

ADMINISTRATIVE PANEL DECISION

Olayan Investments Company Establishment v. alex fergie
Case No. D2022-3556

1. The Parties

The Complainant is Olayan Investments Company Establishment, Liechtenstein, represented by DLA Piper UK LLP, United Kingdom.

The Respondent is alex fergie, United States of America.

2. The Domain Name and Registrar

The disputed domain name <olayan-holdings.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 26, 2022. On September 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 27, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 28, 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 October 3, 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 October 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 26, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 28, 2022.

The Center appointed Benoit Van Asbroeck as the sole panelist in this matter on November 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

The Complainant is the parent company of the Olayan Group, which includes over 50 companies and affiliated entities worldwide and is active in a range of sectors, including private equity investment, real estate, distribution, manufacturing and marketing. Amongst other countries, the Complainant is active in Saudi Arabia. The Complainant contends that its trademarks are well recognized by customers since it has prominently and extensively used, promoted and advertised its trademarks for over 20 years.

The Complainant owns several semi-figurative and verbal OLAYAN trademarks, including:

- Saudi Arabia semi-figurative OLAYAN trademarks, registered under number 141001444 and 141001442 respectively on February 2, 2019 in classes 36 and 37 respectively;
- United States of America verbal trademark OLAYAN, registered under number 2920452 on January 25, 2005 in class 35; and
- European Union verbal trademark OLAYAN, registered under number 008208423 on September 22, 2009 in class 36.

The Complainant operates several domain names including <olayan.com>, registered on March 6, 1996.

The disputed domain name was registered on August 2, 2022, by the Respondent. At the time of filing of the complaint, the disputed domain name resolved to a parking page including links related to the sectors of activity of the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to its earlier trademarks OLAYAN, as the disputed domain name fully incorporates the trademark. Additionally, the Complainant submits that the addition of the generic term "holdings" does not diminish the likelihood of confusion.

The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name registered after its trademarks, as the Respondent has neither acquired trademark rights in the term "olayan", nor is it using the disputed domain name to display an active website.

The Complainant contends that the Respondent has registered and is using the disputed domain name in bad faith as the Respondent has used an email address associated with the disputed domain name to fraudulently impersonate the Complainant and send phishing emails to a client of the Complainant.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the UDRP, the Complainant must demonstrate that the disputed domain name is (i) identical or confusingly similar to a trademark or service mark, (ii) in which the Complainant has rights.

On the basis of the evidence presented, it is established that the Complainant owns several OLAYAN verbal and semi-figurative trademarks.

The disputed domain name reproduces the Complainant's OLAYAN verbal trademarks, albeit with the addition of the term "holdings". Previous UDRP panels have consistently held that, in circumstances where the disputed domain name incorporates the entirety of a trademark or its dominant feature is recognizable, the disputed domain name will be considered confusingly similar to the trademark (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7; *Fondation Le Corbusier v. Monsieur Bernard Weber, Madame Heidi Weber*, WIPO Case No. [D2003-0251](#); and *Bayerische Motoren Werke AG ("BMW") v. Registration Private, Domains By Proxy, LLC / Armands Piebalgs*, WIPO Case No. [D2017-0156](#)).

This finding of confusing similarity is not precluded by the addition of other terms ([WIPO Overview 3.0](#), section 1.8; *Intesa Sanpaolo S.p.A. v. Rampe Purda*, WIPO Case No. [D2010-1116](#); and *Société des Bains de Mer et du Cercle des Etrangers à Monaco v. Mark Bolet*, WIPO Case No. [D2006-1245](#)), especially where the associated term carries a risk of implied affiliation – in this case, "holdings" (*Partnerre Ltd v. Privacy Protect LLC (PrivacyProtect.org) / Name Redacted*, WIPO Case No. [D2022-1847](#); and *FIL Limited v. Magdy Mahmoud, Everest Medical Services*, WIPO Case No. [D2014-1014](#)).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's OLAYAN trademarks and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, evidence of the Respondent's rights or legitimate interests in the disputed domain name for the purposes of paragraph 4(a)(ii) may be established, in particular, by any of the following circumstances:

(i) prior to becoming aware of the dispute, the Respondent has used 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 made serious preparations to do so;

(ii) the Respondent is known by the disputed domain name in question, even without having acquired trademark or service mark rights; or

(iii) the Respondent is making a legitimate noncommercial or fair use of the disputed domain name without intent to divert consumers for profit by creating confusion or to tarnish the trademark or service mark at issue.

Where the Complainant establishes *prima facie* that the Respondent has no rights or legitimate interests in the disputed domain name, the burden of production on this element is on the Respondent and it is up to the Respondent to provide relevant evidence demonstrating rights or legitimate interests in the disputed domain name. If the Respondent does not provide such relevant evidence, the Complainant is deemed to have satisfied the second element ([WIPO Overview 3.0](#), section 2.1).

