

ADMINISTRATIVE PANEL DECISION

International Olympic Committee (IOC) v. Registration Private, Domains By Proxy, LLC / Thomas Clohessy, Spirited Movie Co
Case No. D2022-2383

1. The Parties

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

The Respondent is Registration Private, Domains By Proxy, LLC, United States of America / Thomas Clohessy, Spirited Movie Co, United States of America.

2. The Domain Name and Registrar

The disputed domain name <shopolympics.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 30, 2022. On June 30, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 1, 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 July 5, 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 July 7, 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 July 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 4, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 5, 2022.

The Center appointed Alistair Payne as the sole panelist in this matter on August 16, 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 leads the Olympic movement and owns the “Olympic Properties” as defined by the Olympic Charter including a wide range of trade marks and intellectual property rights related to the Olympic Games. These rights include an International trade mark registration for the word OLYMPIC under number 1128501 registered on November 8, 2011, which in particular is designated in the European Union.

The Complainant operates its own ecommerce website at the domain name <shop.olympics.com> (registered in 1995) from which it sells merchandise produced by licensees and suppliers appointed by the Complainant for each Olympic Games. The Olympic shop was relaunched by the Complainant in 2021 to give access to Olympic branded merchandise from past, present, and future Olympic and Paralympic Games in a single unified on-line store. The Complainant also owned <shop.olympic.org> which referred to an e-commerce website exploited between 2012-2019. In December 2018, the Complainant launched an Olympic store on Tmall, China’s largest business to consumer marketplace for brands and retailers.

The disputed domain name was registered on January 29, 2020. At the date of this Complaint the disputed domain name resolved to a blank page.

5. Parties’ Contentions

A. Complainant

The Complainant firstly submits that the Respondent should have been prevented from registering the disputed domain name according to Article 2.1 of ICANN’s Protection of IGO and INGO Identifiers in All gTLD’s Policy which offers special protection to certain names associated with the Olympic Movement. The Complainant firstly submits that the Panel should be able to determine transfer of the disputed domain name based on the breach of this policy and without resort to the UDRP.

In the event that the Panel declines this request, then the Complainant submits that it owns registered trade mark rights as set out above for the term OLYMPIC and that as its mark is wholly contained in the disputed domain name, even if presented in the plural form and with the common English word “shop”, then the disputed domain name is confusingly similar to the Complainant’s trade mark registration under the Policy.

The Complainant submits that the Respondent is neither affiliated with the Complainant in any way nor has the Complainant licensed, authorised, or permitted the Respondent to use and register, or to seek registration of any domain name or trade mark incorporating the OLYMPIC trade mark. It says that in the absence of any licence or permission from the Complainant to use its trade mark, no actual or contemplated *bona fide* or legitimate use of the disputed domain name could reasonably be claimed (*Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#)). In addition, the Complainant submits that the Respondent is not commonly known by the disputed domain or the name “Olympic” and furthermore, the Complainant is not aware of any trade marks in which the Respondent may have rights that are identical or similar to the disputed domain name.

The Complainant maintains that since the disputed domain name resolves to an inactive website that is “not secure” and which displays a blank page, the Respondent cannot assert that he was using or had made 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 and services. It says that despite the fact that the disputed domain name was registered almost two years ago, there is no evidence at all that the Respondent has made a *bona fide* use or intends to make a *bona fide* use of the disputed domain name. It

says that the mere holding of a blank page cannot be considered a *bona fide* offering of goods or services under the Policy (see *Guinness World Records Limited v. Solution Studio*, WIPO Case No. [D2016-0186](#)).

In terms of registration in bad faith, the Complainant says that at the time of registration of the disputed domain name, the Respondent already knew, or at least should have known, of the existence of the Complainant and of the Complainant's trade marks. Actual or constructive knowledge of the Complainant's OLYMPIC trade mark can be inferred from their widespread use and their worldwide reputation.

It says that according to section 3.1.4 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the mere registration of a domain name that is identical or confusingly similar to a famous or widely known trade mark by an unaffiliated entity can itself create a presumption of bad faith. Consequently, the mere fact that the Respondent has registered a domain name which incorporates the well-known trade marks of a well-known company is alone sufficient to assume bad faith. In addition, it says that the disputed domain name is almost identical to the Complainant's domain name <shop.olympics.com> registered in 1995. As such, the Complainant maintains that there is no other plausible explanation for the Respondent's registration of the disputed domain name, except to deliberately attempt to mislead and attract the Internet users. Further, says the Complainant, even a cursory Internet search by the Respondent at the time of registration of the disputed domain name would have made it clear to the Respondent that the Complainant owned trade marks in OLYMPIC and used them extensively.

