

## **ADMINISTRATIVE PANEL DECISION**

OVS S.p.A. v. Ornella Shephard, ovskollections.com  
Case No. D2023-0111

### **1. The Parties**

The Complainant is OVS S.p.A., Italy, represented by Rapisardi Intellectual Property, Italy.

The Respondent is Ornella Shephard, ovskollections.com, United States of America (“United States”).

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

The disputed domain name <ovskollections.com> is registered with Tucows Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 10, 2023. On January 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. 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 (Contact Privacy Inc. Customer 0163715349) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 18, 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 amendment to the Complaint on January 19, 2023.

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 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 9, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default February 13, 2023.

The Center appointed Soerensen Garcia, Mario, as the sole panelist in this matter on March 16, 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 the Italian company OVS S.p.A operating in the field of fashion retail.

The Complainant owns trademark registrations for the mark OVS and OVS-formative marks in many jurisdictions around the world, including the following registrations:

- European Union Trade Mark No. 010761609, for OVS, registered on September 3, 2012;
- International trademark No. 1158670, for OVS, registered on September 4, 2012;
- United States trademark No. 5361999, for OVS, registered on December 26, 2017;

The Complainant owns several domain names incorporating its mark OVS, registered before the registration of the disputed domain name, including <ovsfashion.com>, <ovsman.com>, <ovsofficial.com>, <ovsoutlet.com>, <ovsunderwear.com>, <ovswoman.com> among others.

The Respondent used a Whois privacy service.

The disputed domain name was registered on October 2, 2022. The disputed domain name resolved to a website reproducing the Complainant's trademarks OVS, purportedly offering goods in the clothing sector. It currently resolves to an unavailable website with the information "We'll be back soon".

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant was founded in 1972 and it is the largest clothing retailer in Italy. It has more than 1,600 OVS stores around the world.

The element "ovs" has no meaning in Italian and English, as well as (to the best of the Complainant's knowledge) in any other language.

The Complainant highlights that the disputed domain name totally overlaps its company name and trademarks.

The Complainant alleges that the Respondent has no rights or legitimate interests in respect of the domain name. The Complainant has never provided a third party with authorization to register the disputed domain name or domain names comprising the trademark OVS plus the word "collection".

The Complainant also argues that the Respondent registered the disputed domain name in bad faith, what can be proved by the fact that the Respondent's website displayed the trademark OVS in color and layout which are identical or at least confusingly similar to the Complainant's trademarks OVS as registered and used.

Additionally, the Complainant defends that the use of the element "ovs" by the Respondent to sell uniforms and apparel in general constitutes a clear infringement of the Complainant's rights over the trademark OVS.

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

## **B. Respondent**

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

## **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 demonstrates that the Complainant is the owner of several trademark registrations for OVS in many jurisdictions. The trademark registrations for the Complainant's trademark OVS predate the registration of the disputed domain name.

The disputed domain name incorporates the Complainant's trademark OVS in its entirety. The addition of the term "collections" does not avoid a finding of confusing similarity between the disputed domain name and the Complainant's trademark.

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 mark. See section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)).

Moreover, it is the general view among UDRP panels that where the relevant trademark is recognizable within the disputed domain name the addition of others terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) to a trademark would not prevent a finding of confusing similarity under the first element of the UDRP. See section 1.8 of the [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 name is confusingly similar to the Complainant's trademark.

### **B. Rights or Legitimate Interests**

The Respondent has not submitted a 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 Complainant's trademark OVS.

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

There is no evidence that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name or that before any notice of the dispute the Respondent has made 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. Instead, the Complainant showed evidence that the disputed domain name was being used to mislead Internet users, by offering clothing articles for sale under the OVS trademark in the same colors used by the Complainant.

The construction of the disputed domain name itself is such to carry a risk of implied affiliation that cannot constitute fair use.

The Panel finds that the use of the disputed domain name, which incorporates the Complainant's trademark with the addition of the word "collections", purportedly offering goods in the Complainant's sector and reproducing the Complainant's mark, does not correspond to a *bona fide* use of the disputed domain name 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 name.

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

The trademark OVS is registered by the Complainant in several jurisdictions, including in the United States where the Respondent is located, and has been used since a long time. Also, the Complainant has registered domain names consisting of the mark OVS.

The disputed domain name reproduces the Complainant's trademark OVS in its entirety, with the addition of the descriptive word "collections," and the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant's trademark OVS is distinctive and has a strong worldwide and online visibility.

The Complaint demonstrates that there is no other reason for the use and registration of the disputed domain name than to take any advantage of the reputation of the Complainant's trademark, with the intent to deceive Internet users into believing that the disputed domain name is associated with the Complainant. The Respondent obviously knew of the Complainant's mark when registering the disputed domain name to be used purportedly to sell the same goods offered by the Complainant.

Moreover, the Respondent has chosen not to respond to the Complainant's allegations. According to the panel's decision in *The Argento Wine Company Limited v. Argento Beijing Trading Company*, WIPO Case No. [D2009-0610](#), "the failure of the Respondent to respond to the Complaint further supports an inference of bad faith" (see also *Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. [D2002-0787](#)).

The failure of the Respondent to submit a Response and the fact that the Respondent used a privacy service to conceal its identity corroborates the finding of bad faith. See section 3.3 of the [WIPO Overview 3.0](#)

Therefore, this Panel finds that the Respondent has intentionally attempted to cause confusion with the Complainant's trademark by misleading Internet users to believe that the inherently misleading disputed domain name belong to or is associated with the Complainant. The fact that the disputed domain name currently resolves to an unavailable website with the information "We'll be back soon" does not prevent a finding of bad faith.

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 name has been registered and is 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 name, <ovscollections.com>, be transferred to the Complainant.

*/Mario Soerensen Garcia/*

**Mario Soerensen Garcia**

Sole Panelist

Date: March 30, 2023