

ADMINISTRATIVE PANEL DECISION

Olympic Council of Asia v. DEMCO, DEMCO
Case No. D2024-4233

1. The Parties

The Complainant is Olympic Council of Asia, Kuwait, represented by Bailey Duquette P.C., United States of America.

The Respondent is DEMCO, DEMCO, Kuwait.

2. The Domain Name and Registrar

The disputed domain name <ocasia.org> is registered with DomainSpot LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 14, 2024. On October 15, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 15, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 the Respondent of the Complaint, and the proceedings commenced on October 21, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 10, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 11, 2024.

The Center appointed Steven A. Maier as the sole panelist in this matter on November 15, 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.

The Complainant submitted an unsolicited Supplemental Filing on November 25, 2024.

On December 10, 2024, the Panel issued a Procedural Order No. 1. The Complainant submitted a reply to the Administrative Panel Procedural Order No. 1 on December 15, 2024. The Respondent did not reply.

4. Factual Background

The Complainant is an organization, headquartered in Kuwait, which is engaged in the development of sport, culture, and education of Asian youth, the moral and physical qualities that come from fair competition in sports, and the promotion of international respect, friendship, goodwill, peace, and the environment.

It is the Complainant's evidence that, in 2001, it engaged the Respondent to register and maintain a website located at the disputed domain name. The Complaint does not, however, produce any contractual documentation in this regard.

The disputed domain name was registered on April 28, 2001.

The disputed domain name has been used for the purposes of a website operated by or behalf of the Complainant.

The Complainant is the owner of Kuwait trademark registration number 70496 for the word mark OLYMPIC COUNCIL OF ASIA, registered on May 13, 2008 in International Class 41.

The commercial relationship between the Complainant and the Respondent appears to have terminated in or before 2019.

The Complainant produces evidence that, since that date, it has repeatedly asked the Respondent to transfer the disputed domain name to the Complainant, but the Respondent has declined to do so, at least (allegedly) without additional consideration being paid.

5. Parties' Contentions

A. Complainant

The Complainant contends that, by virtue of its use of the name OLYMPIC COUNCIL OF ASIA since 2001, that name has gained a substantial degree of public recognition and has become uniquely associated with the Complainant. The Complainant also relies on its Kuwait trademark registration. The Complainant submits that the test under the first element of the Policy engages a low threshold for confusing similarity, and that the disputed domain name is confusingly similar to its trademark, differing principally by the abbreviation of "Olympic" to "o" and "Council" to "c". The Complainant further submits that this is a case in which the relevant website content may confirm a finding of confusing similarity (see e.g. section 1.15 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It states that the Respondent's sole business is in creating and maintain websites, and that it has no association with the Complainant save as its website operator. It further contends that "while the Respondent may have had a legitimate right to maintain and/or control the content at the domain name, panels have consistently found that when an arrangement terminates, any rights to use the website also terminates." The Complainant cites *Compagnie Générale des Etablissements Michelin v. Osazuwa Etinosa*, WIPO Case No. [D2023-1203](#) (the "Michelin case"), and *Progeo Monitoring GmbH v. Clark Guinness*, WIPO Case No. [D2015-2163](#) (the "Progeo case"), in support of this proposition.

The Complainant submits that the disputed domain name was registered and is being used in bad faith. It states that it "engaged Respondent to register and maintain the site at [ocasio.org](#)," but "was unaware that the Respondent harbored a bad faith intent to maintain ultimate control of the site and refuse to turn over the

relevant data and passwords without additional consideration from OC Asia once the business relationship terminated.” The Complaint contends that the Respondent has consistently refused, in bad faith, to transfer the disputed domain name to the Complainant, and has used the disputed domain name in bad faith by recently taking down the Complainant’s website.

Within the Complainant’s exhibits to the Complaint, it includes a letter written by it to the Internet Corporation for Assigned Names and Numbers (“ICANN”) relating to the disputed domain name. The Complainant’s letter stated:

“While we acknowledge the absence of a formal contract, we possess supporting evidence including:

- Emails confirming initial discussions and understanding with Demco concerning domain ownership.
- Financial records documenting the payment made for the domain using OCA funds.
- Internal records referencing the ocasisa.org domain as OCA property since 2008.”

