

ADMINISTRATIVE PANEL DECISION

OC Oerlikon Corporation AG v. yuan gang peng
Case No. D2024-0468

1. The Parties

The Complainant is OC Oerlikon Corporation AG, Switzerland, represented by BRANDIT GmbH, Switzerland.

The Respondent is yuan gang peng, China.

2. The Domain Name and Registrar

The disputed domain name <oerlikonoc.com> is registered with Gname.com Pte. Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on January 31, 2024. On February 1, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 2, 2024, 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 (Redacted for privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 3, 2024, 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 February 6, 2024.

On February 3, 2024, the Center informed the parties in Chinese and English, that the language of the registration agreement for the disputed domain name is Chinese. On February 6, 2024, the Complainant requested English to be the language of the proceeding in the amended Complaint. The Respondent did not submit any comment on the Complainant’s submission.

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 9, 2024. In accordance with the Rules, paragraph

5, the due date for Response was February 29, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 1, 2024.

The Center appointed Rachel Tan as the sole panelist in this matter on March 21, 2024. 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 company based in Switzerland which specializes in providing engineering solutions for companies in markets such as automotive industry, aerospace, energy, tooling industry and additive manufacturing. The history of the Complainant can be traced back to 1907 where it first started as a machine tool factory in Oerlikon, a district of Zurich, Switzerland. As of today, the Complainant provides its technologies and services in 37 countries, including in China.

The Complainant is the owner of the OERLIKON mark in different jurisdictions. For example, International Trade Mark Registration No. 927142 for OERLIKON registered on May 26, 2006, in Classes 4, 7, 9, 12, 40, 42; International Trade Mark Registration No. 965695 for **oerlikon** registered on July 5, 2007, in Classes 6, 7, 9, 12, 19, 35, 37, 42, and Chinese Trade Mark Registration No. 5471944 for OERLIKON registered on September 28, 2009, in Class 42.

The Complainant is the registrant of numerous domain names incorporating the OERLIKON mark, for example, <oerlikon.com> registered in 1998, <ocoerlikon.com> registered in 2006 and <oerlikon.com.cn> registered in 2007.

On November 17, 2023, the Complainant sent a cease-and-desist letter to the Registrar. On November 20, 2023, the Registrar confirmed that the letter was forwarded to the Respondent. At the time of the Complaint, there was no response from the Respondent to the letter.

The disputed domain name was registered on October 22, 2023. At the time of the Complaint and at the time of Decision, the disputed domain name resolved to an active website featuring gambling content and gambling advertisements.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant's OERLIKON mark as it incorporates the entirety of the mark along with the term "oc" which is also part of the Complainant's business name. The Complainant also argues that the applicable generic Top-Level Domain ("gTLD"), in this case ".com" should be disregarded for the purposes of assessment under the first element.

The Complainant further alleges that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not licensed or authorized by the Complainant to register or use the disputed domain name nor is he affiliated to the Complainant in any form. There is also no evidence that the Respondent is known by the disputed domain name or holds any registered rights for OERLIKON. In addition, the disputed domain name resolves to a website displaying gambling content in Chinese. This illustrates that the Respondent is not using the disputed domain name with a bona fide offering of goods and services nor is he making a legitimate noncommercial or fair use of the disputed domain name.

The Respondent is likely generating commercial gain through misleadingly diverting Internet users with the disputed domain name.

Finally, the Complainant asserts that the disputed domain name was registered and is being used in bad faith. The Respondent should have known of the Complainant's mark given its well-known status and wide use on the Internet. The Respondent's use of the disputed domain name to direct Internet users intending to land on the Complainant's website to gambling content illustrates the Respondent's attempt to generate commercial profits through the disputed domain name. The Complainant noted that the Respondent used a privacy shield service to register the disputed domain name in order to conceal his identity. Moreover, the Respondent's failure to articulate any justification for the disputed domain name's inclusion of the OERLIKON mark in response to the November 17, 2023 cease-and-desist letter further supports a finding of bad faith.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue: Language of Proceeding

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that (i) the Respondent chose to register the disputed domain name in Latin alphabets which demonstrates his familiarity with English language; (ii) English is the common language being used internationally; (iii) the Complainant is based in Switzerland and conducting proceedings in Chinese would add significant additional cost to the Complainant and delay in the proceedings.

