

## ADMINISTRATIVE PANEL DECISION

Olayan Investment Company Establishment v. Alex Monopoly, Sergey Frolov,  
Case No. D2024-0811

### 1. The Parties

Complainant is Olayan Investment Company Establishment, Liechtenstein, represented by DLA Piper UK LLP, United Kingdom.

Respondent is Alex Monopoly, Ukraine (the “First Respondent”), and Sergey Frolov, Germany (the “Second Respondent”)<sup>1</sup>.

### 2. The Domain Names and Registrar

The disputed domain names <olayangroupfund.com>, and <olayantrade.com> are registered with NameCheap, Inc. (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 22, 2024. On February 23, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On February 23, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Sergey Frolov trading as “Olayan Trade”/ “Olayan”/ “Olayan Group”/ “Olayan Group Fund”) and contact information in the Complaint. The Center sent an email communication to Complainant on February 26, 2024, 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 February 28, 2024.

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”).

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<sup>1</sup> Unless otherwise noted, based upon the Panel’s finding under Section 6.1 below in favor of Complainant’s request for consolidation, First Respondent and Second Respondent shall be referred to collectively for purposes of this decision as “Respondent”.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on March 4, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 24, 2024. Respondent did not submit any formal response. However, an email communication was received from the First Respondent on March 4, 2024, stating: "Hello, I do not agree that the domain olayantrade.com has anything to do with the complainant, why are you accepting complaints from a complainant and who never had access to this domain, all matches are coincidental, if you cancel the domain or give them to the complainant I will sue. Once again, I say they have no right to claim the domain olayantrade.com." Accordingly, the Center notified Commencement of Panel Appointment Process on March 27, 2024.

The Center appointed Scott R. Austin as the sole panelist in this matter on April 4, 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 following facts appear from the Complaint (as amended) and its Annexes, which have not been contested by Respondent.

Complainant is a parent company of The Olayan Group, a multinational enterprise founded in 1947, which comprises over 50 companies and affiliated entities worldwide engaged in managing a diverse range of investments and commercial operations under a portfolio of marks incorporating the words "Olayan" or "Olayan Group" (as word marks, stylized word marks and combined word plus design marks; collectively the "OLAYAN Marks"). Complainant's services include investing in both public and private equities, real estate, and businesses engaged in distribution, manufacturing, and marketing.

Complainant, by itself or through affiliated Olayan Group companies holds a portfolio of registrations for the OLAYAN Marks in countries around the world for its investment management services, including Benelux Trademark Registration No. 0797215, OLAYAN GROUP, registered April 4, 2006, for services in International Class 35; Brazil Trademark Registration No. 831019352, OLAYAN, registered August 12, 2014, for services in International Class 36; United States of America ("United States") Trademark Registration No. 2922150, THE OLAYAN GROUP, registered February 1, 2005, for services in International Class 35; and European Union Trademark Registration No. 4653151, OLAYAN, registered March 2, 2007, for a range of goods and services in International Classes 35 and 39. Complainant also asserts that as a parent company of The Olayan Group, Complainant has used, promoted and advertised the OLAYAN Marks since at least as early as 1969 and that the OLAYAN Marks are distinctive and well known.

The OLAYAN Mark also represents the entirety of Complainant's official domain name, <olayan.com>, used to access the official OLAYAN website at "www.olayan.com" (the "Official OLAYAN Website"), as its primary website from which the services of Complainant and the wider The Olayan Group are offered. Notably, in addition to the foregoing second level domain names, Complainant here has also gone to the next level in demonstrating the extent of its significant investment in promoting its brand online by applying for and obtaining Top-Level Domain names ("TLD's") for the terms ".olayan", ".olayangroup", and ".olayan" in Arabic script (العليان).

On December 13, 2023, Complainant attempted to contact Respondent prior to filing its Complaint by asking the Registrar to provide Respondent's details and/or forward a letter addressed to Respondent and also by sending a copy of this letter directly to Respondent using the email addresses provided on the "contact us" page of the website resolving to the disputed domain name <olayangroupfund.com>.

