

## **ADMINISTRATIVE PANEL DECISION**

Apolo Anton Ohno v. Nguyen Van Thanh  
Case No. D2024-1425

### **1. The Parties**

The Complainant is Apolo Anton Ohno, United States of America, represented by Morrison Cooper LLP, United States of America (“United States”).

The Respondent is Nguyen Van Thanh, Viet Nam.

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

The disputed domain name <apoloantonohno.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 April 3, 2024. On April 4, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 4, 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 (Unknown, Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 5, 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 on April 5, 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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on April 10, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 30, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 2, 2024.

The Center appointed Andrew F. Christie as the sole panelist in this matter on May 6, 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, Apolo Anton Ohno, is an American short-track speed skater and decorated athlete. In three Winter Olympic Games (2002, 2006, and 2010), the Complainant accumulated a total of eight medals - two gold, two silver, and four bronze. When he was 14 years old, the Complainant became the youngest skater ever to be accepted into the residency program at the United States Olympic Training Center. He won the first of his numerous United States championships in 1997, and by 2001 he had emerged as an elite competitor on the international short-track circuit, winning the overall World Cup title that year – the first United States skater to do so. Subsequently, the Complainant competed in the 2002 Winter Olympic Games in Salt Lake City Utah, the 2006 Winter Olympics in Turin, and the 2010 Winter Olympics in Vancouver, turning him into a globally recognized athlete.

Aside from his speed skating career, in 2007 the Complainant appeared as a contestant on the United States televised dance competition *Dancing with the Stars*, which he won with his dance partner. He also competed on the show in 2012. Ohno retired after the 2010 Winter Olympics, and appeared as an NBC commentator for the 2014 Sochi Games and 2018 Pyeongchang Games. In 2019, he was inducted into the United States Olympics Hall of Fame. The Complainant has further appeared in a number of television shows as a host, actor, and guest star since his retirement, and has generally become well-known outside of his Olympic career. Currently, he is a speaker, entrepreneur, and *New York Times* bestselling author of the book *Hard Pivot*.

Throughout his career, the Complainant has maintained a large and dedicated fanbase. He also enjoys a strong online presence via his official social media accounts. Currently, the Complainant has 87,400 followers on Instagram, 244,100 followers on X, and 201,000 followers on Facebook.

The disputed domain name was registered on February 9, 2002. The Complainant has provided screenshots of Wayback Machine records for the disputed domain name from 2002, 2006, 2012, and 2016, which show that the disputed domain name resolved to websites prominently displaying the Complainant's name, and which at various times showed pictures of the Complainant and contained what appear to be pages for "biography", "news", "chat", "events", "images", "media", "awards", "forums", "faq", "contact", "Vote for Team Apolo", "Instagram", "Contact", "Subscribe", and "Follow Apolo". As of the date of this decision, the disputed domain name does not resolve to an active web location.

#### **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.

The Complainant contends that the disputed domain name is confusingly similar to a trademark in which he has rights on the following grounds, among others. The Complainant owns common law trademark rights in the mark APOLO ANTON OHNO and APOLO OHNO. The Complainant has been using the APOLO ANTON OHNO and APOLO OHNO marks since 2001 in connection with his career as an athlete, television personality, and author. The APOLO ANTON OHNO and APOLO OHNO marks have acquired a secondary meaning which consumers associate with the Complainant's goods and services. The domain name incorporates entirely the Complainant's trademarks APOLO ANTON OHNO and APOLO OHNO. The

APOLO ANTON OHNO and APOLO OHNO trademarks are clearly recognizable within the disputed domain name.

