

ADMINISTRATIVE PANEL DECISION

Open Society Institute v. fletcher alex, OPEN SOCIETY FUND
Case No. D2022-5041

1. The Parties

The Complainant is Open Society Institute, United States of America (“United States”), represented by Morrison & Foerster, LLP, United States.

The Respondent is fletcher alex, OPEN SOCIETY FUND, Switzerland.

2. The Domain Name and Registrar

The disputed domain name <opensocietyfund.com> is registered with Ligne Web Services SARL (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on December 30, 2022. On January 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 5, 2023, the Registrar transmitted by email to the Center its verification response disclosing additional registrant and contact information for the disputed domain name which partly differed from the named Respondent (OPEN SOCIETY FUND) and contact information in the Complaint. The Center sent an email communication to the Complainant on the same day, 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 amendment to the Complaint in English on January 6, 2023.

On January 5, 2023, the Center sent an email communication to the Parties in both French and English regarding the language of the proceeding. On January 6, 2023, the Complainant requested that the language of the proceeding be English. On January 9, 2023, the Respondent requested that the proceeding be conducted in French.

On January 17, 2023, the proceeding was suspended at the Complainant’s request. On February 16, 2023, the suspension was extended until March 18, 2023 at the Complainant’s request. On March 28, 2023, the proceeding was reinstated at the Complainant’s request, as a settlement had not been reached.

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 in both French and English, and the proceedings commenced on March 29, 2023. In accordance with the Rules, paragraph 5, the due date for the Response was April 18, 2023. On April 18, 2023, pursuant to paragraph 5(b) of the Rules, the due date for the Response was extended until April 22, 2023 at the request of the Respondent. Subsequently, the Respondent did not submit any response. On April 25, 2023, the Center informed the Parties that it would proceed to panel appointment.

The Center appointed Matthew Kennedy as the sole panelist in this matter on May 10, 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 a United States charitable trust. It conducts philanthropic services and provides a database for the exchange of information. It holds the following United States trademark registrations:

- Number 2412029 for OPEN SOCIETY INSTITUTE, registered on December 12, 2000, with claims of first use in commerce on December 31, 1993 and February 28, 1995, specifying goods and services in classes 16, 36, 41 and 42, and disclaiming any exclusive right to use “institute” apart from the mark;
- Number 3769307 for OPEN SOCIETY POLICY CENTER, registered on March 30, 2010, with claims of first use in commerce in December 2004, specifying services in classes 35 and 36, and disclaiming any exclusive right to use “policy center” apart from the mark;
- Number 3081212 for a figurative mark (the “Spiral Logo”), registered on April 18, 2006 with claims of first use in commerce in April 1998, May 1998, and April 1999, specifying goods and services in classes 16, 36, 38 and 41; and
- Number 4248358 for OPEN SOCIETY FOUNDATIONS, registered on November 27, 2012 with claims of first use in commerce on August 23, 2010, specifying goods and services in classes 9, 16, 36, 38 and 41, and disclaiming any exclusive right to use “foundations” apart from the mark.

The above trademark registrations (collectively, the “OPEN SOCIETY Marks”) remain current. The Complainant also holds the domain name <opensocietyfoundations.org>, registered on April 6, 2010, that it uses in connection with a website where it provides information about its mission and activities. The website presents George Soros and Alexander Soros as the Founder/Chair and Deputy Chair, respectively, of the Complainant’s Global Board.

The Respondent is an individual and an entity allegedly based in Switzerland. The Respondent’s contact address in the Registrar’s Whois database consists of the name of the main shopping street in Geneva, with no street number, and a postcode in Bern.

The disputed domain name was created on June 27, 2022. It formerly resolved to a website in English that prominently displayed the Complainant’s Spiral Logo alongside the title “Open Society Fund”, and provided information about the Respondent’s consulting services for philanthropic projects. Some of the content was reproduced from the Complainant’s website, including a photograph and text that mentioned “Open Society Foundations”. The site presented George Soros and Alexander Soros as the Respondent’s Founder and CEO, respectively. The site published testimonials from nominally different people using the same profile

photograph and random content in Latin. The site displayed the names and logos of partner organizations and companies, one of which was “Open Society Foundations” alongside the Complainant’s Spiral Logo. The Respondent’s contact address on the website was in the United States. A contact form on the site allowed Internet users to enter their names and contact information. At the time of this Decision, the disputed domain name no longer resolves to any active website; rather, it is passively held.

5. Parties’ Contentions

A. Complainant

The disputed domain name is confusingly similar to the Complainant’s OPEN SOCIETY Marks.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has not made use of the disputed domain name in connection with a *bona fide* offering of goods or services. The Complainant has not authorized or licensed the Respondent to use the OPEN SOCIETY Marks nor is the Respondent a provider of the Complainant’s services. Rather, the Respondent registered the disputed domain name to create a website for an entity that purports to be the Complainant or otherwise affiliated with the Complainant. The Respondent appears to be using the disputed domain name in an effort to misappropriate the goodwill connected to the Complainant’s OPEN SOCIETY Marks and other trademarks. The Respondent has not been commonly known by the disputed domain name. The Respondent is not making a legitimate noncommercial or fair use but is using the disputed domain name to imply a connection between its services and the Complainant’s services.

The disputed domain name was registered and is being used in bad faith. The use of the OPEN SOCIETY mark in the disputed domain name as well as the Complainant’s long-term prior use of the marks show that the Respondent had actual knowledge of the Complainant’s rights in the marks. The Respondent’s use of the Complainant’s logo and photographs of the Complainant’s Founder/Chair and Deputy Chair without permission further evidences bad faith registration.

B. Respondent

The Respondent did not substantively reply to the Complainant’s contentions.