The disputed domain name <olayangroupfund.com> was registered by the First Respondent on September 11, 2023, and originally resolved to a copycat website displaying not only the OLAYAN Marks and logo incorporating the stylized word "olayan" preceded by three curved lines as found on Complainant's Official OLAYAN Website, but also displaying content of similar business operations focused on investment, namely,

as a platform for cybercurrency exchange and providing contact pages soliciting personal and financial information from users arriving at the First Respondent's website.

First Respondent shut down the website that it had hosted through the <olayangroupfund.com> disputed domain name following Complainant's representative contacting Respondent and the Registrar on December 13, 2023, which website remains inactive. On December 15, 2023, however, Second Respondent registered the <olayantrade.com> disputed domain name at which it hosted an identical copycat website which was active as of the date Complainant filed its Complaint, but now also appears inactive.

## **5. Parties' Contentions**

### **A. Complainant**

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain names, namely, that (i) each disputed domain name is confusingly similar to Complainant's OLAYAN Marks; (ii) Respondent has no rights or legitimate interests in the disputed domain names; and (iii) Respondent has both registered and used the disputed domain names in bad faith.

### **B. Respondent**

Neither the First Respondent nor the Second Respondent formally replied to the substance of Complainant's contentions. On March 4, 2024, in an informal email sent to the Center the First Respondent stated: "Hello, I do not agree that the domain olayantrade.com has anything to do with the complainant, why are you accepting complaints from a complainant and who never had access to this domain, all matches are coincidental, if you cancel the domain or give them to the complainant I will sue. Once again, I say they have no right to claim the domain olayantrade.com."

## **6. Discussion and Findings**

### **6.1 Procedural Issues**

#### **Consolidation: Multiple Respondents and Unsolicited Additional Submission**

The amended Complaint was filed in relation to nominally different domain name registrants. Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The disputed domain name holder registrants did not comment on Complainant's request, other than the First Respondent's informal email submission as noted below.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. Panels have considered a range of factors, typically present in some combination, as useful to determining whether such consolidation is appropriate. These factors present here include similarities in or relevant aspects of, (i) the content or layout of websites corresponding to the disputed domain names, (ii) the nature of the marks at issue (e.g., where a registrant targets a specific sector), (iii) any naming patterns in the disputed domain names (e.g., <mark-country> or <mark-goods>), (iv) any changes by the respondent relating to any of the above items following communications regarding the disputed domain name(s), and (v) any evidence of respondent affiliation with respect to the ability to control the disputed domain name(s),

See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 4.11.2.

As regards common control, the Panel notes the following evidence and contentions submitted by Complainant which leads the Panel to find common control in support of consolidation. First, both disputed domain names are registered with the same Registrar. Next, the first registered disputed domain name <olayangroupfund.com>, registered by the First Respondent on September 11, 2023, provided access to a website fashioned by the First Respondent to create a false association with Complainant by using Complainant’s OLAYAN Mark and related stylized logo mark on the website showcasing a purported investment company, which is Complainant’s industry. Based on Complainant’s evidence submitted, the Panel finds it reasonable to infer that Respondent intended to use the disputed domain name to mislead Internet users into believing that the investment company was connected to, or at the very least associated with Complainant in order to support a phishing scheme to induce Internet users to transfer money to Respondent’s investment company on the promise (possibly entirely false) of investing in and trading in shares of stock and crypto currencies featured on Respondent’s website.

As noted above in Section 4, on December 13, 2023, Complainant attempted to contact the First Respondent prior to filing its complaint by asking the Registrar to provide First Respondent’s details and/or forward a letter addressed to Respondent and also by sending a copy of this letter directly to First Respondent using the email addresses provided on the “contact us” page of the website resolving at the first disputed domain name <olayangroupfund.com>. On or about December 15, 2023, the website accessed through the first disputed domain name was taken down.

