

## **ADMINISTRATIVE PANEL DECISION**

PJSC “Lianozovskiy OGK” (Public Joint Stock Company Lianozovskiy Office and Hotel Complex) v. David Jones

Case No. D2024-4522

### **1. The Parties**

The Complainant is PJSC “Lianozovskiy OGK” (Public Joint Stock Company Lianozovskiy Office and Hotel Complex), Russian Federation, represented by Soundmark Law, Canada.

The Respondent is David Jones, United Kingdom.

### **2. The Domain Name and Registrar**

The disputed domain name <lianogk.com> is registered with Tucows Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 4, 2024. On November 5, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 5, 2024, the Registrar transmitted by email to the Center its verification disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Domain Administration, Contact Privacy Inc. Customer 0160654326) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 6, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant did not amend the Complaint. The Respondent and the Center exchanged correspondence on November 8, 2024.

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 November 11, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 1, 2024. The Response was filed with the Center on November 30, 2024.

On December 2, 2024, the Complainant requested to make a supplemental filing. On December 3, 2024, the Respondent filed an objection.

The Center appointed Assen Alexiev as the sole panelist in this matter on December 6, 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.

On December 6, 2024, the Complainant submitted its supplemental filing with the Center. On December 9, 2024, the Respondent submitted a response to the Complainant's supplemental filing.

#### **4. Factual Background**

The Complainant is a public joint-stock company based in the Russian Federation. It operates a hotel and office facilities in Moscow, where it provides hotel accommodation and office space rental services.

The disputed domain name was registered on January 25, 2021. It resolves to a Russian language website that contains articles discussing the activities of the Complainant's management.

#### **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.

The Complainant maintains that its hotel and office services have a strong reputation among consumers and business partners in the Russian Federation, and that, by reason of its adoption and long-term use of the brand Lianozovskiy OGK, the Complainant has unregistered trademark rights in this brand, which is distinctive and well-known in the Russian Federation due to its association with the Complainant's Lianozovskiy Hotel and Office Complex, distinguishing the Complainant's services from those of others in the Russian market. According to the Complainant, Russian law recognizes the protection of well-known marks through use, even when they are not formally registered, offering similar protections against bad faith registration and use.

The Complainant submits that the disputed domain name is confusingly similar to its unregistered trademark Lianozovskiy OGK, because it includes the terms "Liano" and "ogk", and is likely to cause confusion with the trademark, leading consumers to believe that the disputed domain name is associated with the Complainant's services. The Complainant maintains that the Respondent uses the disputed domain name in connection with a website that publishes content damaging to the reputation of the Complainant and intended to mislead consumers and tarnish the goodwill associated with the Lianozovskiy OGK trademark. The Complainant notes that some websites list its business as "Lianozovskiy Hotel and Office Complex", which is a formal version of "Lianozovskiy OGK". According to it, "OGK" is a recognized abbreviation for "ofisno-gostinichnyy kompleks" ("office and hotel complex"), and it is commonly used interchangeably with the full name in both business and consumer contexts, so the public, industry partners, and consumers would easily associate the disputed domain name with the Complainant's Lianozovskiy OGK business, despite the abbreviation, as both names are synonymous.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it is not known by this name and has no relevant trademark rights, has not used it for a bona fide offering of goods or services, and has not made a legitimate noncommercial or fair use of it. The Complainant submits that the Respondent is using the disputed domain name to publish untruthful defamatory content about the Complainant, which includes serious and unsubstantiated allegations of

criminal activity involving one of the Complainant's directors, exceeding any reasonable definition of lawful fair criticism or commentary.

The Complainant states that it does not have its own domain name and website, and visitors looking for it would mistake the website at the disputed domain name for the Complainant's official website. The Complainant adds that the front page of the website at the disputed domain name contains no disclaimer that it is not operated by the Complainant.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. According to it, the Respondent registered the disputed domain name to harm the reputation of the Complainant by publishing defamatory content that misleads consumers.

