

## **ADMINISTRATIVE PANEL DECISION**

### **O2 Developpement v. Olga Chernysheva**

### **Case No. D2023-1818**

#### **1. The Parties**

The Complainant is O2 Developpement, France, represented by Casalonga Avocats, France.

The Respondent is Olga Chernysheva, Russian Federation.

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

The disputed domain name <o2.maison> (the “Domain Name”) is registered with Registrar of Domain Names REG.RU LLC (the “Registrar”).

#### **3. Procedural History**

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 24, 2023. On April 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 27, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on May 1, 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 May 5, 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”).

The Registrar also indicated that the language of the Registration Agreement is Russian. On May 1, 2023, the Center sent an email communication to the Parties in both English and Russian inviting the Complainant to submit satisfactory evidence of an agreement between the Complainant and the Respondent to the effect that the proceeding should be in English; or submit the Complaint translated into English; or submit a request for English to be the language of the administrative proceedings. The Respondent was also invited to comment on the language of the proceeding. On May 5, 2023, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint in English and Russian, and the proceedings commenced on May 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 29, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 30, 2023.

The Center appointed Piotr Nowaczyk as the sole panelist in this matter on June 7, 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 French company offering a wide range of home care products and services, including assistance for disabled persons, assistance for elderly, childcare, tutoring, janitorial services, home improvement services or gardening. Currently, the Complainant has around 14,000 employees and 360 agencies. It provides its services to around 74,000 customers across France.

The Complainant is the owner of the O2 trademark registrations, including:

- the International Trademark Registration O2 (word) No. 1652805 registered on November 23, 2021; and
- the French Trademark Registration O2 (word) No. 4770042 registered on May 25, 2021.

Moreover, the Complainant is the owner of numerous domain names incorporating its O2 trademark, including its official domain name <o2.fr>.

The Domain Name was registered on August 29, 2022.

On March 22, 2023, the Complainant sent the cease-and-desist letter to the Respondent requesting the transfer of the Domain Name to the Complainant. However, no reply was received by the Complainant.

At the time of submitting the Complaint and as of the date of this Decision, the Domain Name has resolved to the Registrar parking page.

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

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

The Complainant requests that the 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 Domain Name is identical or confusingly similar to the trademark in which the Complainant has rights.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the Domain Name.

Third, the Complainant submits that the 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

### 6.1. Preliminary Matter – Language of the Proceeding

The language of the Registration Agreement for the Domain Name is Russian. 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 Panel may also order that any documents submitted in a language other than that of the proceeding be translated.

As noted by previous UDRP panels, paragraph 11 of the Rules must be applied in accordance with the overriding requirements of paragraphs 10(b) and 10(c) of the Rules that the parties are treated equally, that each party is given a fair opportunity to present its case, and that the proceeding takes place with due expedition (see, e.g., *General Electric Company v. Edison Electric Corp. a/k/a Edison Electric Corp. General Energy, Edison GE, Edison-GE and EEEGE.COM*, WIPO Case No. [D2006-0334](#)).

The Complainant has submitted a request that the language of the proceeding be English. The Complainant argues that English is the most spoken language in the world. Moreover, the Complainant submits that it is unable to communicate in Russian. Translation of the Complaint would unfairly disadvantage and burden the Complainant, as well as delay this proceeding.

The Panel agrees that substantial additional expense and delay would likely be incurred if the Complaint had to be translated into Russian. Moreover, the Panel notes that the Respondent did not comment on the language of the proceeding, even though it was notified in English and Russian regarding the language of the proceeding.

Thus, taking these circumstances into account, the Panel finds that it is appropriate to exercise its discretion and allow the proceeding to be conducted in English.

### 6.2. Substantive Matters – Three Elements

Paragraph 4(a) of the Policy places a burden on the Complainant to prove the presence of three separate elements, which can be summarized as follows:

- (i) the 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 the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

The requested remedy may only be granted if the above criteria are met.

At the outset, the Panel notes that the applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”. See section 4.2, [WIPO Overview 3.0](#).

#### A. Identical or Confusingly Similar

The first element requires that the Complainant must establish is that the Domain Name is identical or confusingly similar to the trademark in which the Complainant has rights.

The Complainant holds valid O2 trademark registrations. The Domain Name incorporates this trademark in its entirety. As numerous UDRP panels have held, incorporating a trademark in its entirety is sufficient to establish that a domain name is identical or confusingly similar to that trademark (see *PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS COMPUTER INDUSTRY (a/k/a EMS)*, WIPO Case No. [D2003-0696](#)).

