the use to which it has been put in resolving to a pornographic website is not *bona fide*.

The Complainant says the disputed domain name was registered and is being used in bad faith. The Complainant says that, considering that OCTO in its trademark is distinctive and without meaning in English or French, the Respondent must have been aware of the Complainant, and therefore registered the disputed domain name in bad faith, using a privacy service for the purpose of avoiding identification.

The Complainant says the dispute domain name resolves to a pornographic website annotated, as translated from the Chinese: "This website is only suitable for persons aged 18 or over. No Entry For Less Than 18-Year-Old." The Complainant submits that, according to prior decisions under the Policy, registration and use in bad faith are generally found where a disputed domain name that incorporates another's trademark is used to publish pornographic content.

The Complainant also contends that the disputed domain name is disruptive of the Complainant's business

and harmful to its brand image because Internet users may believe that the associated websites is operated by the Complainant.

The Complainant says cease and desist letter were sent with the intention of making contact with the Respondent. The letters were sent by the Complainant's Industrial Property Attorney, attempting to reach the Respondent through the Registrar, through the Respondent's hosting service, and to a contact email address provided by the hosting service. There has been no reply from the Respondent.

The Complainant has cited a number of potentially relevant previous decisions under the Policy.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

A. Procedural Matters

Paragraph 4(a) of the Policy states that the Respondent is required to submit to a mandatory administrative proceeding in the event that the Complainant asserts to the applicable dispute-resolution provider, in compliance with the Rules, that:

“(i) your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

(ii) you have no rights or legitimate interests in respect of the domain name; and

(iii) your domain name has been registered and is being used in bad faith.”

The Complainant has made the relevant assertions as required by the Policy. The dispute is properly within the scope of the Policy and the Panel has jurisdiction to decide the dispute.

Identity of the Respondent

Paragraph 1 of the Rules states that the Respondent is “the holder of a domain-name registration against which a complaint is initiated”. In this instance, the identity of the holder is concealed by means of a privacy service. The Registrar has disclosed the contact details provided by the underlying registrant, *i.e.*, the Respondent. However, the Respondent's purported contact details are meaningless and have the appearance of having been generated by tapping on the keyboard randomly.

Having perused the files, the Panel is satisfied that the Center has taken all reasonable steps in accordance with paragraph 2(a) of the Rules to attempt to effect proper service of the Complaint, including by email to the Registrar and to the postmaster at the disputed domain name, and physically to the address of the privacy service, which could not be located by the courier.

B. Identical or Confusingly Similar

The Panel is satisfied by the evidence produced that the Complainant has rights in the trademark OCTO GROUPE. The disputed domain name <octogroupe.com> is found to be effectively identical to the Complainant's trademark, since spaces are not permitted in a domain name. The generic Top-Level Domain (“gTLD”), in this case “.com”, need not be taken into account. Accordingly the Panel finds for the Complainant under paragraph 4(a)(i) of the Policy.

C. Rights or Legitimate Interests

The Complainant has stated a *prima facie* case to the effect that the Respondent does not have rights or legitimate interests in respect of the disputed domain name, has not been permitted to use the Complainant's trademark, and has had no business relationship with the Complainant.

Paragraph 4(c) of the Policy provides for the Respondent to contest the Complainant's *prima facie* case under paragraph 4(a)(ii) of the Policy and to establish rights or legitimate interests in a disputed domain name by demonstrating, without limitation:

“(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

The Respondent has not responded to the Complaint or to earlier attempted communications from the Complainant and has not asserted rights or legitimate interests in the disputed domain name with reference to paragraphs 4(c)(i), (ii) or (iii) of the Policy or otherwise.

The Panel is satisfied by the evidence that the disputed domain name, bearing the Complainant's trademark, has been used for an adult website and cannot be construed to be in *bona fide* use or in use for any fair or noncommercial purpose. There is no evidence that the Respondent, whose name is unknown, has been known by the disputed domain name.

The Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name and finds for the Complainant under paragraph 4(a)(ii) of the Policy.

D. Registered and Used in Bad Faith

The Complainant must prove under paragraph 4(a)(iii) of the Policy that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy lists four alternative circumstances, without limitation, that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

“(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 on-line 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 screen capture produced in evidence by the Complainant, shows the disputed domain name to have resolved to a pornographic website in the Chinese language. The Respondent's website projects a comprehensive commercial operation and, in all the circumstances, may reasonably be assumed to be commercial.

On the evidence and on the balance of probabilities, the Respondent is found to have intended to attract Internet users to the Respondent's website by confusion with the Complainant's trademark, for the purpose of commercial gain, constituting registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy. The Panel finds the disputed domain name to have been registered and used in bad faith under paragraph 4(a)(iii) of the Policy.

The Panel further finds the registration and use of the disputed domain name in bad faith to have been aggravated by the Respondent's provision of evidently false and unreachable contact information in contravention of paragraph 3(a)(i) of the Registration Agreement between the Respondent and the Registrar.

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 <octogroupe.com> be transferred to the Complainant.

/Dr. Clive N.A. Trotman/

Dr. Clive N.A. Trotman

Sole Panelist

Date: June 28, 2022