

ADMINISTRATIVE PANEL DECISION

International Olympic Committee (IOC) v. Domain Administrator, Informative Portals Limited

Case No. D2022-2068

1. The Parties

The Complainant is International Olympic Committee (“IOC”), Switzerland, represented by Bird & Bird (Belgium) LLP, Belgium.

The Respondent is Domain Administrator, Informative Portals Limited, Hong Kong, China, internally represented.¹

2. The Domain Name and Registrar

The disputed domain name <aoyunhui.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 June 8, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 June 9, 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 June 13, 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”).

¹ The original Complaint was filed against a privacy service, which the amended Complaint replaced with the underlying registrant verified by the Registrar. The Panel considers the latter to be the Respondent in this proceeding.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on June 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 4, 2022. The Response was filed with the Center on July 4, 2022.

The Center appointed Matthew Kennedy as the sole panelist in this matter on July 6, 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.

The Panel issued Administrative Panel Procedural Order No. 1 on July 19, 2022. In the Order, the Panel noted the creation date of the disputed domain name and the Respondent's contention that it had held certain domain names for "similar historical periods" as the disputed domain name. Pursuant to paragraphs 10 and 12 of the Rules, the Order invited:

1. the Respondent to indicate the date on which it registered or acquired the disputed domain name and to provide supporting evidence; and
2. the Complainant to provide evidence of any use of "奥运会" prior to the creation date of the disputed domain name.

The original due date for the Parties' respective submissions in response to points 1 and 2 above was July 25, 2022 but, in response to a request for an extension from the Complainant, the Panel extended that date to July 29, 2022. Each Party was permitted to submit comments on or before August 3, 2022 on any submission provided by the other Party in response to the Order and the Decision due date was extended to August 12, 2022. The Complainant made a further submission in response to the Order on July 29, 2022. The Respondent made no further submission or comment in response to the Order.

4. Factual Background

The Complainant is an international, non-governmental, non-profit organization established in 1894 that supervises the conduct of the Olympic Games. The Complainant holds multiple trademark registrations, including the following:

- International trademark registration number 609691 for OLYMPIC, registered on October 1, 1993, designating multiple jurisdictions, including China, and specifying goods and services in multiple classes;
- Swiss trademark registration number 410111 for OLYMPIC GAMES, registered on May 16, 1994 with a claim of priority from use in 1894, and specifying goods and services in multiple classes;
- Hong Kong, China trademark registration number 301049012 for 奥运, registered on February 11, 2008 and specifying goods and services in multiple classes; and
- International trademark registration number 1127000 for 奥运会, registered on December 19, 2011, designating China, and specifying goods and services in multiple classes. The registration notes that the meaning of this mark is "Olympic Games".

The above trademark registrations remain valid. The Complainant has also registered the domain name <olympics.com> that it uses in connection with its official website and it has accounts on various social media platforms. "Olympic Games" may be translated as "奥林匹克运动会", as confirmed in the Chinese Regulations on the Protection of Olympic Symbols, in force since April 1, 2002.

The Respondent is a company in Hong Kong, China.

The disputed domain name was created on May 31, 2001. According to archived screenshots and domain tool data provided by the Complainant, the disputed domain name was available for registration on November 26, 2004 and already held by the Respondent on June 1, 2012. The disputed domain name has

resolved to a parking page that merely displays the URL “www.aoyunhui.com” since at least June 20, 2012, except for a period from 2018 to 2021 when it displayed an application error message.

The Registrar confirmed that the Registration Agreement is in English.

5. Parties' Contentions

A. Complainant

The disputed domain name is phonetically and semantically identical to transliteration of the Complainant's 奥运会 trademark; identical to the transliteration of the Chinese translation of the Complainant's OLYMPIC GAMES trademark; and confusingly similar to the transliteration of the Complainant's 奥运 trademark and to the transliteration of the Chinese translation of the Complainant's OLYMPIC trademark. The Complainant has been using the 奥运会 trademark since long before 2001. The general public in China and Mandarin-speaking people globally have long used “奥运会” to refer to the Olympic Games.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not affiliated with the Complainant in any way nor has the Complainant licensed, authorized or permitted the Respondent to use and register any domain name incorporating the 奥运会, OLYMPIC GAMES, 奥运 or OLYMPIC marks. The disputed domain name is not currently in use and only resolves to a parking page. The Respondent is not commonly known by the disputed domain name. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name.