According to the Complainant, the Respondent was aware of the Complainant's Lianozovskiy OGK name and its association with the Lianozovskiy Hotel and Office Complex before registering the disputed domain name, and the similarity between the Lianozovskiy OGK name and the disputed domain name, combined with the content of the associated website leave no doubt that the Respondent had the Complainant in mind when registering the disputed domain name. The Complainant concludes that the Respondent registered the disputed domain name to exploit the reputation and goodwill associated with the Complainant's Lianozovskiy OGK name, to mislead consumers looking for the Complainant's business, to prevent the Complainant from reflecting its name in a corresponding domain name, and to disrupt the Complainant's business.

## **B. Respondent**

The Respondent contends that the Complainant has not satisfied the elements required under the Policy for a transfer of the disputed domain name.

The Respondent asserts that the disputed domain name is lawfully operated and serves a critical informational and oversight function for the shareholders of the Complainant, that its purpose is to provide a platform dedicated to transparency, efficiency, and accountability for the shareholders of the company, and that it was created in response to the activities of the Complainant's management, which it alleges are currently under investigation. The Respondent maintains that its use of the disputed domain name is purely informational and non-commercial and that it does not generate revenues or direct users to competing businesses. The Respondent emphasizes that the shareholders of the Complainant do not own or directly operate the website at the disputed domain name, and that its operations, including content publication, are managed independently to ensure compliance with legal and ethical standards and to avoid conflicts of interest.

The Respondent submits that it has no intention to imitate, mislead or confuse Internet users regarding any association with the Complainant. The Respondent explains that it selected the disputed domain name because it is logical and descriptive, and reflects the geographical and organizational scope of the associated website. In this regard, the Respondent notes that "Lianozovsky" refers to a well-known district in Moscow, and that "OGK" is an abbreviation commonly used in Russian business contexts, which in this case stands for "Объединённая Гостиничная Компания" (in English – "United Hotel Company").

The Respondent submits that the terms "lianogk" and "Lianozovskiy OGK" are not registered as trademarks anywhere in the world, and that the evidence submitted by the Complainant does not establish that it has unregistered trademark rights. The Respondent points out that the Complainant uses different names in the various exhibits to the Complaint, which undermines its claim of having a clear and recognizable brand identity. The inconsistency in branding weakens any argument that the Complainant holds an unregistered trademark. According to the Respondent, the term "lianogk" is not inherently distinctive or exclusively tied to the Complainant's brand, as it does not appear in the Complainant's business profile or on the Complainant's invoices and business card, and is not being used as an abbreviation or as a recognized identifier of the Complainant's business. According to the Respondent, this shows that the Complainant itself does not recognize "lianogk" as a trademark associated with its own business.

## 6. Discussion and Findings

### 6.1. Procedural issue – Supplemental Filings

The Complainant and the Respondent have each submitted unsolicited supplemental filings after the appointment of the Panel.

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, and Paragraph 12 of the Rules expressly provides that it is for the panel to request, in its sole discretion, any further statements or documents from the parties it may deem necessary to decide the case.

As noted in section 4.6 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), unsolicited supplemental filings are generally discouraged, unless specifically requested by the panel, and panels have repeatedly affirmed that the party submitting or requesting to submit an unsolicited supplemental filing should clearly show its relevance to the case and why it was unable to provide the information contained therein in its complaint or response (e.g., owing to some "exceptional" circumstance).

Panels are typically concerned about the delay caused by additional rounds of pleadings, and normally accept supplemental filings only to consider material new evidence or provide a fair opportunity to respond to relevant arguments that could not reasonably have been anticipated. See *Welcomemat Services, Inc. v. Michael Plummer Jr., MLP Enterprises Inc.*, WIPO Case No. [D2017-0481](#).

The Complainant's supplementary submission responds to some of the Respondent's arguments in the Response, and the Respondent's supplementary submission responds to the Complainant's supplementary submission. The Respondent's arguments and statements were not unforeseeable or based on evidence that was not available at the time the Complaint was filed, and a number of them are irrelevant to the present dispute. At the same time, the Complainant's supplementary submission does not address the argument raised in the Response regarding the non-existence of the Complainant's trademark rights, which turned out to be determinative of the outcome of this proceeding and rendered unnecessary the discussion of the issues of rights and legitimate interests and bad faith, to which the Parties' supplementary submissions might otherwise have been of some relevance. Therefore, the Panel concludes that it is neither necessary nor justified to accept and consider the unsolicited supplemental submissions made by the Parties.

