

ADMINISTRATIVE PANEL DECISION

AS Eesti Post v. Bargaza Fitalia, Bargavavache and Thomas Dubois Case No. D2023-2313

1. The Parties

The Complainant is AS Eesti Post, Estonia, represented by AAA Patendibüroo OÜ (AAA Legal Services), Estonia.

The Respondents are Bargaza Fitalia, Bargavavache, United States of America, and Thomas Dubois, France.

2. The Domain Names and Registrars

The disputed domain name <post-omniva.com> is registered with Google LLC (the “Registrar”).

The disputed domain name <omniva-tarne.com> is registered with GMO Internet, Inc. d/b/a Discount-Domain.com and Onamae.com (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on May 29, 2023. On May 30, 2023, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On May 30, 2023 and May 31, 2023, the Registrars transmitted by email to the Center their verification responses respectively disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Domain Admin) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 31, 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 June 4, 2023.

On May 31, 2023, the Center transmitted an email communication to the Parties in English and Japanese regarding the language of the proceeding. On June 4, 2023, the Complainant submitted a request that English be the language of the proceeding. The Respondents 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 Respondents in English and Japanese of the Complaint, and the proceedings commenced on June 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 29, 2023. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on June 30, 2023.

The Center appointed Masato Dogauchi as the sole panelist in this matter on July 18, 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

Whereas the Respondents have not submitted any formal response, the following information from the Complaint is found to be the factual background of this case.

The Complainant is an Estonian state-owned postal, logistics and e-solutions (payments, invoicing) company with operations in Estonia, Latvia and Lithuania. OMNIVA is the brand name of the Complainant's international logistics business established in 2013. OMNIVA OÜ is the registered business name of the company. The Complainant employs more than 2,000 employees, operates directly in three countries in Baltic States.

The Complainant owns the OMNIVA trademarks, among others, as follows:

- European Union Registration No. 012221149 for OMNIVA, registered on May 22, 2014;
- European Union Registration No. 018603966 for OMNIVA, registered on April 27, 2022;
- European Union Registration No. 018771071 for OMNIVA, registered on April 26, 2023.

The Complainant uses the OMNIVA trademark in its own domain names and websites such as "www.omniva.ee", "www.omniva.lv", "www.omniva.lt", etc.

The disputed domain name <post-omniva.com> was registered on May 15, 2023, and the disputed domain name <omniva-tarne.com> was registered on May 26, 2023. These disputed domain names resolve to websites which are similar in many respects to the websites used by the Complainant including the use of almost identical color scheme and the Complainant's trademark, and appear to allow customers to track packages that are delivered to Estonia. When accessing the webpages resolved by the disputed domain name <post-omniva.com>, the access is immediately blocked and a message appears that there is a potential phishing attempt.

5. Parties' Contentions

A. Complainant

Prior to discussing the substantive matters in this case, the Complainant requests the Panel to consolidate the complaints against two Respondents into one Complaint. The Complainant contends that the disputed domain names are controlled by the same domain name holder, the seemingly different registrants are alter egos of the same beneficial holder, and the consolidation would be fair and equitable to all Parties and benefits procedural efficiency. The reasons for such contention asserted by the Complainant are as follows:

- both disputed domain names were registered within a short period of one another, namely within 11 days;
- both disputed domain names follow a similar pattern, *i.e.*, incorporating the Complainant's OMNIVA trademark in conjunction with the terms "post" or "tarne" ("delivery" in English), making a clear reference to the services provided by and offered by the Complainant;

- the two websites resolved by both disputed domain names are completely identical in every aspect.

The Complainant's contentions with regard to the substantive matters are divided into three parts as follows:

First, the Complainant asserts that the disputed domain names are confusingly similar to its trade mark, since the disputed domain names incorporates the entirety of the Complainant's OMNIVA trademark and the dominant element in the disputed domain names is "omniva". The terms "post" and "tarne" ("delivery" in English) the Respondents combines with the term "omniva" would not preclude confusion, rather the opposite since the Complainant's OMNIVA trademark is associated with its postal services and parcel delivery. The Complainant also contends that the hyphen and the suffix are irrelevant in the similarity test.

Second, the Complainant asserts that the Respondents have no rights or legitimate interests in respect of the disputed domain names. The Complainant confirms that the Complainant has not authorized the Respondents to use the OMNIVA trademark. It should be sufficient that the Complainant shows *prima facie* that the Respondents lack rights or legitimate interests in the disputed domain names in order to shift the burden of production to the Respondents. The Complainant contends the use of the disputed domain names in this case constitutes neither a *bona fide* offering of services nor a legitimate noncommercial or fair use.