The Respondent did not make any specific submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2 Substantive Issues

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 3.0](#), section 1.7.

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 entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other term “oc” may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy as the term “oc” forms part of the Complainant’s business name. [WIPO Overview 3.0](#), section 1.8.

Lastly, it is permissible for the Panel to ignore the gTLD, in this case “.com”, under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1.

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

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Respondent has not provided evidence of a legitimate or noncommercial use of the disputed domain name or reasons to justify the choice of the disputed domain name that is confusingly similar to the Complainant’s OERLIKON mark. There is also no indication to show that the Respondent is commonly known by the disputed domain name or otherwise has rights or legitimate interests in it. The Respondent is currently using the disputed domain name on a webpage featuring gambling content. However, the Complainant has not granted the Respondent any license or authorization to use the Complainant’s OERLIKON mark or register the disputed domain name.

None of these circumstances indicates a bona fide offering of goods or services or legitimate noncommercial or fair use of the disputed domain name within the meaning of paragraph 4(c) of the Policy are present in this case. Further, the Panel considers that the composition of the disputed domain name carries a risk of implied affiliation with the Complainant. [WIPO Overview 3.0](#), section 2.5.1. For these reasons, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

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

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 Complainant's OERLIKON mark has been widely registered around the world, including in China. The disputed domain name was registered long after the registration of the Complainant's OERLIKON mark. Through extensive use and advertising, the Complainant's OERLIKON mark is known throughout the world including China where the Respondent is apparently located in. Search results using the key word "oerlikon" on Internet search engines direct Internet users to the Complainant and its business, which indicates that an exclusive connection between the OERLIKON mark and the Complainant has been established. As such, the Respondent either knew or should have known of the Complainant's OERLIKON mark when registering the disputed domain name, and has exercised "the kind of willful blindness that numerous panels have held support a finding of bad faith". See *Barclays Bank PLC v. Andrew Barnes*, WIPO Case No. [D2011-0874](#) and [WIPO Overview 3.0](#), section 3.2.2.

Section 3.1.4 of the [WIPO Overview 3.0](#) states that "mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely known trade mark by an unaffiliated entity can by itself create a presumption of bad faith". In this case, the disputed domain name incorporates the Complainant's OERLIKON mark in entirety along with the additional term "oc" which is part of the Complaint's business name. Given that the Respondent has no relationship with the Complainant, a presumption of bad faith has been created.

The Panel notes that the disputed domain name is used by the Respondent to resolve to a website featuring online gambling content, which demonstrates the Respondent's intention to make commercial gain from the website by creating a likelihood of confusion with the Complainant's mark and attracting Internet users. Such use constitutes evidence of bad faith registration and use as contemplated under paragraph 4(b)(iv) of the Policy.

Furthermore, the Panel considers that the nature of the inherently misleading disputed domain name, which includes the Complainant's trademark in its entirety (and is confusingly similar to the domain name used by the Complainant, namely <ocoerlikon.com>), further supports a finding of bad faith. [WIPO Overview 3.0](#), section 3.2.1.

The Respondent has kept silent in the face of the Complainant's allegations of bad faith either in response to the cease-and-desist letter or in the response to the Complaint in this proceeding. Further, the Respondent has taken active steps to conceal its identity using a privacy service. Taking into account these circumstances, the Panel finds that: (i) the Respondent must have known of the Complainant before registering the disputed domain name and, (ii) considering the Respondent's lack of rights or legitimate interests, and (iii) by registering and using the disputed domain name as discussed above, the Panel is led to conclude that the disputed domain name was registered and is being used in bad faith.

Based on the available records, the Panel finds that the Complainant has established the third element 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 <oerlikonoc.com> be transferred to the Complainant.

/Rachel Tan/

Rachel Tan

Sole Panelist

Date: April 4, 2024