

ADMINISTRATIVE PANEL DECISION

Orange Brand Services Limited v. 李明龙 (Minglong Li)

Case No. D2023-0079

1. The Parties

The Complainant is Orange Brand Services Limited, United Kingdom, internally represented.

The Respondent is 李明龙 (Minglong Li), China.

2. The Domain Names and Registrar

The disputed domain names <smart-orange.biz> and <smart-orange.com> are registered with Alibaba Cloud Computing (Beijing) Co., Ltd. (the "Registrar").

3. Procedural History

The Complaint regarding the disputed domain name <smart-orange.com> was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on January 6, 2023. On January 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name <smart-orange.com>. On January 10, 2023, 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 January 11, 2023 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 in English on January 20, 2023, requesting to add the disputed domain name <smart-orange.biz> to the current proceeding. On January 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name <smart-orange.biz>. On January 28, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

On January 11, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On January 12, 2023, the Complainant submitted a request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceeding commenced on January 31, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 20, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 21, 2023.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on February 28, 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

A. Complainant

The Complainant is a company headquartered in the United Kingdom and a leading provider since 1994 of telecommunications goods and services under the trade mark ORANGE (the “Trade Mark”) globally and in particular in the European and African markets.

The Complainant is the owner of numerous registrations in jurisdictions worldwide for the Trade Mark, including European Union Trade Mark registration No. 000127837, registered on March 29, 2001.

On January 4, 2021 and November 4, 2021, respectively, the Complainant obtained interim and final judgments from the Riga City Vidzeme District Court in Latvia against the operator of the Website referred to in Section 4.D. below, including orders restraining the operator of the Website from infringing the Trade Mark and from using the infringing SMART ORANGE trade mark in a domain name.

Notwithstanding these judgments, the Complainant has to date been unable to prevent the continued use of the Website, as the Riga City Vidzeme District Court in Latvia does not have the jurisdiction to enforce orders relating to domain names registered under the generic Top-Level Domain (“gTLD”) “.com”.

B. Respondent

The Respondent is apparently an individual resident in China.

C. The Disputed Domain Names

The disputed domain name <smart-orange.biz> was registered on July 11, 2016. The disputed domain name <smart-orange.com> was registered on August 4, 2017.

D. The Website at the Disputed Domain Names

The disputed domain names resolve to the same English language website promoting the retail of telecommunications goods and services under the trade mark SMART ORANGE (the “Website”) both online and via a network of retail stores in Europe, Russia and the CIS, Latin America, the Middle East and China.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain names are confusingly similar to the Trade Mark, the

Respondent has no rights or legitimate interests in respect of the disputed domain names, and the disputed domain names were registered and are being used in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Issue: Language of the Proceeding

The language of the Registration Agreement for the disputed domain names is Chinese.

Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

Paragraph 11(a) of the Rules allows the Panel to determine the language of the proceeding having regard to all the circumstances. In particular, it is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding, in order to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to undue burden being placed on the parties and undue delay to the proceeding (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

The Complainant has requested that the language of the proceeding be English, for several reasons, including the fact the Website is an English language website.

The Respondent did not make any submissions regarding the language of the proceeding, and did not file any response in either Chinese or English, after the Respondent had been duly notified in both Chinese and English of the language of the proceeding, and the Complaint.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both Parties, taking into account all relevant circumstances of the case, including matters such as the Parties' ability to understand and use the proposed language, time, and costs.

In light of the English language content of the Website, the Panel finds there is sufficient evidence in support of the conclusion that the Respondent is conversant in English.

The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2. Substantive Elements of the Policy

The Complainant must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has rights in the Trade Mark acquired through use and registration.

Disregarding the gTLDs “.biz” and “.com”, the disputed domain names incorporate the entirety of the Trade Mark, prefaced by the word “smart”, separated by a hyphen (see [WIPO Overview 3.0](#), section 1.7).

Where a relevant trade mark is recognisable within a 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 (see [WIPO Overview 3.0](#), section 1.8).

The Panel therefore finds that the disputed domain names are confusingly similar to the Trade Mark.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in the disputed domain name:

- (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 organisation) has been commonly known by the disputed domain name even if the respondent has acquired no trade mark 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 trade mark or service mark at issue.

The Complainant has not authorised, licensed, or permitted the Respondent to register or use the disputed domain names or to use the Trade Mark. The Panel finds on the record that there is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain names, and the burden is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that he has acquired any trade mark rights in respect of the disputed domain names or that the disputed domain names have been used in connection with a *bona fide* offering of goods or services. To the contrary, each of the disputed domain names has been resolved to the Website, offering telecommunications goods and services under the SMART ORANGE trade mark (with an orange logo similar to the Complainant’s one). Furthermore, the operator of the Website has been found by the Riga City Vidzeme District Court in Latvia to have infringed the Trade Mark, and has ignored the Order obtained by the Complainant in the same Court prohibiting the continued use of the Website and the disputed domain name <smart-orange.com>. In this regard, the Complainant states that “a company ‘Smart Orange SIA’ with a registered office located at [...] Latvia was incorporated on 5 May 2017. Although it is still mentioned on the Latvian website of the Disputed Domain Name (<http://www.smart-orange.com/lv/>), Smart Orange SIA was liquidated on 9 March 2022 as evidenced by the extract from the Latvian Commercial Registry dated 14 December 2022 in Annex 2 following the Court Judgment”. The Panel finds that the fact that the Website was operated by a company named Smart Orange SIA does not give rise to rights or legitimate interests under the Policy in the circumstances of the case.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain names.

There has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain names.

Moreover, the nature of the disputed domain names when considered together with the content of the Website is inherently misleading, and carries a risk of implied affiliation.

In all the circumstances, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names.

C. Registered and Used in Bad Faith

In light of the manner of use of the Website, the Panel finds that bad faith has been made out by the Complainant under paragraph 4(b)(iv) of the Policy.

The fact the operator of the Website is subject to, but has failed to comply with, the Order obtained by the Complainant from the Riga City Vidzeme District Court in Latvia provides further support for a finding of bad faith herein.

For all the foregoing reasons, the Panel concludes that 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 <smart-orange.biz> and <smart-orange.com> be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Dated: March 14, 2023