### 6.2. Substantive issues

#### 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 does not have a registered trademark. It claims having unregistered trademark rights in its abbreviated name "Lianozovskiy OGK".

The Complainant is based in the Russian Federation. This is a first-to-file jurisdiction, where unregistered trademarks do not enjoy legal protection, and trademark rights are not acquired by using the designation in respect of the sale of goods or the advertising or performance of services. The only protection afforded to non-registered brands in the Russian Federation may be found in unfair competition law based on Article 10-bis of the Paris Convention. As discussed in section 1.3 of the [WIPO Overview 3.0](#), noting the availability of trademark-like protection under certain national legal doctrines (e.g., unfair competition or passing-off) and considerations of parity, where acquired distinctiveness/secondary meaning is demonstrated in a particular UDRP case, unregistered rights have been found to support standing to proceed with a UDRP case including

where the complainant is based in a civil law jurisdiction. In light of the foregoing, the Panel accepts that if the Complainant successfully demonstrates that its abbreviated name “Lianozovskiy OGK” has acquired a secondary meaning that consumers associate with the Complainant, this may, in principle, support standing in the present case, even though the Complainant is based in a civil law jurisdiction.

As pointed out in section 1.3 of the [WIPO Overview 3.0](#), to establish unregistered trademark rights for purposes of the UDRP, the complainant must show that its mark has become a distinctive identifier which consumers associate with its hotel and office space rental services. Relevant evidence demonstrating such acquired distinctiveness (also referred to as secondary meaning) includes a range of factors such as (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys. In cases involving unregistered marks that are comprised solely of descriptive terms which are not inherently distinctive, there is a greater onus on the complainant to present evidence of acquired distinctiveness/secondary meaning.

The evidence submitted by the Complainant in support of its alleged unregistered trademark rights includes a number of documents. The first of these is a printout from the Rusprofile database of Russian commercial companies, which shows that the Complainant was registered in 1993 and that its turnover in 2023 was 35,000,000 Russian Rubles (approximately USD 350,000), ranking it 2192 out of 6442 Russian companies in the same industry. The document also shows that the full corporate name of the Complainant is “ПАО ‘Лианозовский офисно-гостиничный комплекс’” (in Latin script – “PAO ‘Lianozovskiy ofisno-gostinichnyy kompleks’”), also in the abbreviated form “ПАО Лианозовский ОГК” (in Latin script – “PAO Lianozovskiy OGK”). “ПАО” (“PAO”) is an abbreviation of the Russian legal term “public joint stock company” (a type of business company), “Lianozovskiy” (as noted by the Respondent) is an adjective formed from the geographical name of the Lianozovo district in the northern part of Moscow, near which the Complainant’s hotel and office facilities are located, and “ОГК” (“OGK”) contains the initial letters of the Russian words “офисно-гостиничный комплекс” (in English – “hotel and office complex”), i.e., the premises operated by the Complainant. Thus, the Complainant’s business name is a combination of terms describing its legal form, the facilities it operates and the geographical location where those facilities are located. These terms and their combination are not inherently distinctive, so that the burden of proof for acquired distinctiveness or secondary meaning is heavier on the Complainant.

The second document is a certificate issued on September 20, 2024, for awarding a three-stars rating to the Complainant’s hotel, referred to under the name “ПАО Лианозовский ОГК” (“PAO Lianozovskiy OGK”). This document does not contain any information whether the Complainant’s hotel enjoyed a three-star rating prior to September 20, 2024.

The third document is a business card in English of the First Deputy General Director of the Complainant where its corporate name is given in full as “Lianozovskiy hotel and office complex”, and which indicates a Mail.ru email address, similarly to the official email address indicated by the Complainant for correspondence in the present proceeding. There is no information about the period in which this business card has been used.

The Complainant also submits an invoice issued to the Complainant on September 30, 2024, by a service provider. The invoice indicates the Complainant by the name “PAO Lianozovskiy OGK”, but it is not a source of information about the activities of the Complainant and about the period in which this name has been used.