However, the letter to ICANN did not appear to include the emails or other documents referred to above, nor were they otherwise exhibited to the Complaint.

In an unsolicited supplemental filing of November 25, 2024 (to which the Panel does not consider that the Respondent requires an opportunity to reply), the Complainant alleges further bad-faith action on the part of the Respondent following the filing of the Complaint, including disabling the Complainant’s email infrastructure.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

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

6. Procedural Order and Complainant’s Reply

On December 10, 2024, pursuant to paragraphs 10 and 12 of the Rules, the Panel issued Procedural Order No. 1 in the proceeding. The Procedural Order stated that, while the Complainant claimed that the disputed domain name had been registered in bad faith, this was not clear from the evidence. The Procedural Order stated, in particular, that:

“On page 2 of Annex 2 of the Complaint, the Complainant submits that ‘without a formal contract, we possess supporting evidence including: emails confirming initial discussions and understanding with Demco regarding domain name ownership’ without producing it.”

The Complainant was invited to produce additional evidence accordingly by December 15, 2024 (with the Respondent having until December 17, 2024 to respond).

The Complainant replied on December 15, 2024, producing a signed declaration dated December 11, 2024 from its Chief Financial Officer. While the declaration referred to an agreement said to have been made between the parties in April 2001, it neither exhibited nor made any reference to the emails referred to above.

In a covering email accompanying the declaration, the Complainant’s representative asserted that, by reason of disruptions (allegedly) caused by the Respondent to the Complainant’s email system, the representative had been “unable to confirm as of the time of this submission whether and to what extent these disruptions prevented OC Asia from obtaining or accessing the emails referenced in Annex 2 and cited in [the Procedural Order].”

The Complainant's representative requested a further two weeks in order to investigate and provide additional evidence if appropriate.

In view of the Complainant's failure to produce the emails in question in conjunction with its letter to ICANN, the Complaint, or its reply to the Procedural Order, and noting that the Complainant's Chief Financial Officer made no reference to those emails in his declaration, the Panel did not consider it would be productive, or in the interests of procedural efficiency, for further time to be granted. The Panel therefore refused the request for further time.

7. Discussion and Findings

7.1. Preliminary Matter – The Complainant's Supplemental Filing

After the Panel had been appointed, the Complainant filed an unsolicited supplemental filing on November 25, 2024.

Paragraph 10 of the Rules vests the Panel with the authority to determine the admissibility, relevance, materiality, and weight of the evidence, and also to conduct the proceedings with due expedition. There is no provision in the Rules for a party to file additional unsolicited submissions. Unsolicited supplemental filings are generally discouraged. A party submitting an unsolicited supplemental filing should show some exceptional circumstances as to why it was unable to provide the information contained therein in its complaint or response (see section 4.6 of [WIPO Overview 3.0](#)).

The supplemental filing alleges further bad faith action on the part of the Respondent following the filing of the Complaint, including disabling the Complainant's email infrastructure. The information in the supplemental filing could not have been included in the original Complaint.

The Panel has reviewed the Complainant's supplemental filing, however, the matters raised do not affect the outcome of this case, in particular because they do not address bad faith registration of the disputed domain name.

7.2. Substantive Matters

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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

The Complainant has established that it is the owner of registered trademark rights in the mark OLYMPIC COUNCIL OF ASIA. The first element functions principally as a standing requirement, and the Panel accepts the Complainant's submission that there is a relatively low threshold for establishing confusingly similarity for the purposes of the Policy. The Panel also accepts that this is a case in which the relevant website content – being the Complainant's own website – serves to affirm confusing similarity. The Panel therefore finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

There is no evidence in this case that the Respondent has any rights or legitimate interests in respect of the disputed domain name other than to have created, maintained and operated a website on behalf of the Complainant. It appears to be undisputed that the commercial relationship under which the Respondent undertook those functions ended in or before 2019, and, as observed in section 2.11 of [WIPO Overview 3.0](#):

“Panels tend to assess claimed respondent rights or legitimate interests in the present, i.e., with a view to the circumstances prevailing at the time of the filing of the complaint.

Without prejudice to the complainant’s duty to establish that a domain name has been registered and used in bad faith, a respondent claiming a right or legitimate interest in a domain name for example based on a prior agreement or relationship between the parties or based on past good-faith use (thus demonstrating merely a past right or legitimate interest) would not necessarily have rights or legitimate interests in the domain name, at the time a decision is rendered.”

