

## **ADMINISTRATIVE PANEL DECISION**

The International Olympic Committee v. Registration Private, Domains By Proxy, LLC / Ryan Crowther  
Case No. D2022-3210

### **1. The Parties**

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

The Respondent is Registration Private, Domains By Proxy, LLC / Ryan Crowther, United States of America.

### **2. The Domain Name and Registrar**

The disputed domain name <olympicmetaverse.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 August 30, 2022. On August 31, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 31, 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 September 1, 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 September 6, 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 September 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 27, 2022. The Respondent did not submit any response. The Center received the Respondent's emails on September 7, 2022. On September 28, 2022, the Center informed the Parties that it would proceed to panel appointment.

The Center appointed Andrew Brown K.C. as the sole panelist in this matter on October 10, 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.

### **Procedural Issue: Non-compliance with ICANN Protection of IGO and INGO Identifiers in all generic Top-Level Domain (“gTLD”)’s Policy**

The Complainant has raised a preliminary procedural issue concerning non-compliance with ICANN’s *Protection of IGO and INGO identifiers in all gTLDs Policy* (the “ICANN Policy”). The Complainant asserts that under this Policy all gTLD Registry Operators must “either reserve from registration or allocate to Registry Operators the second-level domain names corresponding to the DNS label of all identifiers” recorded on the list of Reserved Names for gTLDs (Article 4.1 of ICANN Policy).

The Complainant is one of the organizations to whom the ICANN Policy provides special protection for certain trademarks/names owned by or associated with it: in the case of the Complainant trademarks relating to the Olympic movement.

The second-level domain names and list of DNS Label(s) to be reserved in respect of the Complainant is provided for in the ICANN Policy and (relevantly for this Complaint) includes:

<b>Name</b>	<b>DNS Label 1</b>
olympic	olympic

The Complainant complains that, despite the Policy entering into effect on August 1 2018, *i.e.*, well before the registration of the disputed domain name, the Respondent was not prevented from registering the disputed domain name. It asserts that the Registry Operator should have reserved the disputed domain name from registration but failed to do so.

In view of the fact that the current dispute purportedly arises out of non-compliance with the ICANN Policy, the Complainant contends that it should not need to demonstrate fulfilment of the three elements under the Policy in order to obtain transfer of the disputed domain name.

Instead, the Complainant requests that the Panel automatically transfer the disputed domain name as a proper remedy for the non-compliance with the ICANN Policy by the Registry Operator. The Complainant contends that, as it is entitled to register the disputed domain name (which should have been reserved by the Registry Operator), an automatic transfer would achieve the same effect.

As a fallback, in case this argument does not succeed, the Complainant addresses the requirements of the UDRP Policy.

### **Discussion and Findings on Preliminary Procedural Issue.**

Clause 4.1 of the ICANN Policy reads as follows:

“All gTLD Registry Operators MUST either Reserve from registration or allocate to Registry Operators the second-level domain names corresponding to the DNS label(s) of all identifiers recorded on the Red Cross, IOC and IGO Identifier List found on the Reserved Names for gTLDs.”

The term “Reserve” is defined by the Policy as meaning “to withhold from registration or to allocate to Registry Operator but not register to third parties, delegate, use in the DNS or otherwise make available a character string within the TLD”.

The mandatory obligation on all gTLD operators to reserve from registration or allocate to Registry Operators is directed to second-level domain names corresponding to the DNS Label(s) of all identifiers “recorded...in

the IOC...Identifier List...".<sup>1</sup> A second-level domain name in the present case is the combination <olympicmetaverse> in the disputed domain name. The Wikipedia entry on "second-level domain" states that:

"For example, in *example.com*, example is the second-level domain of the .com TLD."

Paragraph 4.3 of the ICANN Policy provides the Red Cross, IOC and IGO Organizations "MAY request registration of domain names matching their identifiers otherwise withheld from registration at the second-level under this Policy and Registry Operators must provide a method for registration of the reserved names by the Red Cross, IOC and IGO organizations".

**Must Second-Level Domain Name be an exact match to an Identifier on the IOC Reserved Names List for gTLDs or is similarity sufficient?**

The key issue requiring resolution is whether the second-level domain (in this case <olympicmetaverse>) must be identical to one of the identifiers on the IOC Reserved Names for gTLDs, *i.e.*, "olympic", for the Policy to apply? If an exact match is required, then the second-level domain in this case is not identical. Alternatively, is it sufficient to trigger application of the ICANN Policy that the IOC identifier "olympic" forms *part* of the second-level domain of the gTLD in this case, being part of the combination <olympicmetaverse>?

