

ADMINISTRATIVE PANEL DECISION

Old Dominion Freight Line, Inc. v. Jack Wines, Ajay Kulkarni
Case No. D2024-1731

1. The Parties

The Complainant is Old Dominion Freight Line, Inc., United States of America (“United States”), represented by Nelson Mullins Riley & Scarborough, L.L.P., United States.

The Respondents are Jack Wines, and Ajay Kulkarni, United States.

2. The Domain Names and Registrar

The disputed domain names <olddominionfreightlinesandservices.com>, and <olddominionshipping.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 April 24, 2024. On April 25, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On April 25, 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 (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 May 2, 2024 with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, requesting the Complainant to either file separate complaint for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity and/or that all domain names are under common control. The Complainant filed an amended Complaint on May 6, 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 Respondents of the Complaint, and the proceedings commenced on May 10, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 30, 2024. The Respondents did not submit any response. Accordingly, the Center notified the Parties of the Respondents' default on June 3, 2024.

The Center appointed Ingrīda Kariņa-Bērziņa as the sole panelist in this matter on June 20, 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

Established as a corporation registered in the State of Virginia, United States, the Complainant offers less-than-truckload ("LTL") motor carrier and shipping services across the United States. It is the proprietor of several registrations for its OLD DOMINION FREIGHT LINE mark, including United States Trademark Registration No. 4316040 for OLD DOMINION FREIGHT LINE (word mark), registered on April 9, 2013 for services in class 39, claiming a date of first use of December 31, 1954.

The disputed domain name <olddominionfreightlinesandservices.com> was registered on September 9, 2023. The disputed domain name <olddominionshipping.com> was registered on March 22, 2024. At the time of this Decision, neither resolved to an active website. The record contains evidence that the former previously resolved to a website featuring the Complainant's mark and purporting to offer freight services; the latter previously resolved to a website mimicking the Complainant's own website in layout and colors, featuring the Complainant's mark and logo and purporting to offer shipping services.

The Complainant sent a cease-and-desist letter to the Respondents on April 8, 2024. The record does not reflect the Respondents' response thereto.

5. Parties' Contentions

A. Complainant

1. Request to consolidate proceedings

The Complainant requests consolidation of the proceedings for the following reasons: the disputed domain names were both registered through the same Registrar, Namecheap, Inc., and were registered within a six-month period of each other. The disputed domain names use a similar naming convention, namely, beginning with "OLD DOMINION" and adding descriptive terms related directly to the Complainant's services. The websites to which they resolved both falsely impersonate the Complainant and/or give a false appearance of an association or affiliation with the Complainant. Lastly, the WhoIs information is falsified to hide the true identity of the Respondents giving rise to the inference that both disputed domain names are under common control given the other above-discussed similarities.

2. Substantive contentions

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

Notably, the Complainant contends that it was founded in 1934 and is one of the leading LTL service providers in the United States. Its use of the OLD DOMINION FREIGHT LINE mark predates the registration of the disputed domain names by over 70 years. The mark has been highly publicized including by sponsorships of college football teams and television broadcasts of games. The disputed domain names both incorporate the element "old dominion" followed by terms related to the Complainant's business. The

Respondents have not been authorized to use the Complainant's mark. The websites to which the disputed domain names resolved mimic the Complainant's website, reflect its mark, and purport to offer the same services as those offered by the Complainant. Finally, the Respondents have provided false contact information.

B. Respondents

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

6. Discussion and Findings

6.1 Consolidation: Multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. The 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 registrants did not comment on the Complainant's request.

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 the 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. 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 that the disputed domain names reflect similar naming patterns, consisting of the "old dominion" element of the Complainant's mark followed by terms related to services offered by the Complainant. The disputed domain names resolved to websites featuring the Complainant's mark and purporting to offer the same shipping and freight services offered by the Complainant. The registrations were effected within a six-month period, using the same Registrar.

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 to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as "the Respondent") in a single proceeding.

6.2 Substantive issues

Paragraph 4(a) of the UDRP requires the Complainant to make out all three of the following:

- (i) the disputed domain names are 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 Respondent has registered and is using the disputed domain names in bad faith.

Under paragraph 15(a) of the Rules, "[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

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 Complainant's OLD DOMINION FREIGHT LINE mark is reproduced within the disputed domain name <olddominionfreightlinesandservices.com>. The Panel finds that this disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. Further, the Panel finds the Complainant's OLD DOMINION FREIGHT LINE mark is recognizable within the disputed domain name <olddominionshipping.com>. Accordingly, this disputed domain name is also confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, "and services" and "shipping") may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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 names. 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 names such as those enumerated in the Policy or otherwise.

The Panel notes there is no evidence that the Respondent has used the disputed domain name in connection with a bona fide offering of goods or services, nor that the Respondent has been commonly known by the disputed domain names. There is no evidence that the Respondent has made a legitimate noncommercial or fair use of the disputed domain names. The use of the disputed domain names reflected in the evidence does not support an inference that the Respondent was engaged in a legitimate business connected to the disputed domain names. Under these circumstances, the Panel finds that such use does not establish rights or legitimate interests. Moreover, the composition of the disputed domain names, which reflects part or all of the Complainant's OLD DOMINION FREIGHT LINE trademark together with terms referring to the Complainant's services, carries a risk of implied affiliation to the Complainant that cannot constitute fair use. [WIPO Overview 3.0](#), section 2.5.1.

Panels have held that the use of a domain name for illegal activity (here, claimed impersonation/passing off, or other types of fraud) 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.

In the present case, the Panel notes that the Respondent intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark. The disputed domain names were registered more than a decade after the Complainant registered its OLD DOMINION FREIGHT LINE trademark, and over 70 years after the Complainant commenced use of this mark. The disputed domain names reflect the Complainant's mark in its entirety or in part, plus terms referring to the Complainant's business, and therefore implies a connection to the Complainant. Under these circumstances, the Panel finds that the disputed domain names were registered in bad faith. [WIPO Overview 3.0](#), section 3.1.

Panels have held that the use of a domain name for illegal activity (here, claimed impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. The record contains evidence that the disputed domain names both resolved to websites featuring the Complainant's mark and purporting to offer services identical to those offered by the Complainant. Such conduct is clearly indicative of bad faith use of the disputed domain names. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain names constitutes bad faith under the Policy.

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 names <olddominionfreightlinesandservices.com> and <olddominionshipping.com> be transferred to the Complainant.

/Ingrīda Kariņa-Bērziņa/

Ingrīda Kariņa-Bērziņa

Sole Panelist

Date: July 5, 2024