The Whois data shows that on December 15, 2023, the Second Respondent registered the second disputed domain name <olayantrade.com> which resolved to a copycat website identical to the copycat website previously operated by the First Respondent, which Complainant contends suggests a concerted effort to exploit a false association with Complainant through the unauthorized use of its OLAYAN Marks. Given that the websites hosted at the disputed domain names were identical, and the second appeared shortly after the first was taken down, it seems extremely likely that the registrant of the two disputed domain names is the same person, or under the common control of the same person. In addition, it is important to the question of common control to note that the informal email submission discussed below, was made by the First Respondent, identified by the Registrar as the registrant of the first disputed domain name <olayangroupfund.com>, yet the email speaks only about “the domain olayantrade.com” which the Registrar identified the Second Respondent as its registrant. Clearly the two registrants are related if not one in the same person.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides it is appropriate to consolidate in a single proceeding the disputes regarding the nominally different disputed domain name registrants (referred to collectively as “Respondent”).

### **Consideration of First Respondent’s Unsolicited Supplemental Filing**

The Panel has also reviewed the First Respondent’s supplemental filing in this proceeding, the email submission received by the Center on March 4, 2024, before the deadline for a Response had passed as set forth in Section 3, along with the admissibility of such unsolicited additional filing in this proceeding.

Rule 12 of the Rules provides that the Panel may request, in its sole discretion, further statements or documents from either of the Parties. There is no provision in the Rules, however, for a party to file an additional submission without leave of the Panel. This is because, under the expedited process provided under the Policy and Rules, each party is given one opportunity to put forward all the material on which it wishes to rely and is expected to do so. See, *Delikommat Betriebsverpflegung Gesellschaft m.b.H. v. Alexander Lehner*, WIPO Case No. [D2001-1447](#).

Under the Rules, each Party is entitled as of right to submit only one single pleading. Paragraphs 10 and 12 of the Rules grant the Panel discretion to determine the admissibility of supplemental filings, including further statements or documents.

The Panel is of the view that First Respondent's submission addresses points relevant to the disposition of this case, e.g., consolidation, but it is essentially a general denial of Complainant's contentions without supporting arguments or attached supporting evidence and without the oath required to be signed by a respondent as part of a formal response. Noting that the Panel would be fully within its discretion to disregard First Respondent's submission, given that the email arrived before the decision date it is exceptionally taken into account in the interest of completeness of the record, but is of limited weight given the factors noted above.

## **6.2 Substantive Issues**

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 Complainant to make out its case and it is apparent from the terms of the Policy that 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 a domain name. As the proceedings are administrative, the standard of proof under the Policy is often expressed as the "balance of the probabilities" or "preponderance of the evidence" standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true. See [WIPO Overview 3.0](#), section 4.2.

Thus, for Complainant to succeed it must prove within the meaning of paragraph 4(a) of the Policy and on the balance of the probabilities that:

- (i) the disputed domain names are 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 disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

The Panel finds that Complainant has met its burden in all three elements of the Policy and will deal with each of these elements in more detail below.

### **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 Complainant's trademark and the disputed domain names. [WIPO Overview 3.0](#), section 1.7.

The Panel finds Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. Trademark registration evidence has been submitted in the name of Complainant referenced in section 4 above. Ownership of a nationally registered trademark constitutes prima facie evidence that the complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. [WIPO Overview 3.0](#), section 1.2.1; see *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#); see also *Janus International Holding Co. v. Scott Rademacher*, WIPO Case No. [D2002-0201](#).

The [WIPO Overview 3.0](#), section 1.8 provides: "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element."

While the addition of the terms here, “fund”, and “trade”, may bear on assessment of the second and third elements, the Panel finds the addition of such terms within each respective disputed domain name does not prevent a finding of confusing similarity between the disputed domain names and Complainant’s mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8. See *Advance Magazine Publishers Inc. v. Arena International Inc.*, WIPO Case No. [D2011-0203](#).