On this basis, and in the absence of any submission from the Respondent asserting any rights or legitimate interests in the disputed domain name on any other grounds, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The third element of the Policy involves the conjunctive requirement that the disputed domain name must both have been registered, and is being used, in bad faith. This requirement may frustrate a complainant in a case where the disputed domain name is clearly being used in bad faith, but where the initial registration or acquisition of the disputed domain name cannot be shown to have been in bad faith. Moreover, prior cases under the UDRP have comprehensively rejected the concept of “retroactive bad faith,” i.e. relying upon the respondent’s later bad-faith conduct to infer bad-faith intent at the time of registration.

In cases where a respondent, acting on behalf of a complaint, wrongfully registers a domain in its own name rather than the complainant’s, then a finding of registration in bad faith may follow. In this case, however, there is no evidence – or indeed submission on the part of the Complainant – that the Respondent was instructed, or otherwise obliged, to register the disputed domain name in the Complainant’s name rather than its own. Furthermore, the Complainant appears to have made no complaint about the Respondent’s registration of the disputed domain name in its own name for a period of approximately 18 years following registration.

The Complainant asserts that, while “Respondent may have had a legitimate right to maintain and/or control the content at the domain name,” that right terminated upon the parties’ commercial relationship coming to an end. However, while that argument may bear upon the question of any continuing rights or legitimate interests on the Respondent’s part (as discussed above), it does not resolve the issue of registration in bad faith.

Concerning the two cases that the Complainant cites in support of its position, the Michelin case involved the use of the Complainant’s trademark to operate a competing website, and the fact that the Respondent was a former distributor of the Complainant was incidental to the decision. In the Progeo case, the Respondent registered the disputed domain name in the face of an express contractual obligation that the Respondent “was prohibited from claiming in his own name, trade mark rights [...] from products sold and manufactured by [the Complainant].”

In the view of the Panel, of more relevant application to the present case is the decision in *Adgrabber AB v. Gordito AB, Robin Kochauf*, WIPO Case No. [D2019-2753](#), in which the panel found as follows:

“Although the circumstances [...] suggest that the disputed domain names were registered in the name of the Respondent with the common intention that the Complainant would become the registered holder, there is no clear evidence in the case demonstrating that it was in fact agreed by the parties at the time of registration [...] Consequently, there is no material in the case from which the Panel can state with any degree of confidence that the Respondent’s motives at time of registration of the disputed domain names were *mala fide* and actuated by a desire to exploit a nascent trademark of the Complainant. Considering the above, the Panel concludes that the Complaint has provided insufficient evidence to conclude that the disputed domain names were registered in bad faith by the Respondent.”

In this case, similarly, there is no evidence that the Respondent was required to register the disputed domain name in the Complainant’s name, and the inference to be drawn from the Complainant’s submissions and surrounding circumstances is in fact to the contrary. Moreover, the Complainant’s assertion that it “was unaware that Respondent harbored a bad faith intent” to refuse to transfer the disputed domain name upon the commercial relationship ending, amounts in effect to an invitation to infer bad-faith intent at the time of registration from the Respondent’s subsequent conduct, i.e. “retroactive bad faith”. The Panel notes again that, while the Complainant claimed to have emails confirming the Parties’ understanding concerning ownership of the disputed domain name, it has been unable to produce any such evidence despite having several opportunities to do so. Moreover, the sworn statement of the Complainant’s Chief Financial Officer indicates that the Respondent was engaged to register the disputed domain name, including for at least some time in the Respondent’s name, and create a website for the Complainant.

In the circumstances, the Panel is unable to conclude that the disputed domain name was registered in bad faith for the purposes of the Policy, and the Complaint must necessarily fail.

The Panel makes the observation, however, that while the Complainant has not demonstrated registration of the disputed domain name in bad faith for the purposes of the Policy, such finding should not be taken as an endorsement of the Respondent’s actions and does not prejudice the Complainant’s ability, if so advised, to pursue an appropriate case before a court of competent jurisdiction, which may provide a more appropriate forum for a detailed investigation of the facts and legal implications than is possible in proceedings under the UDRP.

8. Decision

For the foregoing reasons, the Complaint is denied.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: December 22, 2024