

ADMINISTRATIVE PANEL DECISION

Obagi Holdings Company Limited v. zhu lin
Case No. D2024-4269

1. The Parties

Complainant is Obagi Holdings Company Limited, Cayman Islands, United Kingdom, represented by MSA IP - Milojevic Sekulic & Associates, Serbia.

Respondent is zhu lin, China.

2. The Domain Name and Registrar

The disputed domain name <obagichina.com> (the “Domain Name”) is registered with Net-Chinese Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on October 16, 2024. On October 17, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On October 18, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to Complainant on October 22, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint in English on October 25, 2024.

On October 22, 2024, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the Domain Name is Chinese. On October 24, 2024, Complainant requested English to be the language of the proceeding. Respondent did not submit any comment on Complainant’s submission.

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 Respondent in English and Chinese of the Complaint, and the proceedings commenced on October 29, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 18, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on November 19, 2024.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on November 22, 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

Founded in 1988, Complainant is a global skincare products company involved in skin-care research and skin biology. Complainant has rights in numerous registered trademarks for the OBAGI mark in over 60 countries, including:

- United States of America Trademark Registration No. 2203028 for the OBAGI word mark, registered on November 10, 1998;
- United States of America Trademark Registration No. 2786594 for the OBAGI word mark, registered on November 25, 2003;
- European Union Trademark Registration No. 000164509 for the OBAGI word mark, registered on July 10, 1998; and
- European Union Trademark Registration No. 001164599 for the OBAGI word mark, registered on March 2, 2001.

Complainant, through affiliated entities, also holds numerous additional trademark registrations in China, where Respondent is based, and in which the country name "china" is included in the Domain Name, such as:

- Chinese Trademark Registration No. 1080669 for OBAGI, registered on August 21, 1997;
- Chinese Trademark Registration No. 5150303 for OBAGI, registered on August 28, 2009;
- Chinese Trademark Registration No. 5150304 for OBAGI, registered on June 7, 2009;
- Chinese Trademark Registration No. 5150305 for OBAGI, registered on June 21, 2009;
- Chinese Trademark Registration No. 10854894 for OBAGI, registered on August 7, 2013; and
- Chinese Trademark Registration No. 12217819 for OBAGI, registered on August 14, 2014.

Complainant operates the domain name <obagi.com>, registered on January 26, 1998, as its principal website, to promote its products and services.

The Domain Name was registered on September 22, 2024, and at the time of the filing of the Complaint, resolved to an inactive website.

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

Complainant contends that (i) the Domain Name is identical or confusingly similar to Complainant's trademarks; (ii) Respondent has no rights or legitimate interests in the Domain Name; and (iii) Respondent registered and is using the Domain Name in bad faith.

In particular, Complainant contends that it has trademark registrations for OBAGI and that Respondent registered and is using the Domain Name with the intention to confuse Internet users looking for bona fide and well-known OBAGI products and services.

Complainant notes that it has no affiliation with Respondent, nor authorized Respondent to register or use the Domain Name, which includes Complainant's trademarks, and that Respondent has no rights or legitimate interests in the registration and use of the Domain Name. Rather, Complainant contends that Respondent has acted in bad faith in acquiring and setting up the Domain Name, when Respondent clearly knew of Complainant's rights.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

6.1. Preliminary Procedural Issue - Language of the Proceeding

The Rules, in paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement between the respondent and the registrar in relation to the disputed domain name, the language of the proceeding shall be the language of the registration agreement, subject to the authority of the panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

Complainant submitted its Complaint in English. In its email dated October 24, 2024, Complainant requested that the language of the proceeding be English. According to the information received from the Registrar, the language of the Registration Agreement for the Domain Name is Chinese.

Complainant contends that: it is a multinational company with English as a working language within the company and all third parties, and has no knowledge of Chinese; the Domain Name is registered in Latin characters and not Chinese script, that English is the language most widely used in international relations, and one of the working languages of the Center; that the proceedings in Chinese would require Complainant to retain specialized translation services, and the time and costs required for translation of the proceedings would unfairly burden Complainant and delay the proceedings and adjudication of this matter. Complainant further states that the Domain Name includes the geographical term "china" in English and the list of domain names registered by Respondent indicate numerous domain names with English terms, strongly suggesting that Respondent has knowledge of English.

In exercising its discretion to use a language other than that of the Registration Agreement for the Domain Name, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both Parties, taking into account all relevant circumstances of the case, including matters such as the Parties' ability to understand and use the proposed language, time, and costs.

The Panel accepts Complainant's submissions regarding the language of the proceeding. The Panel notes that the Center notified the Parties in Chinese and English of the language of the proceeding as well as notified Respondent in Chinese and English of the Complaint. Respondent chose not to comment on the language of the proceeding, nor did Respondent choose to file a Response.