Prior UDRP panels have also found the Top-Level Domains, such as “.com” and “.net”, being viewed as a standard registration requirement, may typically be disregarded under the first element analysis. See [WIPO Overview 3.0](#), section 1.11.1; see also *Bentley Motors Limited v. Domain Admin / Kyle Rocheleau, Privacy Hero Inc.*, WIPO Case No. [D2014-1919](#); *L’Oréal v. Tina Smith*, WIPO Case No. [D2013-0820](#).

The Panel finds Complainant’s OLAYAN Marks are recognizable within each of the disputed domain names. Accordingly, both of the disputed domain names are confusingly similar to the OLAYAN Marks for the purposes of the Policy.

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.

While 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 often impossible 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. 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. See also *Do the Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#).

Having reviewed the available record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in each of the disputed domain names. Complainant contends that none of the circumstances provided in paragraph 4(c) of the Policy for demonstrating a respondent’s rights to and legitimate interests in a domain name are present in this case. Respondent has not rebutted Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

First, Complainant asserts that it has no commercial relationship with Respondent, who is not sponsored by or affiliated with Complainant in any way, nor has Complainant given Respondent authority or license to register or use Complainant’s trademarks in any manner, including in domain names. Prior UDRP panels have held “in the absence of any license or permission from Complainant to use its trademark, no actual or contemplated bona fide or legitimate use of the disputed domain name could reasonably be claimed”. *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#).

Second, Complainant contends neither Respondent is commonly known by either of the disputed domain names, which evinces a lack of rights or legitimate interests under Policy paragraph 4(c)(ii). The Registrar’s registrant data submitted to the Center for each of the corresponding disputed domain names, identified First Respondent “Alex Monopoly” as registrant for <olayangroupfund.com>; and Second Respondent “Sergey Frolov” as registrant for <olayantrade.com>. Neither of these registrants listed above as a Respondent could be considered to be commonly known by their respective disputed domain name because each clearly bears no resemblance to it, nor to the OLAYAN Marks, nor to Complainant’s official <olayan.com> domain name. Prior UDRP panels have held where no evidence, including the Whois record for the disputed domain name, suggests that Respondent is commonly known by the disputed domain name, then Respondent cannot be

regarded as having acquired rights to or legitimate interests in the disputed domain name within the meaning of Policy paragraph 4(c)(ii). See *Moncler S.p.A. v. Bestinfo*, WIPO Case No. [D2004-1049](#).

Most importantly, Complainant contends Respondent is not using the disputed domain names in connection with a bona fide offering of goods or services because, as Complainant's Annex evidence shows of the web page connected to each respective disputed domain name when originally discovered by Complainant resolved to a carefully crafted "copycat" version of Complainant's Official OLAYAN Website to create a false association with Complainant.

Panels have held that the use of a domain name for illegal activity, as applicable to this case: impersonation/passing off, or other types of fraud through Respondent's purported offering of products in competition with complainant's products, counterfeit goods or potential phishing can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel notes that evidence submitted in the Annexes to the Complaint persuasively supports Complainant's argument because it shows each Respondent website prominently features unauthorized use of Complainant's OLAYAN Marks for the sale of ostensibly related or competing investment products to create the false impression that products for sale at each Respondent website are authorized or affiliated with or sponsored by Complainant but also may be used as a phishing scheme to unlawfully extract financial and personal information from unsuspecting consumers believing Respondent to be Complainant. Respondent, therefore, is using the disputed domain name to confuse Internet users and suggest an affiliation with or sponsorship by Complainant to attract Internet users to its websites for its commercial gain. Based on these facts the Panel finds Respondent's actions are clearly not legitimate and clearly are misleading. Respondent, therefore, cannot establish rights or legitimate interests pursuant to paragraph 4(c)(iii) of the Policy. See *Six Continents Hotels v. "m on"*, WIPO Case No. [D2012-2525](#).