The disputed domain name was registered and is being used in bad faith. Based on the Registrar's Whois data, the Complainant believes that the Respondent only acquired the disputed domain name in 2012. At that time, the Respondent knew, or should have known, of some of the Complainant's trademarks and its rights under the Chinese Regulations on the Protection of Olympic Symbols. Beijing was selected as the host city of the 2008 Summer Olympics on July 13, 2001. The disputed domain name was registered only a few weeks before that date and therefore evidently with the intention to profit from association with the Complainant and the Olympic Games if Beijing were selected. The Complainant has a strong worldwide reputation. It can be inferred that the disputed domain name is maintained for future bad faith use. It is not possible to conceive of any plausible use of the disputed domain name by the Respondent that would not infringe the Complainant's rights in its trademarks and the Olympic symbols. The Respondent has also used a privacy service, which is indicative of bad faith.

B. Respondent

The disputed domain name is not identical or confusingly similar to a trademark in which the Complainant has rights. “Aoyunhui” does not directly bear any resemblance to any of the Complainant's Chinese character marks or English marks. The Respondent is not sure that embarking on an exercise of transliteration and translation is relevant to this element of the Policy but, in any event, there is no obvious direct similarity between the disputed domain name and the translations of the Complainant's marks or their abbreviations. There are different transliterations of Chinese due to different dialects, different approaches to transliteration, and different pronunciations. Further, Pinyin transliteration needs to specify tones, not just the Romanized letters. The Complaint makes it seem as though a reverse Pinyin transliteration, without tone or context, can mean only one thing, *i.e.*, its marks. The Respondent's desire has been to create portals that would hopefully benefit certain communities or industries in new ways. It holds a number of domains relating to Australia (in both English as well as Chinese Pinyin) and has held them for similar historical periods as the disputed domain name. It was envisaged that emerging virtual and cloud opportunities online would gradually replace old ways of doing business in traditional conferences and expos. For the Respondent, “aoyunhui” is a transliteration of “澳云会” (Pinyin: “àoyúnhuì”) meaning “Australia cloud meeting/conference expo”. There has been no content, contact or intention to associate with the Complainant, unlike prior cases under the Policy. It is incorrect to simply presume that the disputed domain name can only mean what the Complainant asserts, using a flawed Pinyin transliteration without any appreciation of tone or context.

The Respondent has rights or legitimate interests in respect of the disputed domain name. There has been no content on the disputed domain name, except for a Heroku page and an html page indicating a URL containing the disputed domain name. Heroku is a cloud platform that hosts various application programming languages. The Respondent has used it to provide its programming outputs which, in the case of the disputed domain name, is only the URL itself. Until a project is implemented to fully commit to develop the Australian-related domains including the disputed domain name, the Respondent submits that (i) preparations were made by the Respondent in programming the backbone framework for the website. Heroku requires non-trivial programming work to be done. There are many written lines of programming code (Ruby on Rails coding) behind the scenes, even though the interim output served is minimal html; (ii) finding the right timing for this project or having delays and different priorities does not mean that there cannot be any *bona fide* intention for the use of such domain name; and (iii) there has been no advertisement, pay-per-click (“PPC”) links, back links or anything of that sort on the disputed domain name in the meantime. The Respondent has not falsely suggested affiliation with the Complainant, has never contacted the Complainant to sell the disputed domain name and has never put up content or advertisements to suggest any affiliation with the Complainant. There can be fair use if there is no affiliation or connection. Why can't the Respondent have the right to fair use over Australian cloud expo opportunities that have nothing to do with the Olympics?