The generic Top-Level Domain (“gTLD”) “.maison” in the Domain Name is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See section 1.11.1, [WIPO Overview 3.0](#).

Given the above, the Panel finds that the Domain Name is identical to the Complainant’s O2 trademark. Thus, the Complainant has proved the requirements under paragraph 4(a)(i) of the Policy.

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

Under the second element, the Complainant must prove that the Respondent has no rights or legitimate interests in the Domain Name.

The respondent may establish a right or legitimate interest in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- (i) that it has used or made 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 prior to the dispute; or
- (ii) that it is commonly known by the domain name, even if it has not acquired any trademark rights; or
- (iii) that it 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.

Although given the opportunity, the Respondent has not submitted any evidence indicating that any of the circumstances foreseen in paragraph 4(c) of the Policy are present in this case.

On the contrary, it results from the evidence in the record that the Complainant’s O2 trademark registrations predate the Respondent’s registration of the Domain Name. There is no evidence in the case record that the Complainant has licensed or otherwise permitted the Respondent to use the O2 trademark or to register the Domain Name incorporating this trademark. There is also no evidence to suggest that the Respondent has been commonly known by the Domain Name.

Moreover, it results from the evidence on record that the Respondent does not make use of the Domain Name in connection with a *bona fide* offering of goods or services, nor does it make a legitimate noncommercial or fair use of the Domain Name. On the contrary, at the time of submitting the Complaint and as of the date of this Decision, the Domain Name has resolved to the parking page. In fact, it does not result from the case evidence that the Domain Name has been used in any active way to date.

Given the above, the Respondent has failed to invoke any circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in respect of the Domain Name. Thus, there is no evidence in the case file that refutes the Complainant’s *prima facie* case. The Panel concludes that the Complainant has also proved the requirement under paragraph 4(a)(ii) of the Policy.

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

Under the third element, the Complainant must prove that the Domain Name has been registered and is being used in bad faith.

Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark. See section 3.1, [WIPO Overview 3.0](#).

Under paragraph 4(b) of the Policy, evidence of bad faith registration and use includes without limitation:

- (i) circumstances indicating the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the owner of a trademark or to a competitor of the trademark owner, for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name; or

- (ii) circumstances indicating that the domain name was registered in order to prevent the owner of a trademark from reflecting the mark in a corresponding domain name, provided it is a pattern of such conduct; or
- (ii) circumstances indicating that the domain name was registered primarily for the purpose of disrupting the business of a competitor; or
- (iii) circumstances indicating that the domain name has intentionally been used in an attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with a trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on a website or location.

As indicated above, the Complainant's rights in the O2 trademark predate the registration of the Domain Name. This Panel finds that the Respondent was or should have been aware of the Complainant's trademark at the time of registration, as it has been proven to the Panel's satisfaction that the Complainant's O2 trademark is well known and unique to the Complainant. Thus, the Respondent could not likely reasonably ignore the reputation of products and services under this trademark. In sum, the Respondent in all likelihood registered the Domain Name with the expectation of taking advantage of the reputation of the Complainant's O2 trademark.

Furthermore, as of the date of this Decision, as well as at the time of submitting the Complaint, the Domain Name has resolved to the parking page. Considering the overall circumstances of this case, the Panel finds that the Respondent's passive holding of the Domain Name does not prevent a finding of bad faith. As numerous UDRP panels have held, passive holding, under the totality of circumstances of the case, would not prevent a finding of bad faith under the Policy. See section 3.3, [WIPO Overview 3.0](#). Here, given the well-known nature of the Complainant's trademark, the Respondent's failure to participate in the proceeding, and the implausible good faith use to which the Domain Name may be put, the Panel agrees with the above.

In addition, the Complainant has presented evidence that the Domain Name has been configured with MX records to enable sending and receiving emails from the Domain Name. In the circumstances of this case, there appear to be no conceivable benefit to the Respondent to be gained by registration and use of the Domain Name in this way other than through bad faith activity such as phishing (*W.W. Grainger, Inc. v. WhoisGuard Protected, WhoisGuard, Inc. / Daniel Thomas*, WIPO Case No. [D2020-1740](#)).

Finally, the Respondent failed to respond to the cease-and-desist letters sent by the Complainant. This circumstance constitutes further evidence of the Respondent's bad faith.

For the reasons discussed above, the Panel finds that the Complainant has proved the requirements under paragraph 4(a)(iii) 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 Domain Name <o2.maison> be transferred to the Complainant.

*/Piotr Nowaczyk/*

**Piotr Nowaczyk**

Sole Panelist

Date: June 21, 2023