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

Paragraph 11(a) of the Rules provides that “unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding”. The Registrar confirmed that the Registration Agreement for the disputed domain name is in French.

The Complainant requests that the language of the proceeding be English. Its main arguments are that the website linked to the disputed domain name is entirely in English with no separate French version available. Additionally, the contact information listed on the website is an address in Portland, Oregon, United States. The Complainant provides evidence that the majority of residents of Portland speak English, and that French is not one of the five most commonly spoken languages other than English in that city and county.

The Respondent requests that the language of the proceeding be French. It states that it would have preferred that the Complainant contact it before initiating any procedure and alleges that the Parties would have been able to reach an agreement. The Respondent submits that it is French-speaking with a registered address in a country where French is an official language, and that the disputed domain name is

registered with a French company. It refers to paragraphs 11(a), 10(b) and 10(c) of the Rules and to previous UDRP panel decisions.

Paragraph 10(b) and (c) of the Rules require the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties. See, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#); and *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. Ltd.*, WIPO Case No. [D2008-0293](#).

The Panel observes that the Complaint and amendment to the Complaint in this proceeding were filed in English, whereas the Respondent submitted its comments on the language of the proceeding in French. Nevertheless, the website to which the disputed domain name resolved was in English, from which it is reasonable to infer that the Respondent can communicate in that language. Further, the Respondent does not allege that it is unable to understand English. The Panel attaches no importance to the fact that its contact address in the Registrar's Whois database is in a French-speaking country as that address is incomplete or false, while it has another contact address (in the United States) on its website. In view of these circumstances, the Panel considers that requiring the Complainant to translate the Complaint into French would create an undue burden and delay whereas accepting all submissions from the Parties in their original language does not cause prejudice to either Party.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English. The Panel would have accepted a Response in French, but none was filed.

6.2 Substantive Issues

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; and
- (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.

The burden of proof of each element is borne by the Complainant.

A. Identical or Confusingly Similar

Based on the evidence presented, the Panel finds that the Complainant has rights in the OPEN SOCIETY INSTITUTE mark, the OPEN SOCIETY POLICY CENTER mark, and the OPEN SOCIETY FOUNDATIONS mark.

The disputed domain name wholly incorporates the dominant element of all three of the above marks, *i.e.*, OPEN SOCIETY, as its initial element. The disputed domain name omits the words "institute", "policy center" and "foundations", which are disclaimed in the trademark registrations, while it adds the word "fund". However, these omissions and this addition do not prevent a finding of confusing similarity with the Complainant's marks because the dominant element of the marks remains clearly recognizable within the disputed domain name. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), sections 1.7 and 1.8.

The disputed domain name includes a generic Top-Level Domain ("gTLD") (".com"). As a standard requirement of domain name registration, a gTLD suffix may be disregarded in the comparison between a disputed domain name and a trademark for the purposes of the first element in paragraph 4(a) of the Policy unless it has some impact beyond its technical function, which is not the case here. See [WIPO Overview 3.0](#), section 1.11.

Therefore, the Panel finds that the disputed domain name is confusingly similar to trademarks 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 circumstance set out above, the Respondent used the disputed domain name with a website that was presented as that of an affiliate of the Complainant and offered consulting services for philanthropic projects. It displayed the Complainant's Spiral Logo and a title that incorporated the dominant element of the Complainant's word marks, *i.e.*, OPEN SOCIETY. The website displayed the names and photographs of the Complainant's founder/chair and deputy chair whom it claimed were its own founder and CEO. It expressly presented the Complainant as a partner organization. It also displayed fake testimonials. However, the Complainant submits that it has not authorized or licensed the Respondent to use the OPEN SOCIETY Marks and that the Respondent is not a provider of the Complainant's services. At the present time, the disputed domain name is passively held. The Panel considers that these circumstances indicate that the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods and services nor is it making a legitimate noncommercial or fair use of the disputed domain name.

As regards the second circumstance set out above, the Respondent's personal name is shown in the Registrar's private Whois database as "fletcher alex", not the disputed domain name. Although the Respondent's organization name is shown in the same database as "Open Society Fund", there is no evidence besides the Respondent's own website that the Respondent has been known by that name.

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. The Respondent failed to rebut that *prima facie* case because it did not substantively respond to the Complainant's contentions.

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. The fourth circumstance is as follows:

- (iv) by using the [disputed] domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] web site or location.

The disputed domain name was registered in 2022, years after the Complainant obtained its trademark registrations in the United States, which is the country where the Respondent's contact address on its website is located. The disputed domain name incorporates the dominant element of the Complainant's marks, *i.e.*, "open society", but replaces the words "institute", "policy center" or "foundations" with the word "fund". The Respondent's former website displayed the Complainant's Spiral Logo, a photograph from the Complainant's website, the names and photographs of the Complainant's actual founder and deputy chair and, in the body of the text, the actual name of the Complainant's "Open Society Foundations". These circumstances give the Panel reason to find that the Respondent knew of the Complainant and targeted its trademarks at the time when it registered the disputed domain name.

The Respondent formerly used the disputed domain name, which is confusingly similar to the Complainant's marks, in connection with a website that falsely presented the Respondent as an affiliate of the Complainant, displayed the Complainant's Spiral Logo without authorization, offered the same type of services as those that the Complainant offers, and falsely claimed that the Complainant was its partner. In view of these circumstances, the Panel considers that the disputed domain name was intended to attract Internet users by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of the Respondent's website within the terms of paragraph 4(b)(iv) of the Policy.

The Panel takes note that the use of the disputed domain name has changed and it no longer resolves to an active webpage. This change of use does not alter the Panel's conclusion, if anything, it is a further indication of bad faith.

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 <opensocietyfund.com> be transferred to the Complainant.

/Matthew Kennedy/
Matthew Kennedy
Sole Panelist
Date: May 15, 2023