The Respondent has not acted in bad faith. None of the circumstances in paragraph 4(b) of the Policy apply. The disputed domain name was registered in 2001, much earlier than the Complainant's 奥运会 trademark, which was registered in 2011. The Complainant incorrectly presumes that a set of Latin letters without tone or context can only mean one thing. There has been no bad faith on the part of the Respondent that can be extrapolated to future bad faith. The Respondent has never been interested in having any affiliation with the Olympics. There will be no future bad faith use from the Respondent. The Respondent has not used a privacy service; the Registrar automatically switched many customers' Whols information to a privacy service without notice to the Respondent.

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following elements:

- (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.

A. Identical or Confusingly Similar

Based on the evidence presented, the Panel finds that the Complainant has registered rights in the OLYMPIC GAMES and 奥运会 marks, among others. For the purposes of the first element of paragraph 4(a) of the Policy, it is sufficient that the Complainant had rights in those marks at the time when it filed the Complaint, as in the present case.

The disputed domain name consists of neither a transliteration nor a translation of the OLYMPIC GAMES mark. Cf. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.14. Rather, the disputed domain name is a transliteration of a Chinese translation of the OLYMPIC GAMES mark, and phonetically dissimilar from that mark. In view of the findings below, it is unnecessary for the Panel to compare the disputed domain name with that mark any further under the first element.

The disputed domain name is a transliteration of the 奥运会 mark (“àoyùnhuì” in Pinyin, the standard romanization of simplified Chinese), omitting only the diacritics above the vowels that indicate tones. The

Panel recalls that the omission of tonal diacritics is standard practice in Pinyin domain names, for technical reasons, and that neither Party suggests that the disputed domain name has any meaning other than as a Pinyin transliteration without tones.

The disputed domain name can be pronounced in different ways, one of which is aurally identical to the 奥运会 mark. The Panel finds that “奥运会” springs to mind upon viewing the disputed domain name. While the disputed domain name can be pronounced with tones corresponding to other strings of three Chinese characters (such as the one referenced by the Respondent, *i.e.*, “澳云会”), that does not alter the fact that an obvious pronunciation of the disputed domain name is identical to the pronunciation of the 奥运会 mark in Mandarin Chinese.

The only additional element in the disputed domain name is a generic Top-Level Domain (“gTLD”) extension (“.com”) which, as a mere standard requirement of domain name registration, may be disregarded in the comparison between the disputed domain name and the Complainant’s 奥运会 mark. See [WIPO Overview 3.0](#), section 1.11.

The Respondent points out that nothing in its website content refers to the Complainant. However, that does not prevent a finding of confusing similarity between the disputed domain name itself and the Complainant’s mark.

Therefore, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the Panel, shall demonstrate that the respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (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 organization) [has] been commonly known by the [disputed] domain name, even if [the respondent has] acquired no trademark 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 trademark or service mark at issue.

As regards the first and third circumstances set out above, the disputed domain name resolves to a parking page that merely displays a URL incorporating the disputed domain name. The Complainant submits that the Respondent is not affiliated with it in any way nor has it licensed, authorized or permitted the Respondent to use and register any domain name incorporating its mark. These circumstances indicate that the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services nor making a legitimate noncommercial or fair use of the disputed domain name that would generate rights or legitimate interests in respect of the disputed domain name for the purposes of the Policy.

As regards the second circumstance set out above, the Respondent’s name is listed in the Registrar’s Whois database as “Informative Portals Limited”, not the disputed domain name. There is no evidence indicating that the Respondent has been commonly known by the disputed domain name as envisaged by paragraph 4(c)(ii) of the Policy.

In summary, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Turning to the Respondent's arguments, it notes that the disputed domain name could be a transliteration of the Chinese characters “澳云会” meaning “Australia cloud meeting/conference”, and it refers to a desire or a project to develop Australian-related domain names, specifically, for emerging virtual and cloud opportunities. However, the only evidence to which it refers is the application error message formerly displayed on the parking page, which indicated that details of the error could be found using a Heroku command-line interface. Although Heroku is a cloud application platform, this error message does not demonstrate even perfunctory preparations to use the disputed domain name in furtherance of the Respondent's alleged desire or project. See *Tencent Holdings Limited v. Ning Yang*, WIPO Case No. [D2012-2330](#). Nothing substantiates the Respondent's claim to have registered other Australian-related domain names either. The Respondent asks why it cannot have the right to fair use over Australian cloud expo opportunities that have nothing to do with the Olympics? The Panel considers this question to be theoretical in the present case, as the Respondent cannot demonstrate any actual preparations to make a fair use of the disputed domain name in any such way. Accordingly, the Panel finds that the Respondent has failed to rebut the Complainant's *prima facie* case.

