

ADMINISTRATIVE PANEL DECISION

IPSOS v. Chris Berger

Case No. D2023-4028

1. The Parties

The Complainant is IPSOS, France, represented by Novagraaf France, France.

The Respondent is Chris Berger, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <ipsos-evolution.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 26, 2023. On September 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 27, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details and contact information in the Complaint.

The Center verified that 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 October 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 26, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 27, 2023.

The Center appointed Ganna Prokhorova as the sole panelist in this matter on November 3, 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 was founded in 1975 and is one of the largest market research companies operating in 90 countries with more than 16.000 employees all around the world.

The Complainant owns many registrations for the trademark IPSOS all over the world, including in the United States, where the Respondent resides, e.g.:

- United States trademark IPSOS no. 1747049, registered on January 19, 1993, in classes 16, 35, 38, and 42; and
- European Union trademark IPSOS no. 005583621, registered on January 10, 2008, in classes 35, 41 and 42.

The Complainant owns the domain name <ipsos.com> since May 1995, and uses it to refer to its official website.

The disputed domain name was registered on April 19, 2023 and currently does not resolve to an active website. At the moment of filing the complaint, the disputed domain name resolved to a pay-per-click (PPC) advertising page.

5. Parties' Contentions

A. Complainant

The Complainant asserts that each of the elements enumerated in paragraph 4(a) of the Policy and the corresponding provisions in the Rules have been satisfied. In particular, the Complainant asserts that:

- (1) the disputed domain name is nearly identical to the Complainant's mark, which is entirely reproduced in the disputed domain name. The other word "evolution", separated by a dash from the Complainant's trademark, is not highly distinctive. The consumers will believe that this domain name is a variation of the prior trademark IPSOS for a new range of services. The gTLD ".com" is not sufficient to distinguish the signs in presence;
- (2) the Respondent does not have any rights or legitimate interests in the disputed domain name because the Complainant has never agreed to the registration of it. The Respondent is not related to the Complainant and has absolutely no link with the Complainant's activity. The Respondent is not authorized by the Complainant and has no trademark right on IPSOS or IPSOS EVOLUTION. The Respondent could not ignore the Complainant and its activity, since it is a global leader in the surveys, market research and marketing fields;
- (3) the Respondent both registered and is using the disputed domain name in bad faith. The disputed domain name incorporates the Complainant's IPSOS mark and therefore can only sensibly refer to the Complainant, whereas there is no obvious possible justification for the Respondent's selection of the disputed domain name other than bad faith. The Respondent's use of the disputed domain name, redirecting Internet users through the presentation of PPC links with polls, which is the activity of the Complainant, provides clear evidence of its bad faith.

The Complainant seeks transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer the disputed domain name. As the UDRP proceedings are administrative, the standard of proof is the balance of probabilities.

To succeed in a UDRP complaint, the Complainant has to demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied, namely:

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

The Respondent had 20 days to submit a response in accordance with paragraph 5(a) of the Rules and failed to do so. Paragraph 5(f) of the Rules establishes that if a respondent does not respond to the Complaint, the Panel's decision shall be based upon the Complaint.

However, even if the Respondent has not replied to the Complainant's contentions, the Complainant still bears the burden of proving that all these requirements are fulfilled. Concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See, section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

It is further noted that the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views captured therein.

For the purpose of these proceedings, the Panel also draws attention of the Complainant that according to [WIPO Overview 3.0](#), section 3.1, since the UDRP normally provides for a single round of pleadings without opportunity for discovery, panels expect that a complainant should anticipate and address likely plausible respondent defenses with supporting arguments and evidence in its complaint.

The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence". Under this standard, a party should demonstrate to a panel's satisfaction that it is more likely than not that a claimed fact is true. See [WIPO Overview 3.0](#), section 4.2.

The Panel also notes that it has undertaken limited independent research regarding the prior rights owned by the Complainant. The Panel has made its investigation in accordance with paragraph 10 of the Rules. Such an approach is consistent with the majority of the panel views about the capacity of a panel to undertake independent research (see [WIPO Overview 3.0](#), section 4.8). The Panel has undertaken this research only to the extent necessary to clarify matters of public record as the Panel considers such information useful to assessing the case merits and reaching a decision.

A. Identical or Confusingly Similar

According to paragraph 4(a)(i) of the Policy it should be established that the disputed domain name is identical or confusingly similar to a mark in which the Complainant has rights.

The Panel confirms that for the purposes of paragraph 4(a)(i) of the Policy the Complainant has satisfied the threshold requirement of having relevant trademark rights.

In order to establish the confusing similarity test, panels typically do a side-by-side comparison between the trademark and the domain name to establish if the complainant's trademark is recognizable within the domain name. In this case, the disputed domain name incorporates the trademark IPSOS in its entirety with the addition of the hyphen and the word "evolution". As stated in [WIPO Overview 3.0](#), section 1.7: "[...] in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing". Panels have also established that, where the relevant trademark is recognizable, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first UDRP element (see [WIPO Overview 3.0](#), section 1.8).

In view of the above, the Panel concludes that the Complainant's IPSOS mark remains clearly recognizable in the disputed domain name; the addition of the hyphen and the word "evolution" does not prevent a finding of confusing similarity.

