

ADMINISTRATIVE PANEL DECISION

Open Society Institute v. K Ghost
Case No. D2024-1601

1. The Parties

Complainant is Open Society Institute, United States of America (“US”), represented by Morrison & Foerster, LLP, US.

Respondent is K Ghost, US.

2. The Domain Name and Registrar

The disputed domain name <opensocietyfoundations.org> 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 17, 2024. On April 17, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 17, 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, Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on April 19, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on April 22, 2024.

The Center verified that the Complaint together with the amendment to 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 Respondent of the Complaint, and the proceedings commenced on May 1, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 21, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on May 22, 2024.

The Center appointed Georges Nahitchevansky as the sole panelist in this matter on May 30, 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

Complainant, Open Society Institute, is a philanthropic organization that was founded by George Soros. Complainant funds a wide range of public health, education and business development programs around the world. Complainant owns and uses several names and marks based on the name OPEN SOCIETY in connection with its activities. These include the names and marks OPEN SOCIETY FOUNDATIONS, OPEN SOCIETY INSTITUTE and OPEN SOCIETY POLICY CENTER. Complainant owns the following United States trademark registrations for its names and marks: (i) OPEN SOCIETY FOUNDATIONS (Registration No. 4,248,358), that issued to registration on November 27, 2012; (ii) OPEN SOCIETY INSTITUTE (Registration No. 2,412,029), that issued to registration on December 12, 2000; and OPEN SOCIETY POLICY CENTER (Registration No. 3,769,307), that issued to registration on March 30, 2010. Complainant also owns and uses the domain name <opensocietyfoundations.org> to provide information concerning its mission and activities.

Respondent appears to be based in the State of New York, United States. Respondent registered the disputed domain name on April 8, 2024. The disputed domain does not appear to have been used for an active page or website and is currently not being used for an active page or website.

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 name.

Specifically, Complainant contends that the disputed domain name is merely a typo version of Complainant's OPEN SOCIETY FOUNDATIONS trademark and <opensocietygfoundations.org> domain name by adding an additional letter "i" in the word "society." Complainant argues that Respondent was likely aware of Complainant and targeted Complainant given that the disputed domain name is nearly identical to Complainant's OPEN SOCIETY FOUNDATIONS name and mark. Lastly, Complainant asserts that Respondent's lack of legitimate interest and bad faith are established by Respondent's lack of use of the disputed domain name and passive holding of such.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

Here, although Respondent has failed to respond to the Complaint, the default does not automatically result in a decision in favor of Complainant, nor is it an admission that Complainant's claims are true. The burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence. A panel, however, may draw appropriate inferences from a respondent's default in light of the particular facts and circumstances of the case, such as regarding factual allegations that are not inherently implausible as being true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"); see also *The Knot, Inc. v. In Knot We Trust LTD*, WIPO Case No. [D2006-0340](#).

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](#) at section 1.7.

Here, Complainant has shown rights in respect the OPEN SOCIETY FOUNDATIONS mark (and other OPEN SOCIETY formative marks) for purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. The Panel finds that the disputed domain name is confusingly similar to Complainant's OPEN SOCIETY FOUNDATIONS mark as the disputed domain name is merely a typo version or misspelling of the OPEN SOCIETY FOUNDATIONS mark that adds an additional letter "i" in "society."

The first element of the Policy has thus been established by Complainant.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which 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.

Based on the evidence submitted in this proceeding, and Respondent's failure to file a response, the Panel concludes that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent's registration of the disputed domain name is clearly based on the OPEN SOCIETY FOUNDATIONS mark and does not seem to be a coincidence. Because the disputed domain is visually similar to the OPEN SOCIETY FOUNDATIONS mark in overall appearance and uses the same generic Top Level Domain extension ".org," it is likely to be mistakenly seen by consumers as related to Complainant and its activities. Simply put, the disputed domain name essentially impersonate Complainant and thus, on its face, carries a high risk of implied affiliation. As such, it is hard to see how Respondent could have any rights or legitimate interests in the disputed domain name. [WIPO Overview 3.0](#) at section 2.5.1.

In addition, Respondent is not commonly known by the disputed domain name and may in fact be using an alias. The fact that Respondent has failed to appear in this proceeding to explain his or her actions, reinforces the likelihood that the underlying intent is to impersonate Complainant in some way, and/or perhaps to further a nefarious purpose. Such use is simply not legitimate. *Id.*

Given that Complainant has established with sufficient evidence that it owns rights in the OPEN SOCIETY FOUNDATIONS mark, and given Respondent's above noted actions and failure to file a response, the Panel concludes that Respondent does not have a right or legitimate interest in the disputed domain name and that none of the circumstances of paragraph 4(c) of the Policy are evident in this case.

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.

In view of Respondent's actions, and failure to appear in this proceeding, it is easy to infer that Respondent's registration and use of the disputed domain name, which is merely a typo version of Complainant's OPEN SOCIETY FOUNDATIONS mark, has been done opportunistically and in bad faith for the benefit or profit of Respondent. The disputed domain name could easily be used to impersonate Complainant's OPEN SOCIETY FOUNDATIONS mark and <opensocietyfoundations.com> domain name and was registered well after Complainant had established rights in its OPEN SOCIETY FOUNDATIONS mark. Although Respondent, as already noted, has not used the disputed domain name for an active website or page, it is inconceivable that the disputed domain name, which is nothing more than a typo version of the OPEN SOCIETY FOUNDATIONS mark and <opensocietyfoundations.org> domain name, could be used for a legitimate purpose. In all, Respondent's actions make it more probable than not that Respondent was fully aware of Complainant and its OPEN SOCIETY FOUNDATIONS name and mark when he or she registered the disputed domain name and specifically chose to target Complainant in bad faith.

The Panel thus 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 name <opensocietyfoundations.org> be transferred to Complainant.

/Georges Nahitchevansky/

Georges Nahitchevansky

Sole Panelist

Date: June 13, 2024