Third, the Complainant asserts that the disputed domain names have been registered and are being used in bad faith. It would be inconceivable for the Respondents to argue that they possessed no prior knowledge of the Complainant's OMNIVA trademark at the time of registration of the disputed domain names. With regard to bad faith use, the Complainant asserts that, for instance, its customers have notified the Complainant that they have received text messages in which they are directed to one of the disputed domain names, <post-omniva.com>, in order to pay alleged customs fees. The Complainant contends that the Respondents use the disputed domain names to make Internet users have false impression, for commercial gain, that the websites resolved by the disputed domain names are affiliated to or sponsored by the Complainant.

B. Respondents

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

6. Discussion and Findings

6.1. Preliminary Issues

A. Consolidation of Multiple Respondents

The Complainant requests the consolidation of the Respondents in this case. In accordance with section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the following factors should be considered in general: the domain names or corresponding websites are subject to common control; and the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario. In addition, according to the same section, the following factors have been discussed in the determination of the consolidation of respondents in the previous panel decisions:

- (i) the registrants' identity(ies) including pseudonyms;
- (ii) the registrants' contact information including email address(es), postal address(es), or phone number(s), including any pattern of irregularities;
- (iii) relevant IP addresses, name servers, or webhost(s);
- (iv) the content or layout of websites corresponding to the disputed domain names;

- (v) the nature of the marks at issue (e.g., where a registrant targets a specific sector);
- (vi) any naming patterns in the disputed domain names (e.g., <mark-country> or <mark-goods>);
- (vii) the relevant language/scripts of the disputed domain names particularly where they are the same as the mark(s) at issue;
- (viii) any changes by the respondent relating to any of the above items following communications regarding the disputed domain name(s);
- (ix) any evidence of respondent affiliation with respect to the ability to control the disputed domain name(s);
- (x) any (prior) pattern of similar respondent behavior; or
- (xi) other arguments made by the complainant and/or disclosures by the respondent(s).

In this case, with regard to the items (i) through (iii) above, although the Panel cannot conclude if the contact details of the Respondents are false, the Panel does note that the Written Notice could not be delivered to the Respondents by courier. Further, the Respondent Bargaza Fitalia, Bargavavache appears to be located in the United States of America according to the Registrar's verification, however, its phone number seems to be related to a French number. With regard to the item (iv), the layout and color of the websites corresponding to the disputed domain names resemble each other. With regard to the item (v), each disputed domain name includes the term, "post" and "tarne" ("delivery" in English) respectively, indicating the field of services of the Complainant. With regard to the item (vi), the naming patterns of the disputed domain names are similar in that each of them consists of the entirety of the Complainant's OMNIVA trademark, the term indicating the field of the Complainant's service and the hyphen connecting the trademark and the term. With regard to the item (vii), the languages used in the disputed domain names are different in that one of which includes the term in Estonian ("tarne"), while the other includes the term in English ("post"). Finally, the facts corresponding to the items (viii) through (x) are not found in this case.

Considering the above and the Respondents did not reply to the Complainant's contentions in this proceeding including no objection to the Complainant's consolidation request, the Panel determines that the disputed domain names are subject to common control, and that the consolidation of the Respondents would be fair and equitable to all Parties.

B. Language of the Proceeding

In respect of the language to be used in the administrative proceeding, in accordance with the Rules, paragraph 11(a), the language of the administrative proceeding shall be, in principle, the language of the registration agreement. However, the same provision allows the panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

In the present case, the Registrar with regard to the disputed domain name <omniva-tarne.com> confirmed in the email to the Center on May 31, 2023 that the language of the Registration Agreement for this disputed domain name is Japanese, while the Registrar with regard to the disputed domain name <post-omniva.com> confirmed in the email to the Center on May 30, 2023 that the language of the Registration Agreement for this disputed domain name is English. The Complainant submitted a request that English shall be the language of the proceeding in the amended Complaint.

The Panel determines that the language of this proceeding shall be English rather than Japanese on the following grounds:

- the Panel finds that the disputed domain names are subject to common control, and the language of Registration Agreement for one of the disputed domain names is in English;

- the Respondents did not reply to the notification of language of the proceeding sent in both English and Japanese by the Center that the Respondents were invited to indicate its objection, if any, to the Complainant's request for English to be the language of the proceeding by the specified due date;
- the disputed domain names are not in Japanese script; and
- the use of the Japanese language would produce undue burden on the Complainant and delay of the proceeding in consideration of the absence of a Response from the Respondents.

