

ADMINISTRATIVE PANEL DECISION

OpenTV, Inc. v. JEFERSON RAMOS DE ABREU
Case No. D2022-4514

1. The Parties

The Complainant is OpenTV, Inc., United States of America, represented by KATZAROV S.A, Switzerland.

The Respondent is JEFERSON RAMOS DE ABREU, Brazil.

2. The Domain Names and Registrars

The disputed domain name <opentv1.com> is registered with Wix.com Ltd. (“Wix Registrar”). The disputed domain name <opentv21.com> is registered with Google LLC (“Google Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 28, 2022. On November 28, 2022, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On November 28, 2022 and December 6, 2022, Google and Wix Registrars transmitted by email to the Center their verification response, disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (REDACTED FOR PRIVACY and Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 23, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On the same day, the Center also informed the Parties that the language of the registration agreement for both disputed domain names is Portuguese. The Complainant filed an amendment to the Complaint and a request for English to be the language of proceeding on December 26, 2022.

The Center verified that the Complaint, together with the amendment to the 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 January 13, 2023. In accordance with the Rules,

paragraph 5, the due date for Response was February 2, 2023. The Respondent sent two informal emails to the Center on January 25, 2023. No formal Response was filed.

The Center appointed Mario Soerensen Garcia as the sole panelist in this matter on February 14, 2023. 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 OpenTV, Inc., a NAGRA Kudelski Group company headquartered in San Francisco, California and a pioneer and one of the world's leading providers of advanced digital television solutions dedicated to creating and delivering compelling viewing experiences to consumers of digital content worldwide. OpenTV, Inc.'s technology and software is deployed in 96 countries and on millions of digital set-top boxes around the world.

The Complainant owns several registrations in multiple jurisdictions for the trademark OPEN TV, including:

- the International Trademark Registration No. 627425B for the mark OPEN TV, registered on November 14, 1994;
- the Brazilian trademark registration No. 818117621 for the mark OPEN TV registered on December 17, 1996.

The Complainant also owns the domain name <opentv.com>, registered on October 30, 1995.

The disputed domain name <opentv1.com> was registered on November 14, 2021, and the disputed domain name <opentv21.com> was registered on October 6, 2022, and both resolved to websites offering TV channels and film subscriptions in the Portuguese language.

5. Parties' Contentions

A. Complainant

The Complainant argues that both disputed domain names consist of the Complainant's trademark with the mere addition of the numerals "1" and "21", which does not render the disputed domain names distinctive from the Complainant's trademark but represents a misspelling that readers may overlook.

The Complainant informs that it also uses the numbers with its OpenTV products, such as "OpenTV5", which represented a Complainant's new generation middleware solution, reason why the disputed domain names would certainly create confusion among consumers who may believe that they are associated with the Complainant

The Complainant alleges that the Respondent is not affiliated with the Complainant and the Complainant did not authorize the Respondent to use the disputed domain names.

In addition, the Complainant mentions that the Respondent has not made a *bona fide* offering of goods or services and/or a legitimate non-commercial or fair use of the disputed domain names. Instead, the disputed domain name <opentv1.com> was used in connection with a website promoting a pirate subscription IPTV service, while the disputed domain name <opentv21.com> resolved to a website offering a pirate subscription IPTV service and access to 1000+ channels and both the offered prices were much cheaper than the standard subscription pricing in Brazil.

According to the Complainant, the Respondent is not authorized to register and use the disputed domain names, and they were registered with full knowledge of the Complainant's rights in the trademark OPENTV to intentionally create a likelihood of confusion among Internet users, for commercial gain.

Also, the Complainant argues that the Respondent appears to be obscuring its identity and targeting the Complainant's well-known trademarks to offer competing and illicit services, which cannot constitute a good faith.

Finally, the Complainant requests the transfer of the disputed domain names.

B. Respondent

The Respondent did not file a formal response and only sent emails informing that he would like to release "my domain" in order to delete it because he does not want to use it.

6. Discussion and Findings

As per paragraph 4(a) of the Policy, the Complainant must prove that:

- (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

The evidence presented in the complaint demonstrates that the Complainant is the owner of numerous trademark registrations for OPENTV around the world.

The disputed domain names comprise the Complainant's trademark OPENTV in its entirety. The addition of the numerals "1" and "21" does not avoid confusing similarity between the disputed domain names and the Complainant's trademark, since OPENTV is easily recognizable within the disputed domain names.

As numerous prior UDRP panels have recognized, the incorporation of a trademark in its entirety or a dominant feature of a trademark is sufficient to establish that a domain name is identical or confusingly similar to the Complainant's registered mark. See section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Panel finds that paragraph 4(a)(i) of the Policy has been proved by the Complainant, *i.e.*, the disputed domain names are confusingly similar to the Complainant's trademarks.

B. Rights or Legitimate Interests

The Respondent has not submitted a formal response to the Complaint.

There is no evidence that the Respondent has any authorization to use the Complainant's trademark or to register domain names containing the trademark OPENTV.

There is no evidence that the Respondent is commonly known by the disputed domain names.

There is also no evidence that the Respondent is making a legitimate noncommercial or fair use of the disputed domain names or that before any notice of the dispute the Respondent has made use of, or

demonstrable preparations to use the disputed domain names or a name corresponding to the disputed domain names in connection with a *bona fide* offering of goods or services. Instead, the Complainant showed evidence that the disputed domain names were used in bad faith by misleading Internet users to believe they were negotiating with the Complainant.

The Panel finds that the use of the disputed domain names, which entirely incorporates the Complainant's trademark, does not correspond to a *bona fide* use of the disputed domain names under the Policy.

For the above reasons, the Panel finds that the condition of paragraph 4(a)(ii) of the Policy has been satisfied, *i.e.*, the Respondent has no rights or legitimate interests in the disputed domain names.

C. Registered and Used in Bad Faith

The trademark OPENTV is registered by the Complainant in several jurisdictions and has been used since a long time. Also, the Complainant owns a registration for the domain name <opentv.com> since 1995. All these registrations predate the registration date of the disputed domain names.

The Complainant's OPENTV mark is widely known and has a strong online visibility. Thus, a domain name that reproduces such a mark is already suggestive of the registrant's bad faith. In the circumstances, it is not conceivable that the Respondent would not have been aware of the Complainant's trademark rights at the time of the registration of the disputed domain names.

In addition to the above, the Complainant showed evidence in the Complaint that the Respondent used a privacy service when he registered the disputed domain names and that they were used to mislead users into believing that the corresponding website was related to or authorized by the Complainant, by advertising and offering what the Complainant alleges is pirate TV channels subscriptions, "infringing" the Complainant's rights. The Respondent makes no denial of the Complainant's submissions. In the circumstances, this conduct indeed confirms the Respondent's bad faith.

Therefore, this Panel finds that the Respondent has intentionally attempted to cause confusion with the Complainant's trademark and domain name <opentv.com> by misleading Internet users to believe that its website belongs to or is associated with the Complainant.

This Panel finds that the Respondent's attempt of taking undue advantage of the trademark OPENTV as described in paragraph 4(b)(iv) of the Policy has been demonstrated.

For the above reasons, the Panel finds that the condition of paragraph 4(a)(iii) of the Policy has been satisfied, *i.e.*, the disputed domain names have been registered and are being used in bad faith.

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 names <opentv1.com> and <opentv21.com> be transferred to the Complainant.

/Mario Soerensen Garcia/

Mario Soerensen Garcia

Sole Panelist

Date: February 28, 2023