The Complainant asserts that as the disputed domain name resolves to a blank page and there is no evidence that it has ever been used otherwise then this amounts to a passive holding in bad faith. In this regard the Complainant cites the following circumstances as indicative of a passive holding in bad faith:

- (i) the Complainant's trade mark has a strong reputation and is widely known, as evidenced by numerous registrations worldwide and the Complainant's evidence of its reputation and size;
- (ii) the Respondent has taken active steps to conceal his true identity through a privacy service (see section 3.6 of the [WIPO Overview 3.0](#)). Such concealment of the Respondent's identity is an indication of bad faith as it was not inspired by a legitimate need to protect the Respondent's identity but solely to make it difficult for the Complainant to protect its trade mark rights (*Ferm Living ApS v. PrivacyProtect.org / Domain Admin, Private Registrations AG*, WIPO Case No. [D2013-0093](#)); and
- (iii) taking into account all of the above, the Complainant says that it is not possible to conceive of any plausible good faith use by the Respondent.

Finally, submits the Complainant, it cannot be excluded that the disputed domain name, being quasi-identical to the official domain name of the Complainant, was very likely chosen to sell counterfeit merchandise from the website to which that disputed domain name resolves. In the event the disputed domain name was to be activated by the Respondent in the future, this would comprise bad faith use under Paragraph 4(b) of the Policy

B. Respondent

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

6. Discussion and Findings

Firstly, the Panel notes that its jurisdiction to decide domain name dispute complaints is exclusively restricted by the terms of the UDRP to deciding a matter in terms of the three pronged test set out in paragraph 4(a). The Panel's mandate under the UDRP does not extend to the enforcement of ICANN's Protection of IGO and INGO Identifiers in All gTLD's Policy or of any other ICANN policy and the Complainant's request in this regard is inappropriate and is declined. The Panel will now proceed to consider the Complaint in terms of the Policy.

A. Identical or Confusingly Similar

The Complainant has demonstrated that it owns registered trade mark rights for the word OLYMPIC under International trade mark registration number 1128501 registered on November 8, 2011. As its OLYMPIC mark is wholly contained in the disputed domain name then the disputed domain name is confusingly similar to the Complainant's trade mark registration for the purposes of the Policy. The presentation in the disputed domain name of the word "Olympic" in the plural form and together with the common English word "shop" does not prevent such a finding of confusing similarity. Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trade mark registration and the Complaint succeeds under this element of the Policy.

B. Rights or Legitimate Interests

The Complainant has submitted that the Respondent is neither affiliated with the Complainant in any way nor has the Complainant licensed, authorised, or permitted the Respondent to use and register, or to seek registration of any domain name or trade mark incorporating the OLYMPIC trade mark. It has further alleged that in the absence of any licence or permission from the Complainant to use its trade mark, no actual or contemplated *bona fide* or legitimate use of the disputed domain name could reasonably be claimed. In addition, the Complainant has submitted that the Respondent is not commonly known by the disputed domain or the name "Olympic" and furthermore, that the Complainant is not aware of any trade marks in which the Respondent may have rights that are identical or similar to the disputed domain name.

The Complainant has noted that the disputed domain name resolves to an inactive website that is "not secure" and which displays a blank page and has asserted that the Respondent has made no 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 and services. The Complainant has also submitted that in spite of the fact that the disputed domain name was registered almost two years ago, there is no evidence at all that the Respondent has made a *bona fide* use or intends to make a *bona fide* use of the disputed domain name.

The Panel finds that the Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has failed to respond to or to rebut the Complainant's case and for the reasons set out under Section 6.C. below the Panel finds that the Complaint also succeeds under this element of the Policy.

C. Registered and Used in Bad Faith

The Complainant's OLYMPIC mark is amongst the most well reputed marks internationally and the Complainant's efforts all over the world to protect and enforce its rights in the mark, particularly with respect to unauthorised merchandise, such as might potentially be sold on a "shop" website from the disputed domain name, are well known. In addition, the Complainant operates its own "shop" website for Olympic merchandise at <shop.olympics.com>. A simple internet search would have revealed to the Respondent the Complainant's interest in and protection of its OLYMPIC marks, and also the Complainant's "shop" website. In these circumstances, the Panel finds it more than likely that the New York State based Respondent was well aware of the Complainant and its trade marks in January 2020 when it registered the disputed domain name, probably registering it to take unfair advantage of the confusing similarity between the disputed domain name and the Complainant's OLYMPIC mark, and the Complainant's domain name <shop.olympics.com>.

At the date of this Complaint the disputed domain name resolves to a blank page and there is no evidence that it has ever been actively used. Section 3.3 of the [WIPO Overview 3.0](#) sets out the circumstances in which past panels have found passive holding of a domain name in bad faith as follows:

"While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness

or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put."

In this case the Complainant's OLYMPIC mark is highly distinctive and amongst the most widely known of marks. The Respondent has failed to submit a response or to provide any evidence of the actual or contemplated good faith use of the disputed domain name. Further, the Respondent has taken active steps to conceal his true identity through the use of a privacy service. Finally, without the Complainant's express consent and authority, there is no plausible use to which the disputed domain name could be put in good faith, noting that the Complainant controls international use of the mark OLYMPIC and protected insignia and already operates a "shop" website at the <shop.olympic.com> domain name.

Accordingly, the Panel finds that the disputed domain name has been registered and used in bad faith, and that the Complaint also succeeds under this element 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 <shopolympics.com> be transferred to the Complainant.

/Alistair Payne/

Alistair Payne

Sole Panelist

Date: August 30, 2022