Assistance in answering these questions is provided in the ICANN Policy itself and in the *travaux préparatoire* leading up to adoption of the ICANN Policy:

(a) Para 3.6 of the Policy defines "Red Cross, IOC and IGO Identifier List" as referring "to a list containing second-level, *exact match*, full names of protected Red Cross and IOC organizations, IGOs and their corresponding DNS labels designated to receive certain protection under this Policy". The reference to *exact match* strongly suggests that there must be an exact matching for the provision to apply.

(b) Para 4.1 (which implements the Policy) uses the word "*corresponding to* the DNS Label(s) of all identifiers recorded on the Red Cross, IOC and IGA Identifier List...". In this context, given the reference to 'exact match' in paragraph 3.6, the words "corresponding to" also require an exact match.

(c) Para 4.2 similarly points to the need for an exact match. This paragraph covers the situation where "a domain name, containing *an exact match* was registered before this Consensus Policy effective date...". The fact that an *exact match* is referred to in the very next subparagraph of the Policy to para 4.1 provides confirmation that an exact match is necessary to trigger the obligations in para 4.1 of the Policy.

(d) In relation to INGOs (International Non-Governmental Organizations), the Policy has a slightly different scope in that a claims services is provided for. But paragraph 5.1 states that Registry Operators and Registrars MUST provide (what is called) the *INGO Claims Service* for INGO names and their corresponding DNS Label(s) that are *an exact match* on the INGO Identifier List. Again, the requirement of the Policy is triggered by an exact match, *i.e.*, the INGO identifier names (and the corresponding DNS Label(s)) found on that list.

(e) Apart from the references to exact match, the Policy does not provide any test or guidance for determining whether a second-level domain name that is something less than an exact match "corresponds to" the listed identifier (paragraph 4.1). If something *less than an exact match* were to suffice in order to trigger the Policy, then it is to be expected that guidance would have been provided in the Policy so as to assist all gTLD Registry Operators to meet their obligations.

(f) ICANN's *Final Report on the Protection of IGO and INGO Identifiers in all gTLD's Policy Development Process* dated November 10, 2013 contains valuable background on the Policy which confirms that an exact

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<sup>1</sup> ICANN Policy para 4.1

match was required. At the time, a large number of new gTLD's were anticipated for delegation.<sup>2</sup> The recommendations in respect of IOC Identifiers<sup>3</sup> for second-level domains of gTLD's (adopted by the ICANN Board on April 30, 2014) were:

"3 Second-Level protections of only Exact Match, Full Name Scope 1 identifiers of the *International Olympic Committee* are placed in Specification 5 of the Registry Agreement

4 For *International Olympic Committee* identifiers, if placed in Specification 5 of the Registry Agreement, an exception procedure should be created for cases where a protected organization wishes to apply for their protected string at the Second-Level."

This provides confirmation that the requirement is one of exact matching.

#### **Conclusion on Preliminary Procedural Issue.**

In the present Complaint, the second-level domain name <olympicmetaverse> is not an exact match with the designated IOC identifier "olympic".

Accordingly, the Panel does not consider that the disputed domain name is covered by the ICANN Policy which in any event the Panel and the UDRP have no jurisdiction over.

As a consequence, the Panel finds that the Complainant's invocation of paragraph 4.3 of the ICANN Policy for relief is misplaced, and will turn to consider the requirements of the UDRP.

The Panel finally notes that it has set out the above in the hope it is useful to the Complainant.

#### **4. Factual Background**

The Complainant is the International Olympic Committee founded in 1894. It is an international, non-governmental, non-profit organization which is the umbrella organization of the Olympic Movement. It has conducted 24 Olympic winter games and 32 Olympic summer games.

The Complainant owns all rights to the Olympic games, the Olympic symbol, the Olympic flag, motto and anthem and the word "olympic". These trademark rights are recognized and guaranteed in the trademark legislation of many individual countries.

The Complainant is the owner of several trademark registrations in respect of the word OLYMPIC.

- International trademark 1128501 in Classes 1-45, registered on November 8, 2011;
- The European Union ("EU") designation of international trademark 1128501 in Classes 1-45; and
- Swiss trademark 621700 in Classes 1-45, registered on October 21, 2011.