The Complainant contends that the Respondent does not have any rights or legitimate interests in the disputed domain name on the following grounds, among others. The Complainant has not licensed or authorized the Respondent to use his trademarks. The Respondent is not affiliated to the Complainant. The Complainant did not authorize the Respondent to register or use the disputed domain name incorporating his trademarks nor has the Complainant endorsed or sponsored the Respondent or the Respondent's website. There is no evidence that the Respondent is commonly known by the disputed domain name or owns any registered trademarks including the term "apoloantonohno" or "apoloantonohno.com"; in fact, when entering the term "Apolo Anton Ohno" in the Google search engine, the returned results point to the Complainant and his online activity. Furthermore, when conducting searches on online trademark databases, no information is found of the Respondent in relation with filed or registered trademarks corresponding to the term "ApoloAntonOhno" or "apoloantonohno.com". The disputed domain name impersonates the Complainant and/or suggests sponsorship or endorsement by the Complainant due to the past and frequent use of his image, likeness, and valuable intellectual property.

The Complainant contends that the Respondent registered and is using the disputed domain name in bad faith on the following grounds, among others. The use of the Complainant's trademarks pre-dates the registration of the disputed domain name and the Respondent has never been authorized by the Complainant to use the APOLO ANTON OHNO or APOLO OHNO marks to register the disputed domain name. The Complainant was already known well before the date of the registration of the disputed domain name. The website resolving from the disputed domain name has frequently displayed content that incorporates the image and likeness of the Complainant. It is very likely that the Respondent registered the disputed domain name using the trademark APOLO ANTON OHNO intentionally to prevent the Complainant from reflecting his mark in a corresponding domain name. The Respondent's website has used the Complainant's name and protected material throughout, without Complainant's authorization. This use of the APOLO ANTON OHNO and APOLO OHNO trademarks is clearly intended to disrupt the Complainant's business and attract consumers to the Respondent's website for commercial gain.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

The Panel finds the Complainant has established unregistered trademark or service mark rights for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3. The Complainant came to public attention in 1997, when he won the first of his numerous speed-skating United States championships. By 2001, when he won the short-track circuit World Cup title, the Complainant had a high public profile. Since retiring as an athlete in 2010, the Complainant has engaged in the provision of significant commercial services, including speaking and writing, under his name. A review of the evidence shows that these commercial services are typically provided under the Complainant's first and last names, Apolo Ohno, rather than under his full name, Apolo Anton Ohno. The evidence of the provision of these commercial services, and of the degree of the Complainant's followers on social media, is sufficient to persuade the Panel that APOLO OHNO, while not a registered trademark, has acquired distinctiveness as a source identifier. The Panel finds that Complainant's name APOLO OHNO is an unregistered trademark in which the Complainant has rights.

The entirety of the Complainant's unregistered trademark is reproduced within the disputed domain name, with the mere addition of the term "anton" in between the two names. The Complainant's unregistered trademark is clearly recognizable in the disputed domain name. The addition of the term "anton", which is the Complainant's middle name, does not avoid the confusing similarity of the disputed domain name with the Complainant's unregistered trademark. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

## **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 evidence shows that the Respondent has used the disputed domain name to resolve to websites which falsely give the impression of being either the Complainant's own website or a website that is officially affiliated with the Complainant – i.e., to a website which impersonates the Complainant. Panels have held that the use of a domain name for illegal activity such as impersonation can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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 Panel notes that the Respondent registered the disputed domain name in 2002, which is after the Complainant won his first United States championship (1997), and after he won the World Cup title (2001). The Panel also notes that the disputed domain name incorporates the Complainant's full name and was used by the Respondent to resolve to websites which impersonate the Complainant. Given these circumstances, it is clear the Respondent registered the disputed domain name with knowledge of the Complainant and his nascent unregistered trademark.

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 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.

The evidence shows that the Respondent has used the disputed domain name to impersonate the Complainant, apparently for commercial benefit. Panels have held that the use of a domain name for such

illegal activity constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. The fact that the disputed domain name currently does not resolve to an active web location does not prevent a finding of bad faith. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under 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 <apoloantonohno.com> be transferred to the Complainant.

*/Andrew F. Christie/*

**Andrew F. Christie**

Sole Panelist

Date: May 20, 2024