

ADMINISTRATIVE PANEL DECISION

Linde Plc v. Karl Schnurch, EdenMedia
Case No. D2023-0973

1. The Parties

Complainant is Linde Plc, Ireland, represented by CSC Digital Brand Services Group AB, Sweden.

Respondent is Karl Schnurch, EdenMedia, Seychelles.

2. The Domain Name and Registrar

The disputed domain name <bochomeoxygen.com> (the “Domain Name”) is registered with Key-Systems GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 3, 2023. On March 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On March 6, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to Complainant on March 10, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on March 14, 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 Respondent of the Complaint, and the proceedings commenced on March 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 5, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on April 12, 2023.

The Center appointed Marina Perraki as the sole panelist in this matter on April 24, 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

Complainant is a public limited company formed under the laws of Ireland with its principal offices in the United Kingdom and United States of America. It is an industrial gas and chemical engineering company, and a leading industrial gas and engineering company with operating profit of nearly USD 5 billion (EUR 4 billion) and sales of USD 31 billion (EUR 26 billion) declared in 2021. Complainant employs approximately 72,000 people globally and serves customers in more than 100 countries worldwide. Its LinkedIn page has more than 388,715K followers, its Facebook page has more than 96K followers, and its Twitter page has more than 15.8K followers.

Complainant also offers oxygen therapy products and support patient services in their homes. Complainant offers this service primarily from its website at “www.bochomeoxygen.co.uk”.

Complainant’s group owns trademark registrations for BOC in various jurisdictions, including:

- the Canadian trademark registration No. 463355, BOC (word), filed on December 13, 1993, and registered on September 13, 1996, for goods and services in international classes 1, 4, 5, 6, 7, 9, 10, 11, 22, 36, 39, and 42; and
- the European Union trademark registration No. 000462069, BOC (word), filed on January 28, 1997, and registered on September 17, 1999, for goods and services in international classes 1, 4, 5, 7, 9, 10, 11, and 39.

Complainant also owns domain name registrations for BOC including <boc.com> registered on February 28, 1994, and <bochomeoxygen.co.uk> registered on July 29, 2011.

The Domain Name was registered on February 10, 2020, and leads to a Pay-Per-Click (“PPC”) page (the “Website”) providing sponsored links to third party websites, some of which display Complainant’s trademark and business in the sponsored links’ names and directly compete with Complainant’s business, such as “Home Oxygen” and “Boc Gas Cylinders”.

5. Parties’ Contentions

A. Complainant

Complainant asserts that it has established all three elements required under paragraph 4(a) of the Policy for a transfer of the Domain Name.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements, which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Complainant has demonstrated rights through registration and use on the BOC mark.

The Panel finds that the Domain Name is confusingly similar with the BOC trademark of Complainant.

The Domain Name incorporates the said trademark of Complainant in its entirety with the addition of the words “home” and “oxygen”. The Panel finds that the trademark is recognizable in the Domain Name (*Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson, Sr.*, WIPO Case No. [D2000-1525](#); WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) section 1.7).

The generic Top-Level Domain (“gTLD”) “.com” is also disregarded, as gTLDs typically do not form part of the comparison on the grounds that they are required for technical reasons only (*Rexel Developpements SAS v. Zhan Yequn*, WIPO Case No. [D2017-0275](#)).

The Panel finds that the Domain Name is confusingly similar to the BOC trademark of Complainant.

Complainant has established Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to Respondent of the dispute, 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) 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) 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.

The Panel concludes that Respondent lacks rights or legitimate interests in respect of the Domain Name.

Respondent has not submitted any response and has not claimed any such rights or legitimate interests with respect to the Domain Name. As per Complaint, Respondent was not authorized to register the Domain Name and Respondent has not been commonly known by the Domain Name.

Prior to the notice of the dispute, Respondent did not demonstrate any use of the Domain Name or a trademark corresponding to the Domain Name in connection with a *bona fide* offering of goods or services.

On the contrary, as Complainant demonstrated, the Domain Name resolves to the Website which contains PPC links to third party websites, some of which directly compete with Complainant’s business, such as “Home Oxygen” and “Boc Gas Cylinders”.

Respondent has not provided a plausible explanation about the inclusion of these links. In the absence of such explanation, it appears not unlikely to the Panel that the inclusion of these links was intended to increase and monetize the traffic to the Domain Name.

These circumstances speak against any rights or legitimate interests held by Respondent.

Complainant has established Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, “in particular but without limitation”, are evidence of the registration and use of the Domain Name in “bad faith”:

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding Domain Name, provided that Respondent has engaged in a pattern of such conduct; or
- (iii) Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent’s website or other on line location, by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of Respondent’s website or location or of a product or service on Respondent’s website or location.

The Panel concludes that Respondent has registered and used the Domain Name in bad faith.

Complainant’s BOC trademark had been registered and used before the Domain Name registration. The Panel finds it more likely than not that Respondent had Complainant’s mark in mind when registering the Domain Name (*Tudor Games, Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whols Privacy Services Pty Ltd / Domain Administrator, Vertical Axis Inc.*, WIPO Case No. [D2014-1754](#); *Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net*, WIPO Case No. [D2000-0226](#)). This also in view of the fact that Complainant maintains a website under <bochomeoxygen.co.uk> offering home oxygen services and taking into account that some of the sponsored links in the Website directly compete with Complainant’s services.

Respondent should have known about Complainant’s rights, as such knowledge is readily obtainable through a simple browser search, noting also the identical domain name operated by the Complainant <bochomeoxygen.co.uk> (see *Caesars World, Inc. v. Forum LLC*, WIPO Case No. [D2005-0517](#); *Compart AG v. Compart.com / Vertical Axis Inc.*, WIPO Case No. [D2009-0462](#)).

As regards use, the Domain Name resolves to the Website which contains PPC links to third party websites, mentioning Complainant’s trademark and business in the links’ names. Accordingly, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent’s website, by creating a likelihood of confusion with Complainant’s mark. It has been recognized that use of another’s trademark to generate revenue from Internet advertising can constitute registration and use in bad faith (*McDonald’s Corporation v. ZusCom*, WIPO Case No. [D2007-1353](#); *Volkswagen Aktiengesellschaft v. Robert Brodi*, WIPO Case No. [D2015-0299](#); *SAP SE v. Domains by Proxy, LLC / Kamal Karmakar*, WIPO Case No. [D2016-2497](#); [WIPO Overview 3.0](#), section 3.5).

Under these circumstances and on this record, the Panel finds that Respondent has registered and is using the Domain Name in bad faith.

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 Domain Name <bochomeoxygen.com> be transferred to Complainant.

/Marina Perraki/

Marina Perraki

Sole Panelist

Date: May 8, 2023