According to the [WIPO Overview 3.0](#), section 2.5.1, where a domain name consists of the complainant's trademark and certain additional terms, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the complainant.

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

The Panel finds the second element of the Policy has been established for each of the disputed domain names.

### **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 sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may also be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Complainant contends that Respondent has demonstrated a knowledge of and familiarity with Complainant's brand and business by configuring and registering each domain name that incorporates the OLAYAN Marks in its entirety with the addition of descriptive terms relevant to Complainant's business, "fund" and "trade". Respondent has thereby configured two domain names for registration that are each confusingly similar to Complainant's trademarks, as well as its official domain name. Prior UDRP panels have found a domain name was registered in bad faith where the respondent registered the domain name for the purpose of intentionally attempting to impersonate or mislead in order to commit fraud. See, e.g., *Houghton Mifflin Co. v. The Weatherman Inc.*, WIPO Case No. [D2001-0211](#); *Marlink SA v. Sam Hen, Elegant Team*, WIPO Case No. [D2019-1215](#); *Beam Suntory Inc. v. Name Redacted*, WIPO Case No. [D2018-2861](#).



Prior UDRP panels have also held where the disputed domain name is configured in a manner to wholly incorporate a complainant's mark, as Complainant's OLAYAN Marks are incorporated with the additional common terms here, the disputed domain name can only sensibly refer to Complainant; thus, there is no obvious possible justification for Respondent's selection of the disputed domain names other than registration in bad faith.

As discussed in greater detail in Section 6B above, Complainant shows in evidence in the Annexes to its Complaint that Respondent used each disputed domain name initially and prior to the filing of the Complaint, to link it to a copycat website to impersonate Complainant with content configured to extract money from Internet users seeking Complainant's investment products through the purported sale of investment products which are either counterfeit or non-existent and likely intended only to further a fraudulent phishing scheme, which constitutes evidence of bad faith use under well-established principles in the consensus of cases decided under the Policy. See [WIPO Overview 3.0](#), section 3.4; see also *The Coca-Cola Company v. PrivacyProtect.org/ N/A, Stephan Chukwumaobim*, WIPO Case No. [D2012-1088](#); *Ropes & Gray LLP v. Domain Administrator, c/o DomainsByProxy.com / Account Receivable*, WIPO Case No. [D2020-0294](#). The fact that Complainant shows Respondent has registered a number of other domain names that incorporate the trademarks and names of third party brands, is a further indication that the disputed domain names have been registered and used in bad faith.

Finally, the subsequent inactive status of the website linked to each disputed domain name does not undo or attenuate Respondent's bad faith conduct. Panels have found that the non-use of a domain name (including a blank or "not found" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel notes the distinctiveness or reputation of Complainant's OLAYAN Marks, the composition of the disputed domain names, that Respondent has registered a number of other domain names that incorporate the trade marks and names of third party brands, and finds that in the circumstances of this case the passive holding of each now inactive disputed domain name does not prevent a finding of bad faith under the Policy. [WIPO Overview 3.0](#), section 3.3.

Having reviewed the record, the Panel finds Respondent's registration and use of the disputed domain names constitutes bad faith registration and use under the Policy. The Panel finds that the evidence presented here, Respondent's respective copycat websites selling investments in competition with Complainant's business using the OLAYAN Marks on the respective copycat websites to pass itself off as affiliated with Complainant's Official OLAYAN Website, as well as further the risk of a fraudulent phishing scheme is sufficient for this Panel to find bad faith registration and use of both of the disputed domain names. See [WIPO Overview 3.0](#), section 3.4; see also *On AG, On Clouds GmbH v. Web Commerce Communications Limited, Domain Admin, Whoisprotection.cc / Christin Schmidt, Sandra Naumann, Jana Papst*, WIPO Case No. [D2021-2263](#).

The Panel finds that 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 names <olayangroupfund.com>, and <olayantrade.com> be transferred to Complainant.

/Scott R. Austin/

**Scott R. Austin**

Sole Panelist

Date: April 25, 2024