In the present case, the Complainant does not successively establish the elements set out in paragraph 4(c) of the Policy. However, the Complainant relies on a different argument according to which, in order to

support a claim of rights or legitimate interests under the Policy, the use of a disputed domain name cannot be abusive of the Complainant's trademark rights.

Where there are clear indications of bad faith suggesting that there may be no legitimate rights or interests of the Respondent, the Panel may decide that the second and third elements of the Policy must be evaluated together ([WIPO Overview 3.0](#), section 2.15).

In this case, the Complainant has provided evidence that the disputed domain name is abusive of their trademark right, since it is being used in connection with a fraudulent scheme to impersonate the Complainant in order to obtain funds from at least one client of the Complainant located in Saudi Arabia. The Panel finds that such use can never confer rights or legitimate interests on the Respondent ([WIPO Overview 3.0](#), section 2.13).

Accordingly, the Panel finds that the Respondent can have no rights or legitimate interests in the disputed domain name and hence the second condition of paragraph 4(a) of the Policy has been fulfilled.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that evidence that a disputed domain name has been registered and is being used in bad faith may be adduced for the purposes of paragraph 4(a)(iii) in particular in certain circumstances, the fourth of which is that:

(iv) by using that domain name, [the respondent has] knowingly attempted to attract, for profit, Internet users to a website or other online space [it] owns, by creating a likelihood of confusion with the complainant's mark as to the source, sponsor, affiliation, or endorsement of [its] website or web space or a product or service offered therein.

In addition, the Panel may also consider special circumstances such as (i) the nature of the domain name (e.g., a typo of a widely known mark, or a domain name incorporating the applicant's mark plus an additional term such as a descriptive or geographic term), (ii) a clear lack of rights or legitimate interests coupled with the absence of a credible explanation for the respondent's choice of domain name, or (iii) other indicia generally suggesting that the respondent has targeted the complainant in some way ([WIPO Overview 3.0](#), section 3.2.1).

Among these other indicators, the use of a domain name for certain purposes other than hosting a website may constitute bad faith. These purposes include sending e-mails, phishing, impersonation or distribution of malware. Many such cases involve the respondent's use of the domain name to send deceptive emails, for example to obtain sensitive or confidential personal information from job applicants, or to solicit payment of fraudulent invoices from the complainant's current or potential customers ([WIPO Overview 3.0](#), section 3.4).

In the present case, the disputed domain name was registered on August 2, 2022, which is posterior to the registration of the Complainant's trademarks OLAYAN in 2005, 2009 and 2019.

The Panel considers that the addition in the disputed domain name of the term "holdings" and the subject of the links available on the parking page displayed at the disputed domain name indirectly reference one of the sectors of activity of the Complainant. This addition rather reinforces the impression that the disputed domain name is associated with the Complainant or, at least, that the Respondent unduly benefits from the Complainant's trademarks (*Telstra Corporation Limited v. Peter Lombardo, Marino Sussich et Ray Landers*, WIPO Case No. [D2000-1511](#); *Swarovski Aktiengesellschaft v. www.swarovski-outlet.org*, WIPO Case No. [D2013-0335](#); and *Milipol v. Herbert Szekely*, WIPO Case No. [D2013-1752](#)).

However, most importantly, bad faith is demonstrated where the Respondent registered the disputed domain name with the aim of using it for unlawful purposes, such as attempting to solicit commercial transactions with third parties while impersonating the Complainant, creating a likelihood of confusion and aiming to take undue advantage of the Complainant's reputation and goodwill (*Minerva S.A. v. TT Host*, WIPO Case No.

[D2016-0384](#); and *BHP Billiton Innovation Pty Ltd v. Domains By Proxy LLC / Douglass Johnson*, WIPO Case No. [D2016-0364](#)).

In this case, the Respondent has registered and used the disputed domain name to impersonate the Complainant (or rather its CEO) by sending fraudulent e-mails to at least one client of the Complainant to create a likelihood of confusion between the Respondent and the Complainant, and to solicit commercial transactions for its own gain. Seeing as the Respondent used the disputed domain name for fraudulent purposes, the disputed domain name has been acquired and used in bad faith (*The Prudential Assurance Company Limited v. Prudential Securities Limited*, WIPO Case No. [D2009-1561](#)).

For the reasons set out above, and in the absence of any arguments to the contrary raised by the Respondent, the Panel considers that the requirement of registration and use in bad faith of the disputed domain name set out in paragraph 4(a)(iii) of the Policy is satisfied.

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, <olayan-holdings.com> be transferred to the Complainant.

/Benoit Van Asbroeck/

Benoit Van Asbroeck

Sole Panelist

Date: November 24, 2022