The Panel is also mindful of the need to ensure that the proceeding is conducted in a timely and cost-effective manner. Complainant may be unduly disadvantaged by having to translate the Complaint into Chinese and to conduct the proceeding in Chinese.

Having considered all the circumstances of this case, the Panel determines that English be the language of the proceeding.

6.2. Substantive Issues

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

(i) the 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 Domain Name; and

(iii) the Domain Name was registered and is being used in bad faith.

Section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) states that failure to respond to the complainant’s contentions would not by itself mean that the complainant is deemed to have prevailed; a respondent’s default is not necessarily an admission that the complainant’s claims are true.

Thus, although in this case Respondent has failed to respond to the Complaint, the burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence. See, e.g., *The Knot, Inc. v. In Knot We Trust LTD*, WIPO Case No. [D2006-0340](#).

A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. Complainant has provided evidence of its rights in the OBAGI trademarks, as noted above. Complainant has also submitted evidence, which supports that the OBAGI trademarks are widely known and a distinctive identifier of Complainant’s products and services.

With Complainant’s rights in the OBAGI trademarks established, the remaining question under the first element of the Policy is whether the Domain Name, typically disregarding the Top-Level Domain (“TLD”) in which it is registered (in this case, “.com”), is identical or confusingly similar to Complainant’s trademark. See, e.g., *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#).

Here, the Domain Name is confusingly similar to Complainant’s OBAGI trademarks. These trademarks are recognizable in the Domain Name. In particular, the Domain Name includes Complainant’s OBAGI trademarks in their entirety, with the addition of the geographical term “china” in the Domain Name. The addition of the term “china” in the Domain Name as noted does not prevent a finding of confusing similarity between the Domain Name and Complainant’s OBAGI trademarks.

Thus, the Panel finds that Complainant has satisfied the first element of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make a prima facie showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes such a prima facie showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with relevant evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

From the record in this case, it is evident that Respondent was, and is, aware of Complainant and its trademarks, and does not have any rights or legitimate interests in the Domain Name. Complainant has confirmed that Respondent is not affiliated with Complainant, or otherwise authorized or licensed to use Complainant’s trademarks or to seek registration of any domain name incorporating the trademarks.

Respondent is also not known to be associated with the OBAGI trademarks and there is no evidence showing that Respondent has been commonly known by the Domain Name. Further, the nature of the Domain Name comprising Complainant's trademarks in their entirety, with the inclusion of the geographical term "china" indicates an awareness of Complainant, as Respondent is based in China.

In addition, Respondent has not used the Domain Name in connection with a bona fide offering of goods or services or a legitimate noncommercial or fair use. Rather, at the time of filing of the Complaint, the Domain Name resolved to an inactive website. At the time of the Decision, the Domain Name resolved to an inactive website. Such use does not constitute a bona fide offering of goods or services or a legitimate noncommercial or fair use and cannot under the circumstances confer on Respondent any rights or legitimate interests in the Domain Name. See, e.g. *Intesa Sanpaolo S.p.A. v. Charles Duke / Oneandone Private Registration*, WIPO Case No. [D2013-0875](#).

Accordingly, Complainant has provided evidence supporting its prima facie claim that Respondent lacks any rights or legitimate interests in the Domain Name. Respondent has failed to produce countervailing evidence of any rights or legitimate interests in the Domain Name. Thus, the Panel concludes that Respondent does not have any rights or legitimate interests in the Domain Name and Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Respondent's actions indicate that Respondent registered and is using the Domain Name in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a domain name registrant, namely:

"(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location."

The Panel finds that Complainant provided ample evidence to show that registration and use of the OBAGI trademarks long predate the registration of the Domain Name. Complainant is also well established and known. Indeed, the record shows that Complainant's OBAGI trademarks and related products and services are widely known and recognized. Therefore, Respondent was likely aware of the OBAGI trademarks when it registered the Domain Name, or knew or should have known that the Domain Name was confusingly similar to Complainant's trademarks. See [WIPO Overview 3.0](#), section 3.2.2; see also *TTT Moneycorp Limited v. Privacy Gods / Privacy Gods Limited*, WIPO Case No. [D2016-1973](#).

The Panel therefore finds that Respondent's awareness of Complainant's trademark rights at the time of registration suggests bad faith. See *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. [D2001-1070](#); and *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#).

In the present circumstances, although the Domain Name is inactive, considering the distinctiveness and reputation of the OBAGI trademarks, the failure of Respondent to submit a response or to provide any evidence of actual or contemplated good faith use, and particularly noting the Domain Name clearly targeted Complainant, the Panel finds that Respondent has registered and is using the Domain Name in bad faith and Complainant succeeds under the third element of paragraph 4(a) 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 Domain Name <obagichina.com> be transferred to Complainant.

/Kimberley Chen Nobles/

Kimberley Chen Nobles

Sole Panelist

Date: November 26, 2024