Therefore, based on the record of this proceeding, the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that certain circumstances, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith, but these circumstances are not exhaustive.

Evidence provided by the Complainant shows that the disputed domain name was available for registration three years after its creation date, which indicates that the Respondent acquired its registration (or its current registration) later in time. In these circumstances, panels assess bad faith as of the date on which a respondent acquired a domain name rather than the date of first registration. See [WIPO Overview 3.0](#), section 3.9. In the present dispute, evidence provided by the Complainant shows that the Respondent acquired the disputed domain name no earlier than November 26, 2004 and no later than June 1, 2012. Accordingly, the Panel will assess bad faith regarding acquisition of the disputed domain name by reference to this date range.

Based on the evidence on record, the Panel is unable to determine whether the disputed domain name was acquired by the Respondent after the registration of the 奥运会 mark on December 19, 2011. The Panel recalls that, where a domain name is registered before a complainant's trademark rights accrue, panels will not normally find bad faith on the part of a respondent. See [WIPO Overview 3.0](#), section 3.8.1. However, in certain limited circumstances panels may find bad faith where a respondent's intention in registering a domain name was to unfairly capitalize on the complainant's nascent trademark rights. See [WIPO Overview 3.0](#), section 3.8.2.

In the present case, the Complainant supervises the organization of the Olympic Games, which is one of the most televised events on Earth. Notwithstanding the long-form Chinese translation of “Olympic Games” set out in Section 4 above, the Complainant submits much evidence demonstrating that “Olympic Games” has been translated in the abbreviated form “奥运会” since as early as 1932, and that “奥运会” has been widely used in Chinese to refer to the Olympic Games supervised by the Complainant since at least 1984. In particular, the evidence shows that the term “奥运会” was widely used in China to refer to the Olympic Games supervised by the Complainant during the broadcasts of the 2000 summer Olympic Games and in reports regarding the bidding process in 2001 that led to the Complainant's selection of Beijing as host city of the 2008 summer Olympic Games. The association of the term “奥运会” with the Olympic Games supervised by the Complainant continued during the preparations for, and hosting of, the 2008 summer Olympic Games in Beijing. Although the Complainant did not register “奥运会” as a trademark until 2011, this may be related to the fact that extensive protection was available under the Chinese Regulations on the Protection of Olympic Symbols but, in any case, it is not relevant to the question of the Respondent's intent in registering the disputed domain name. The evidence shows that “奥运会” has been associated with the

Olympic Games supervised by the Complainant since prior to the Respondent's acquisition of the disputed domain name. Although the Respondent points out that "aoyunhui" could be a transliteration of other combinations of three Chinese characters, it submits no evidence of actual use of any such combination either by itself or any other party. In all the circumstances, the Panel finds it likely that the Respondent had the Complainant in mind when it acquired the disputed domain name and that its intent was to capitalize on the Complainant's nascent rights in the 奥运会 mark.

As regards use, the disputed domain name has resolved to a parking page merely displaying a URL or an error message since at least 2012. Considering that bad faith may be found even in cases of passive use (see *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)), the Panel does not consider that the degree of active use of the disputed domain name precludes a finding of bad faith. In the present dispute, the Panel recalls the overwhelming notoriety of the Olympic Games and the Complainant, and the minimally active use of the disputed domain name for an extended period of at least ten years. In the circumstances, these are indicia of bad faith, notwithstanding that the Respondent has not contacted the Complainant and the webpage associated with the disputed domain name has not displayed content related to the Complainant. Moreover, the Respondent has failed to substantiate its allegations as to how it plans to use the disputed domain name.

Therefore, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has satisfied the third element in paragraph 4(a) of the Policy.

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 <aoyunhui.com> be transferred to the Complainant.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: August 12, 2022