As discussed in the preceding section, the "ICANN Policy" which was revised on February 18, 2020, provides protection to various trademarks of the IOC, including the OLYMPIC mark in all gTLD domain names and, in doing so, has provided clear recognition of the Complainant's rights to the OLYMPIC trademarks.

The Complainant has a substantial presence on the Internet through its official website <olympics.com> and on several social media platforms.

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<sup>2</sup> Para 4.1.5. As at March 2018 the number of gTLD's exceeded 1,200 domains (source: Wikipedia Generic Top Level Domain.)

<sup>3</sup> Para 5.2

The disputed domain name was registered on October 29, 2021 (the “Relevant Date”). The disputed domain name resolves to a parking page displaying pay-per-click links.

## **5. Parties’ Contentions**

### **A. Complainant**

The Complainant asserts its rights in the word mark OLYMPIC as a trademark. It also relies on the launch by it and its commercial partners of multiple augmented reality (AR) / virtual reality (VR) projects in the lead-up to the Tokyo 2020 Olympic Games. From May 13, 2021 to June 23, 2021 the Complainant launched the Olympic Virtual Series to connect the sporting world with the virtual and simulation sports gaming community.

The Complainant states that the disputed domain name combines its OLYMPIC trademark with the addition of “metaverse”. The very high level of recognition of the Complainant’s OLYMPIC trademark amongst the general public is sufficient, in the Complainant’s submission, to establish that the disputed domain name is confusingly similar.

The Complainant also contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant states that the Respondent is not affiliated in any way with the Complainant, nor has the Complainant licensed, authorised or permitted the Respondent to use or register its trademark or any domain name incorporating its OLYMPIC trademark. Further, the Respondent is not commonly known by the disputed domain name. Nor is the Respondent making a legitimate, noncommercial or fair use of the disputed domain name without intent for commercial gain to misleadingly direct consumers or to tarnish the Complainant’s trademark. The Complainant states that the inclusion of OLYMPIC in the disputed domain name in fact carries a high risk of implied affiliation.

Further, the Complainant states that the Respondent has not made any use or demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. The disputed domain name displays a parking page with pay-per-click links. The Complainant asserts that this does not represent a *bona fide* offering.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. The Complainant states that, due to the established and well-known identity of the OLYMPIC trademark, the Respondent would in all likelihood have been aware of the Complainant’s trademark at the time of registration of the disputed domain name. Further, given the launch of multiple AR and VR projects of the IOC and its partners in the period May to July 2021, the Complainant states that the registration of the disputed domain name containing “metaverse” on October 28, 2021 was not accidental, pointing particularly to the timing *i.e.*, following the IOC project launches.

In relation to the fact that the disputed domain name displays a parking page advertising the sale of the disputed domain name as well as pay-per-click links, the Complainant relies on the doctrine of passive holding for its submission that there has been use in bad faith.

The Complainant relies too on the concealment of the Respondent’s identity by a privacy filter as an indication of bad faith.

### **B. Respondent**

The Respondent did not reply substantively to the Complainant’s contentions. The only communications from the Respondent are two emails to the Center saying “I have listed the domain for sale it is all yours” and “In non lawyer talk please. GoDaddy was no help in this”.

## 6. Discussion and Findings

Pursuant to paragraph 4(a) of the Policy, a complainant must prove each of the following elements with respect to the disputed domain name in order to succeed in this proceeding:

- (i) That the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights; and
- (ii) That the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) That the disputed domain name has been registered and is being used in bad faith.

### A. Identical or Confusingly Similar

The Complainant has provided evidence of its registration of its OLYMPIC trademark as an International registration in Classes 1-45, the designation of this mark in the EU in the same classes and its trademark registration in Switzerland (again in Classes 1-45). In many jurisdictions internationally, the term OLYMPIC is a protected trademark by statute in recognition of the Complainant's rights.

It is the Panel's view that the Complainant has clearly and sufficiently demonstrated its rights in the OLYMPIC trademark. The Panel is satisfied that the Complainant has achieved a very high level of recognition in its OLYMPIC trademark and is very well-known by that mark.

(The Complainant has also shown to the satisfaction of the Panel its use of the OLYMPIC trademark in conjunction with the launch of AR and VR services by it and its commercial partners in the period May to July 2021 before the Relevant Date; this is discussed under the subsequent elements.) The Panel is satisfied that the Complainant has shown reputation and goodwill in the trademark OLYMPIC in conjunction with such products and services.

