

ADMINISTRATIVE PANEL DECISION

Ornua Co-operative Limited v. Tony Daniels
Case No. D2024-3237

1. The Parties

The Complainant is Ornua Co-operative Limited, Ireland, represented by Tomkins & Co., Ireland.

The Respondent is Tony Daniels, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <ornua.com> is registered with Hostinger Operations, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 7, 2024. On August 7, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 8, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 9, 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 August 9, 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 August 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 4, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 17, 2024.

The Center appointed Luca Barbero as the sole panelist in this matter on September 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

The Complainant is an Irish Agricultural Cooperative founded in 1961 to market and sell dairy products on behalf of its members.

The Complainant is Ireland's largest exporter of Irish dairy products and a leading global provider of premium Irish dairy products, including the KERRYGOLD range of butter and cheese goods.

The Complainant is the owner of several trademark registrations for ORNUA, including the following, as per trademark registration certificates submitted in Annex 4 to the Complaint:

- European Union trademark registration No. 013558143 for ORNUA (word mark), filed on December 12, 2014, and registered on May 8, 2015, in international classes 29, 35, and 42;
- European Union trademark registration No. 013558184 for ORNUA (figurative mark), filed on December 12, 2014, and registered on May 8, 2015, in international classes 29, 35, and 42;
- International trademark registration No. 1310691 for ORNUA (word mark), registered on June 21, 2016, in classes 1 and 29.

The Complainant is also the owner of the domain name <ornua.com>, which was registered on March 13, 2014, and is used by the Complainant to promote its products and services under the trademark ORNUA.

The disputed domain name <0rnua.com> was registered on July 11, 2024, and prior to the present proceeding resolved to a registrar parking page. At present, the disputed domain name does not resolve to an active website.

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 confusingly similar to the trademark ORNUA in which it has rights as it reproduces the trademark in its entirety with the mere substitution of the letter "o" in the mark with the number "0" and the generic Top-Level Domain ("gTLD") ".com".

The Complainant states that its ORNUA mark is an invented word with no common usage, derived from the Irish Words "Ór Nua" meaning "new gold" and submits that such trademark is unique to the Complainant.

The Complainant submits that the Respondent has no rights or legitimate interests in the disputed domain name since: i) the Respondent has not received authorization from the Complainant to use the Complainant's ORNUA trademark, is neither affiliated with the Complainant nor a licensee or authorized agent of the Complainant; ii) the Respondent is not commonly known by the disputed domain name and does not hold any rights or legitimate interests in the mark ORNUA or any other similar sign; iii) the disputed domain name resolved to a parking page showing no offering of original content or goods or services; iv) any other use of the disputed domain name would invariably mislead and divert consumers away from the Complainant and have the genuine potential to dilute and/or tarnish the Complainant's registered trademark rights; v) the Respondent's registration of the disputed domain name is clearly designed for bad faith commercial use, and any possibility of legitimate non-commercial or fair use is excluded; and vi) typo-squatting is a clear indication of a lack of rights or legitimate interests in the disputed domain name.

With reference to the circumstances evidencing bad faith, the Complainant indicates that, since the registration and use of its ORNUA marks long predates the registration of the disputed domain name and considering the internationally well-known and famous status of its trademark ORNUA, the Respondent undoubtedly knew of the Complainant's trademark when registering the disputed domain name.

The Complainant also submits that, since the registration of the disputed domain name constitutes typosquatting of the Complainant's ORNUA mark, the Respondent not only knew about the Complainant's marks, but made a deliberate and opportunistic attempt to create a likelihood of confusion with the Complainant's trademark.

As to the circumstance that the Respondent redirected the disputed domain name to a mere parking page, the Complainant asserts that passive holding does not prevent a finding of bad faith use considering i) the ORNUA mark is inherently distinctive, has acquired enhanced distinctiveness through extensive use worldwide and has a strong reputation; ii) there is no evidence of actual or contemplated good faith use of the disputed domain name by the Respondent; iii) the Respondent has concealed its identity by using a privacy service; and iv) it is impossible to identify any good faith use to which the disputed domain name may be put, given that it is essentially identical to the Complainant's well-known mark.

B. Respondent

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

6. Discussion and Findings

According to 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." Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- (i) that the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that 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. 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. Indeed, the Complainant has provided evidence of valid trademark registrations for ORNUA.

The Panel finds the mark is recognizable within the disputed domain name, as it is entirely reproduced in the disputed domain name with the mere substitution of the first letter "o" of the mark with the number "0". [WIPO Overview 3.0](#), section 1.7. A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.9.

The applicable TLD in a domain name, such as the generic Top-Level Domain (“gTLD”) “.com” in this case, is viewed as a standard registration requirement and is thus disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1.

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. [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.

According to the evidence on record, there is no relationship between the Complainant and the Respondent, and the Complainant has not authorized the Respondent to register or use its trademark or the disputed domain name. Moreover, there is no element from which the Panel could infer a Respondent’s right over the disputed domain name, or that the Respondent might be commonly known by the disputed domain name.

Furthermore, there is no evidence of use of the disputed domain name by the Respondent in connection with a bona fide offering of goods or services or a legitimate noncommercial or fair use without intention to misleadingly divert the consumers or to tarnish the Complainant’s trademark.

The Complainant states that its ORNUA mark is an invented word with no common usage, derived from the Irish Words “Ór Nua” meaning “new gold”, thus the Panel finds that the composition of the disputed domain name is inherently misleading and thus cannot constitute fair use.

Indeed, as highlighted above, the disputed domain name prior to the present proceeding resolved to a registrar parking page whilst at present it does not resolve to any active website. The Panel shares the view held in *Teachers Insurance and Annuity Association of America v. Wreaks Communications Group*, WIPO Case No. [D2006-0483](#), where it was found that “Absent some contrary evidence from Respondent, passive holding of a Domain Name does not constitute ‘legitimate non-commercial or fair use’.

Therefore, the Panel finds that the Complainant has also established the second element of the Policy.

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 finds that, in light of i) the prior registration and use of the trademark ORNUA in connection with the products and services provided by the Complainant since 1961; ii) the promotion of the Complainant's business online at the website "www.ornua.com"; iii) the composition of the disputed domain name, which appears to be a clear case of typosquatting of the Complainant's ORNUA mark and its domain name <ornua.com>, the Respondent registered the disputed domain name to target the Complainant and its trademark.

The Panel also notes that the disputed domain name, currently pointed to an inactive website and resolving prior to the filing of the Complaint to a registrar parking page, has been passively held. Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness of the Complainant's trademark, the composition of the disputed domain name, the Respondent's failure to submit a response to provide any evidence of actual or contemplated good-faith use, and the implausibility of any good faith use to which the disputed domain name may be put, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Therefore, Panel finds that the Complainant has established the third element of the Policy as well.

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 <Ornua.com> be transferred to the Complainant.

/Luca Barbero/

Luca Barbero

Sole Panelist

Date: October 4, 2024