

ADMINISTRATIVE PANEL DECISION

Financiere Oui Care v. yangfei
Case No. D2023-0379

1. The Parties

The Complainant is Financiere Oui Care, France, represented by Casalonga Avocats, France.

The Respondent is yangfei, China.

2. The Domain Name and Registrar

The disputed domain name <oui-care.com> is registered with Realtime Register B.V. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 27, 2023. On January 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 30, 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 30, 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 on February 1, 2023.

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 February 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 23, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 24, 2023.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on March 2, 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 Financiere Oui Care is a French company part of the Oui Care Group, which is specialized in the field of personal services under the name OUI CARE.

Founded in 1996, the Oui Care Group is a leader in the home service market in France. It has more than ten different brands, over 18,000 employees, more than 110,000 customers, and around 600 agencies in France, Spain, Mexico, and Portugal.

The Complainant offers a wide range of home care products and services, including: assistance for disabled persons; household ironing; home improvement; assistance for elderly; pet sitting; childcare and housework.

The Complainant is the owner of the OUI CARE (combined) mark. The mark was registered in France (reg. No. 4361458) on May 15, 2017, and the Complainant also registered an International registration for OUI CARE (combined) (reg. No. 1388569) on November 19, 2017, covering *inter alia* the following territories: United Kingdom, Ireland, Mexico, Sweden, Austria, Benelux, Switzerland, Germany, Spain, Italy, Monaco, Poland, Portugal, and Romania.

The Complainant has been operating a website at “www.ouicare.com” since December 24, 2011.

The disputed domain name was registered on February 23, 2022, and is currently not active.

5. Parties' Contentions

A. Complainant

The Complainant requests that the disputed domain name be transferred to the Complainant.

According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the disputed domain name is identical or confusingly similar to the OUI CARE trademark registrations of the Complainant.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the disputed domain name.

Third, the Complainant submits that the disputed domain name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements which a complainant must satisfy in order to succeed. The Complainant must satisfy that:

- (i) the 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 such domain name; and

(iii) the domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1

The disputed domain name contains the two terms "oui" and "care" forming the mark of the Complainant separated by a dash ("-"). The Panel finds the entirety of the OUI CARE mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Under the Policy, a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. Once such a *prima facie* case is made, the respondent carries the burden of production of demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. [WIPO Overview 3.0](#), section 2.1.

Paragraph 4(c) of the Policy lists the ways that a respondent may demonstrate rights or legitimate interests in the domain name:

- (i) before any notice of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the 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 domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

In this case, the Panel finds that the Complainant has made out a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. In particular, the Respondent has not submitted any arguments or evidence to rebut the Complainant's contention that it has never authorized, licensed or permitted the Respondent to use the OUI CARE mark in any way.

The disputed domain name is not in use. Therefore the Respondent is not using the disputed domain name in connection with any *bona fide* offering of goods or services, nor is the Respondent making a legitimate noncommercial or fair use of the disputed domain name.

Therefore, the Panel concludes that the Respondent does not have rights or legitimate interests in the disputed domain name within the meaning of the Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Panel considers that the record of this case reflects that:

- The Complainant's trademark registrations OUI CARE are known in the home service market, especially in France.
- The Complainant has never authorized, licensed or otherwise consented to the Respondent's use of its trademarks or any confusingly similar variation thereof, for any purpose including as part of a domain name.
- The Respondent never answered the cease and desist letter and then defaulted.

As a result, there is no doubt that the Respondent knew or should have known about the existence of the Complainant and its trademarks. In the circumstances, the Panel finds that the Respondent registered the disputed domain name in bad faith.

With respect to bad faith use, the Panel finds that the Complainant's OUI CARE mark is in use including on the Complainant's website at "www.ouicare.com" (operating since December 24, 2011), and that the Respondent's non-use, or "passive holding," of the Domain Name qualifies as bad faith use under the principle first set forth in *Telstra Corp. v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

The Complainant has established Policy paragraph 4(a)(iii).

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, <oui-care.com>, be transferred to the Complainant.

/Pablo A. Palazzi/

Pablo A. Palazzi

Sole Panelist

Date: March 16, 2023