The Panel accepts that the disputed domain name is confusingly similar to the Complainant's OLYMPIC trademark.

As noted in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8, "where the relevant trademark is recognizable within the 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". It is the Panel's view that the addition of the term "metaverse" to the OLYMPIC trademark does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's OLYMPIC mark which is clearly recognizable in the disputed domain name.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's OLYMPIC trademark and finds in favor of the Complainant.

### B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish that it has rights or legitimate interests in the disputed domain name, among other circumstances, by showing any one of the following elements:

- (i) That before notice of the dispute, the Respondent used or 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 or services; or

(ii) That the Respondent has been commonly known by the disputed domain name, even if it had acquired no trademark or service mark rights; or

(iii) That 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.

The overall burden of proof for establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name lies with the Complainant.

There is no evidence of the existence of any rights or legal interests on the part of the Respondent in the OLYMPIC trademark pursuant to paragraph 4(c) of the Policy. The Complainant has prior longstanding rights in the OLYMPIC trademark which well precede the Respondent's registration of the disputed domain name. The Panel is satisfied that the Complainant has never authorized, licensed, or consented to the use of the OLYMPIC trademark by the Respondent.

The Panel is also satisfied that:

(i) Before notice of the dispute the Respondent had not made demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. The use of a domain name to host a parking page containing pay-per-click links "does not represent a *bona fide* offering where such links capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users" ([WIPO Overview 3.0](#), section 2.9).

(ii) The Respondent has not been commonly known by the disputed domain name.

(iii) The Respondent is not making 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. The disputed domain name by virtue of its use of the OLYMPIC mark carries a risk of implied affiliation.

The Panel therefore finds that the Complainant has satisfied the burden of establishing a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, which has not been rebutted by the Respondent, and accordingly finds that paragraph 4(a)(ii) of the Policy is satisfied in favor of the Complainant.

### **C. Registered and Used in Bad Faith**

The Panel is satisfied that the disputed domain name has been registered in bad faith for the following reasons:

(i) The Panel is satisfied that the Complainant's OLYMPIC trademark is very well-known with very high recognition levels across multiple trademark classes as a result of the Complainant's extensive and high profile use of that mark since 1894. The Panel is also satisfied that the Respondent was and is aware of the Complainant and its OLYMPIC trademark at the time of registration. This is evidenced by the fact that the disputed domain name reproduces the OLYMPIC trademark entirely and adds to it the term "metaverse". The combination is descriptive of the multiple AR and VR activities launched by the Complainant and its sponsors/commercial partners in the period May to July 2021 before the relevant date.

(ii) Paragraph 2 of the UDRP puts the burden on registrants where it states "by applying to register a domain name, or by asking us to maintain or renew a domain name registration, you hereby represent and bond to us that [...] to your knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of a third party [...]. It is your responsibility to determine whether your domain name infringes or violates someone else's rights". Even the most cursory trademark or other online search of existing domain names prior to the Respondent registering the disputed domain name would have

instantly revealed the Complainant and its OLYMPIC trademark. See in this regard section 3.2.3 of the [WIPO Overview 3.0](#).

(iii) The Respondent has made no substantive submission in this proceeding or sought to answer the Complainant's allegations. The Panel is entitled to draw adverse inferences from that failure.

The Panel is also satisfied that the disputed domain name has been used in bad faith. The Panel is satisfied that the doctrine of passive holding applies in this case ([WIPO Overview 3.0](#), section 3.33). Relevant factors under this doctrine are:

(i) The Complainant's OLYMPIC trademark is well-known internationally and is exclusively associated with the Complainant. When confronted with the disputed domain name many Internet users would wrongly assume that the disputed domain name is owned by, connected with, licensed by or otherwise endorsed by the Complainant.

(ii) There is no evidence of any contemplated or actual *bona fide* use of the disputed domain name. It presently operates to host a parking page with pay-per-click revenue.

(iii) Again the Respondent had the opportunity to respond to the Complaint but has not done so. The Panel is therefore entitled to draw adverse inferences from that omission.

Accordingly the Panel finds that paragraph 4(a)(iii) of the Policy is satisfied in favor of the Complainant.

## 7. Decision

For the foregoing reasons, in accordance with paragraphs 4(a)(i)-(iii) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <olympicmetaverse.com> be transferred to the Complainant.

*/Andrew Brown KC/*

**Andrew Brown KC**

Sole Panelist

Date: October 24, 2022