The Complainant also submits printouts made in October 2024 of online listings of its hotel in six hotel reservation portals, where the hotel is referred to as “Lianozovskiy Hotel And Office Complex Moscow”, “Lianozovskiy Hotel And Office Complex”, “PAO Lianozovskiy Ofisno-Gostinichnyy Kompleks” or “Lianozovskiy Hotel”. The listing of the Complainant’s hotel in Agoda shows a rating of 6.4 “Good” based on

17 reviews, the listing in Kayak shows a rating of 6 “Okay” based on 55 reviews, the listing in Trip.com shows a rating of 2.3/5 without indicating a number of reviews, the listing in Zenhotels shows a rating of 5.2 “Not bad”, and the listing in Tripadvisor shows a rating of 2.5/5 based on 10 reviews, putting the Complainant at No. 335 out of 363 small hotels in Moscow.

The Complainant also submits screenshots from a Google search, including a screenshot of a third party listing of “Lianozovskiy Hotel and Office Complex” made in 2016, and printouts from an unidentified website, which shows online listings of its hotel were made in 2017 under the name “Lianozovskiy OGK”, and an invoice from Booking.com for the amount of 4185 Russian Rubles (about USD 57) as commission for online reservation services in December 2015, where the Complainant’s name is indicated as “ОАО ‘Лианозовский офисно-гостиничный комплекс’ Lianozovskiy Hotel and Office Complex”.

Finally, the Complainant submits a booking request from 2012 for a two-night stay in one room in the Complainant’s hotel, where its name is indicated as “Гостиница Лианозовская ОАО Лианозовский офисно-гостиничный комплекс” (“Gostinitsa Lianozovskaya ОАО Lianozovskiy ofisno-gostinichnyy kompleks”), and an invoice from 2013 for the delivery of an automatic detector to the Complainant, where its name is indicated as “Лианозовский офисно-гостиничный комплекс” (“Lianozovskiy ofisno-gostinichnyy kompleks”).

To sum up, the evidence shows that the Complainant has listed its hotel in a number of third-party reservation platforms since 2016 under several variants of its full name, and has achieved very modest rankings based on only a two-digit number of user reviews. These listings do not use the abbreviation “ОГК” (“OGK”), and this abbreviation has been used only in invoices or certificates issued to the Complainant by third parties. There is no evidence that “ОГК” (“OGK”) is widely used as an abbreviation for “офисно-гостиничный комплекс” (“hotel and office complex”). Rather, a simple Internet search for this abbreviation shows that it is being used in the Russian language for many different purposes unrelated to the Complainant or to its business. The hotel listings submitted by the Complainant include a photo of the façade of the hotel, which shows only the descriptive sign “Гостиница” (in English – “Hotel”) on the roof, and the name “Lianozovskaya” does not appear on it.

Apart from the above, the Complainant has not submitted any evidence about the nature and extent of advertising using its claimed unregistered trademark Lianozovskiy OGK and the degree of its actual consumer, industry, or media recognition, or any consumer surveys.

The Complainant appears to be conducting its business only through third-party reservation platforms and states that it does not have its own domain name and official website. This is confirmed by the fact that it uses in its business Mail.ru email addresses rather than email addresses set up at a domain name reflecting its claimed unregistered trademark or any other variation of its corporate name.

Taking all this together, the Panel finds that although the evidence submitted by the Complainant shows that it has used different variations of its corporate name in its business since 2012, this evidence is far from sufficient to support a finding that its claimed unregistered trademark Lianozovskiy OGK (or any other variation of its corporate name) has become a distinctive identifier that consumers associate with the Complainant’s services.

On this basis, the Panel concludes that the Complainant has failed to establish trademark or service mark rights for the purposes of the Policy, and that it does not have standing in the present proceeding.

Therefore, the Panel finds that the first element of the Policy has not been established.

## **B. Rights or Legitimate Interests**

Since the Complainant has failed to establish the first element of the Policy under section 6.2.A above, there is no need to address the present section.

**C. Registered and Used in Bad Faith**

Since the Complainant has failed to establish the first element of the Policy under section 6.2.A above, there is no need to address the present section.

**7. Decision**

For the foregoing reasons, the Complaint is denied.

*/Assen Alexiev/*

**Assen Alexiev**

Sole Panelist

Date: December 19, 2024