Furthermore, it is well accepted by UDRP panels that a gTLD, such as ".com", is typically ignored when assessing whether a domain name is identical or confusingly similar to a trademark. See section 1.11.1 of the [WIPO Overview 3.0](#).

For all of the above-mentioned reasons, the Panel is of the view that the disputed domain name is confusingly similar to the Complainant's mark, which means that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the complainant must make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. If such a *prima facie* case is made out, then the burden of production shifts to the respondent to demonstrate rights or legitimate interests in the domain name.

On the basis of the evidence and arguments submitted, the Panel finds that the Complainant makes out a *prima facie* case that the Respondent is not a *bona fide* provider of goods or services under the disputed domain name and is not making legitimate noncommercial or fair use of the disputed domain name.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established that, as it is put in section 2.1 of the [WIPO Overview 3.0](#), a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent does come forward with evidence of relevant rights or legitimate interests, the panel weighs all the evidence, with the burden of proof always remaining on the complainant.

The Respondent chose not to contest the Complainant's allegations and has failed to come forward with any evidence to refute the Complainant's *prima facie* showing that the Respondent lacks rights or legitimate interests. The Panel therefore accepts these allegations as undisputed facts.

From the record in this case, the Respondent has no trademark rights to the term IPSOS or any other term used in the disputed domain name. The Respondent is not affiliated with the Complainant in any way. The Respondent has not been authorized by the Complainant to register or use the disputed domain name or to seek the registration of any domain name incorporating the Complainant's mark. The Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks or to register the disputed domain name incorporating its trademarks.

The Panel also notes that the Respondent is not commonly known by the disputed domain name, whereas the Complainant has prior rights in the trademarks, which precede the Respondent's registration of the disputed domain name by years.

There is no evidence in the case file that the Respondent is conducting any *bona fide* business in connection with the disputed domain name under the circumstances where it resolves to websites without content. Neither there is evidence that the Respondent has used or made demonstrable preparations to use the disputed domain name in connection with a legitimate noncommercial or fair use or a *bona fide* offering of goods and services.

To the contrary, according to the evidence submitted by the Complainant, the disputed domain name resolved to a pay-per-click (PPC) parking page with links related to the Complainant's business fields, which is sufficient to establish a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. See [WIPO Overview 3.0](#), section 2.9.

On the basis of the evidence and arguments submitted, the Panel finds that the Complainant made out a *prima facie* case that the Respondent is not a *bona fide* provider of goods or services under the disputed domain name and is not making legitimate noncommercial or fair use of the disputed domain name.

The Respondent has not replied to the Complainant's contentions, claiming any rights or legitimate interests in the disputed domain name. With the evidence on file, the Panel finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

In order to prevail under the Policy, the Complainant must show that the disputed domain name has been registered and is being used in bad faith.

The registration of the disputed domain name took place by the Respondent more than 30 years after the IPSOS trademark registration.

The Complainant's IPSOS trademark is well known and has been continuously and extensively used for many years and as a result acquired considerable reputation and goodwill worldwide. Accordingly, the Panel is satisfied that the Respondent must have been aware of the trademark IPSOS when it registered the disputed domain name. Such fact suggests that the disputed domain name was registered in bad faith, with a deliberate intent to create an impression of an association with the Complainant. See [WIPO Overview 3.0](#), section 3.2.2. Furthermore, in view of the Complainant's ownership of trademarks in the United States, where the Respondent is reportedly located, as referenced above, the Panel finds it more likely than not that the Respondent purposefully registered the disputed domain name with the Complainant in mind.

The circumstances of this case indicate the Respondent was using the value and goodwill of the Complainant's IPSOS mark in order to attract revenue through the PPC links hosted on the disputed domain name. This constitutes a clear attempt to generate a commercial gain, particularly by misleading Internet users with the disputed domain name and subsequently redirecting these Internet users to third-party websites. Previous panels have stated that these circumstances amount to "unduly taking advantage of the well-known nature of Complainant's mark to attract more Internet users and generate revenue" (see *Canva Pty Ltd v. Wu Yu*, WIPO Case No. [DCO2022-0005](#)). Therefore, the Panel concludes that the initial use of the disputed domain name by the Respondent to host PPC advertisements is also evidence of the Respondent's bad faith.

Furthermore, the current passive holding of the disputed domain name also does not prevent a finding of bad faith. Prior panels have recognized that passive holding of a domain name (*i.e.*, where the domain name does not resolve to any website) may not prevent a finding of bad faith when assessing the totality of the circumstances. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include:

(i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. See section 3.3 of the [WIPO Overview 3.0](#). All of these conditions seem to have been met in the current proceedings.

The Respondent has not participated in these proceedings and has failed to rebut the Complainant's contentions and to provide any evidence of actual or contemplated good-faith use and indeed none would seem plausible.

All the above circumstances confirm the Respondent's bad faith in the disputed domain name under the Policy. Therefore, the Panel finds that the disputed domain name was registered and is being used in bad faith under paragraph 4(b)(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 disputed domain name, <ipsos-evolution.com>, be transferred to the Complainant.

/Ganna Prokhorova/

Ganna Prokhorova

Sole Panelist

Date: November 5, 2023