

ADMINISTRATIVE PANEL DECISION

OrbiMed Advisors LLC v. Orbimed India
Case No. D2024-2800

1. The Parties

The Complainant is OrbiMed Advisors LLC, United States of America ("United States"), represented by Soteria LLC, United States.

The Respondent is Orbimed India, India.

2. The Domain Name and Registrar

The disputed domain name <orbimedindia.com> is registered with GoDaddy.com, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 10, 2024. On July 10, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 11, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 16, 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 the same date.

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 July 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 15, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 19, 2024.

The Center appointed Willem J. H. Leppink as the sole panelist in this matter on September 10, 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 are undisputed.

The Complainant is a United States investment firm based in New York City, United States, doing business under the name “orbimed”, which focusses on making public and private investments in the healthcare and biotechnology industries.

The Complainant is the owner of several trademark registrations for ORBIMED, including, but not limited to the following trademark registrations:

- United States trademark registration ORBIMED (word) with number 2,728,642 registered on June 24, 2003, for services in class 36;
- United States trademark registration ORBIMED PRIVATE INVESTMENTS (word) with number 4,567,389 registered on July 15, 2014, for services in class 36;
- United States trademark registration ORBIMED PARTNERS (word) with number 4,571,388 registered on July 22, 2014, for services in class 36;
- United States trademark registration ORBIMED ASIA (word) with number 4,583,350 registered on August 12, 2014, for services in class 36.

All of these registrations predate the registration of the disputed domain name in 2022.

The Complainant is also the registrant of the domain name <orbimed.com>, which resolves to the Complainant’s official website (“official website”) containing an overview of all kinds of information about the company, what it stands for as a company, and what it is investing in.

The disputed domain name was registered on February 28, 2022. At the moment of rendering this Decision (and at the time the Complaint was filed), the disputed domain name resolves to an active website identifying the website operator as “Orbimed Health Care” and containing images of different kinds of medical equipment.

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 the following.

The Complainant is considered one of the world’s largest dedicated healthcare investment firms.

The Complainant has continuously used the trademark ORBIMED since 2003. The Complainant’s trademark contains the non-dictionary, unique keyword “Orbimed”.

The disputed domain name is confusingly similar to the Complainant’s trademarks.

The website to which the disputed domain name resolves is confusingly similar to the official websites and imitates the Complainant’s industry and website design.

The Respondent has no rights or legitimate interests in the disputed domain name. Notably, there is no evidence that the Respondent is commonly known by the disputed domain name. Also, the Complainant has not licensed, otherwise permitted or authorized the Respondent to use the Complainant’s trademarks. The Respondent has not established or proven a legitimate unique, noncommercial or fair use of the disputed domain name.

The Respondent has engaged in bad faith. Since the disputed domain name is confusingly similar to the trademark this strongly suggests the Respondent is aware of the Complainant and its trademarks. The Complainant contends that it is highly unlikely that the registration of the disputed domain name was coincidental and this should be considered as evidence of bad faith. Moreover, the Complainant contends that the registration of the disputed domain name by the Respondent poses a significant and valid security risk threat to the Complainant. The Complainant contends where a disputed domain name is connected to a well-known trademark, its very use by someone with no connection with the products suggests opportunistic bad faith.

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 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 mark ORBIMED is reproduced within the disputed domain name. Accordingly, the disputed domain name is 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, "india", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name 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 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 nature of the disputed domain name, also in combination with the contents of the associated website, and the design used, and the copyright notice, suggest that the website is either operated or endorsed by the Complainant. While UDRP panels have recognized limited rights for resellers or distributors to nominally use a trademark for its source-identifying function, such fair use is qualified under the so-called “Oki Data” test enshrined in section 2.8.1 of the [WIPO Overview 3.0](#). Here, noting the lack of disclaimer on the website which the disputed domain name resolves to, the impersonating nature of the disputed domain name is reinforced and as such, the disputed domain name cannot qualify as fair use. Moreover, UDRP panels have largely held that, even where a domain name consists of a trademark plus an additional term (at the second- or top-level), that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. See [WIPO Overview 3.0](#), section 2.5.1.

Furthermore, the Panel notes that the Respondent is identified in the registration details of the disputed domain name as “Orbimed India”, however, there is no evidence before the Panel that the Respondent is actually commonly known as “Orbimed India” apart from the disputed domain name, which itself hosts a website identifying the operator as “Orbimed Health Care” and not “Orbimed India”. Rather, it appears most likely that such details were specifically chosen to falsely suggest an affiliation with the Complainant.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel refers to its considerations under section 6.B.

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.

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.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt “to attract, for commercial gain, Internet users to [the respondent’s] web site or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of [the respondent’s] web site or location or of a product or service on [the respondent’s] web site or location” is evidence of registration and use in bad faith.

In the present case, the Panel notes that the disputed domain name incorporates the entirety of the Complainant’s distinctive ORBIMED trademark along with the geographic term, “India”, falsely suggesting to Internet users the mistaken belief that they may find an India-based distributor or operator of the Complainant’s services. Further, given the content of the website hosted on the disputed domain name, which identifies the operator as “Orbimed Health Care”, it is clear 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 Panel takes into account the notoriety of the Complainant and its trademarks and the fact that despite the Center’s attempts to reach the Respondent, the Respondent did not reply to the Complaint. Accordingly, the Panel finds that the Respondent has attempted to impersonate the Complainant and/or has sought to align himself with the Complainant’s success.

Panels have held that the use of a domain name for illegal activity, here impersonation and passing off, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

The Panel thus finds that the Respondent’s registration and use of the disputed domain name constitutes bad faith under the Policy and thus 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 <orbimedindia.com> be transferred to the Complainant.

/Willem J. H. Leppink/

Willem J. H. Leppink

Sole Panelist

Date: September 16, 2024