

ADMINISTRATIVE PANEL DECISION

Ostrum Asset Management v. 闫家范 (Yan Jia Fan), 成华区科立商务咨询服务部 (Cheng Hua Qu Ke Li Shang Wu Zi Xun Fu Wu Bu)

Case No. D2024-1500

1. The Parties

The Complainant is Ostrum Asset Management, France, represented by MIIP – MADE IN IP, France.

The Respondent is 闫家范 (Yan Jia Fan), 成华区科立商务咨询服务部 (Cheng Hua Qu Ke Li Shang Wu Zi Xun Fu Wu Bu), China.

2. The Domain Name and Registrar

The disputed domain name <ostrum.net> is registered with DNSPod, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on April 9, 2024. On the following day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 11, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name that differed from the named Respondent (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 11, 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 April 12, 2024.

On April 11, 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 April 12, 2024, the Complainant requested that English be the language of the proceeding. The Respondent did not submit any 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 Respondent in Chinese and English of the Complaint, and the proceedings commenced on April 17, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 7, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 9, 2024. Due to an apparent issue with the notification, on May 15, 2024, the Center sent an email communication to the Respondent granting it until May 25, 2024 to indicate whether it wished to participate in this proceeding. The Respondent did not send any email communication to the Center.

The Center appointed Matthew Kennedy as the sole panelist in this matter on May 24, 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 an institutional investment manager. It holds trademark registrations in multiple jurisdictions, including the following:

- French trademark registration number 4375830 for OSTRUM, registered on July 12, 2017, specifying services in class 36; and
- International trademark registration number 1384323 for OSTRUM, registered on October 26, 2017, designating multiple jurisdictions, including China, and specifying services in class 36.

The above trademark registrations remain current. The Complainant also holds the domain names <ostrum.com> registered on July 16, 1999 that it uses in connection with a website where it provides information and about itself, its services, as well as news and insights. According to evidence submitted by the Complainant, the top results of a Google search for "ostrum" all relate to the Complainant.

The Respondent is an individual and a business based in China. The name of the business may be translated as "Chenghua District Keli Business Consulting Service Department".

The disputed domain name was registered on March 28, 2024. It resolves to a landing page displaying Pay-Per-Click ("PPC") links related to guitars, among other things. A notice in the landing page header reads "Buy this domain. The domain ostrum.net may be for sale!" According to evidence presented in the amended Complaint, as at April 12, 2024 a notice in the landing page footer indicated that the owner offered the disputed domain name for sale for USD 4,987.

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 to its OSTRUM mark. The Respondent has no rights or legitimate interests in respect of the disputed domain name. There is no business or legal relationship between the Complainant and the Respondent. The Complainant has neither authorized nor licensed the Respondent to use its trademarks in any way. The disputed domain name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue: Language of the 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 and amended Complaint were filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that the disputed domain name is in Latin characters, resolves to a landing page in English, and is an allegedly fraudulent registration, while translation of the Complaint would create significant expenses and delay.

The Respondent did not make any submissions with respect to the language of the proceeding or express any interest in otherwise participating in the proceeding, despite the Center having sent email communications in English and Chinese regarding the language of the proceeding and the notification of the Complaint.

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 the 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. The Panel would have accepted a Response in Chinese but none was filed.

6.2 Substantive Issues

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following elements:

- (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.

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. See [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of the OSTRUM trademark for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. The only additional element is a generic Top-Level Domain ("gTLD") extension ".net" which, as a standard requirement of domain name registration may be disregarded in the assessment of identity or confusing similarity for the purposes of the Policy. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. See [WIPO Overview 3.0](#), sections 1.7 and 1.11.

Therefore, 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. See [WIPO Overview 3.0](#), section 2.1.

In the present case, the disputed domain name resolves to a PPC links landing page. The Panel does not consider this to constitute a bona fide offering of goods or services that would generate rights or legitimate interests in the disputed domain name. Given that the links presumably operate for the commercial gain of the Respondent, if it is paid to direct traffic to the linked sites, or for the commercial gain of the operators of the linked sites, or both, and that the disputed domain name has been offered for sale on the landing page, this use does not constitute a legitimate noncommercial or fair use of the disputed domain name. Further, nothing in the record indicates that the Respondent has been commonly known by the disputed domain name.

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.

Based on the 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 first and fourth of these circumstances are as follows:

“(i) circumstances indicating that [the Respondent has] registered or [the Respondent has] acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of [the Respondent’s] documented out-of-pocket costs directly related to the [disputed] domain name;” and

“(iv) by using the [disputed] domain name, [the Respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the Respondent’s] website or other online location, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of [the Respondent’s] website or location or of a product or service on [the Respondent’s] website or location.”

The disputed domain name was registered in 2024, years after the registration of the Complainant's OSTRUM mark, including in China, where the Respondent is based. OSTRUM is a coined term that has no apparent meaning other than as the Complainant's mark. The Complainant has made extensive use of its OSTRUM mark. The disputed domain name wholly incorporates the mark, with no additional element besides a gTLD extension. In these circumstances, the Panel has reason to find that the disputed domain name was registered with the Complainant's mark in mind.

As regards use, the disputed domain name resolves to a landing page that offers the disputed domain name for sale. At a certain point during this proceeding, the landing page specified a sale price of USD 4,987. In the Panel's view, this price most likely exceeds the Respondent's out-of-pocket costs directly related to the disputed domain name and the circumstances fall within the terms of paragraph 4(b)(i) of the Policy.

Further, the landing page displays PPC links. The disputed domain name is intended to attract Internet users searching for the Complainant by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the landing page. This use is intentional and for the Respondent's own commercial gain, if it is paid to direct traffic to the linked websites, or for the commercial gain of the operators of the linked websites, or both. In each scenario, these facts satisfy the requirements of paragraph 4(b)(iv) of the Policy.

Therefore, 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 <ostrum.net> be transferred to the Complainant.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: June 3, 2024