6.2. Substantive Matters

In accordance with the Rules, paragraph 15(a), a panel shall decide a case on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable. Since the Respondents have not made any arguments in this case, the following decision is rendered on the basis of the Complainant's contentions and other evidence submitted by the Complainant.

In accordance with the Policy, paragraph 4(a), in order to qualify for a remedy, the Complainant must prove each of the following:

- (i) The disputed domain names are identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- (ii) The Respondents have no rights or legitimate interests in respect of the disputed domain names; and
- (iii) The disputed domain names have been registered and are being used in bad faith.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has rights in the OMNIVA trademark.

The disputed domain names respectively include the term "omniva", which is same as the Complainant's OMNIVA trademark. Such inclusion is, in principle, by itself enough to have the disputed domain names to be confusingly similar to the Complainant's OMNIVA trademark. In one of the disputed domain name <post-omniva.com>, there are the additional term "post", the hyphen and the suffix, ".com", and in the other disputed domain name, <omniva-tarne.com>, there are the hyphen, the additional term "tarne" ("delivery" in English) and the same suffix. The additional terms do not prevent a finding of confusing similarity because the Complainant's OMNIVA trademark remains clearly recognizable within the disputed domain names. See section 1.8 of the [WIPO Overview 3.0](#). The hyphen and the suffix ".com" which represents one of the generic Top-Level Domains are irrelevant in the determination of the confusing similarity. Therefore, the Panel finds that the disputed domain names are confusingly similar to the trademark in which the Complainant has rights.

The above requirement provided for in paragraph 4(a)(i) of the Policy is accordingly satisfied.

B. Rights or Legitimate Interests

There is no evidence that shows the Respondents are commonly known by the name "post-omniva" or "omniva-tarne." The Respondents are not authorized to use the Complainant's OMNIVA trademark. Moreover, the websites resolved by the disputed domain names do not represent any legitimate interests of the Respondents in the disputed domain names as they use the almost identical color scheme of the Complainant's official websites, and the Complainant's trademark, and appear to allow customers to track packages that are delivered to Estonia.

Since the Respondents did not reply to the Complainant's contentions in this proceeding, the Panel finds on the available record that the Complainant has established an un rebutted *prima facie* case that the Respondents have no rights or legitimate interests in respect of the disputed domain names. See section 2.1 of the [WIPO Overview 3.0](#).

The above requirement provided for in paragraph 4(a)(ii) of the Policy is accordingly satisfied.

C. Registered and Used in Bad Faith

In consideration of the size and popularity of the Complainant's business in in Estonia, Latvia and Lithuania, it is highly unlikely that the Respondents would not have known of the Complainant's right in the OMNIVA trademark at the time of registration of the disputed domain names. And, since the disputed domain names include, in addition to the term "omniva" which is the same with the Complainant's trademark, the terms "post" and "tarne", an Estonian word meaning delivery in English and these additional terms are related to the Complainant's postal and logistics businesses, the Panel finds that the Respondents' selection of such terms shows that the Respondents targeted the Complainant's OMNIVA trademark at the time of registering the disputed domain name. Therefore, it is found that the Respondents registered the disputed domain names in bad faith.

With regard to the requirement that the Respondents are using the disputed domain names in bad faith, it should be noted that the disputed domain names resolve to the Respondents' websites similar to the official websites of the Complainant including the use of almost identical color scheme, and the Complainant's trademark, and the websites appear to allow customers to track packages that are delivered to Estonia. Since the Respondents did not reply to the Complaint in this proceeding, the Panel finds, as asserted by the Complainant, that the Respondents use the disputed domain names to make Internet users have false impression, for commercial gain, that the websites resolved by the disputed domain names are affiliated to or sponsored by the Complainant. Therefore, the Panel determines that the disputed domain names are being used in bad faith.

The above requirement provided for in paragraph 4(a)(iii) of the Policy is accordingly satisfied.

In conclusion, all three cumulative requirements as provided for in paragraph 4(a) of the Policy are determined to be satisfied.

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 <post-omniva.com> and <omniva-tarne.com> be transferred to the Complainant.

/Masato Dogauchi/

Masato Dogauchi

Sole Panelist

Date: August 1, 2023