

ADMINISTRATIVE PANEL DECISION

Open Society Institute v. johnson smith
Case No. D2025-1001

1. The Parties

The Complainant is Open Society Institute, United States of America, represented by Morrison & Foerster, LLP, United States of America.

The Respondent is johnson smith, Nigeria.

2. The Domain Names and Registrar

The disputed domain names <opensocietyfoundation.online> and <opensocietyfoundations.online> are registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 12, 2025. On March 12, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On March 13, 2025, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (N/A) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 14, 2025, 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 March 15, 2025.

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 March 18, 2025. In accordance with the Rules, paragraph 5, the due date for Response was April 7, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 8, 2025.

The Center appointed Debrett G. Lyons as the sole panelist in this matter on April 11, 2025. 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 factual findings pertinent to the decision in this case are that:

(1) the Complainant is a charitable organization headquartered in New York that works to promote awareness and development of a civil society;

(2) the Complainant is the owner of, inter alia, United States Patent and Trademark Office (“USPTO”) Reg. No. 4,248,358, registered on November 27, 2012, for the trademark OPEN SOCIETY FOUNDATIONS;

(3) the disputed domain names were registered on December 29, 2024, and January 12, 2025;

(4) neither disputed domain name resolves to a website but the <opensocietyfoundations.online> disputed domain name has been used as part of an email address to send a message to a third party which poses as having originated from the Complainant; and

(5) there is no relationship between the Parties and the Complainant has not authorized the Respondent to use its trademark or register any domain name incorporating that mark.

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 names.

The Complainant states that it is a United States charitable trust which has trademark rights in the name OPEN SOCIETY FOUNDATIONS by reason of use and registration. The Complainant submits that the disputed domain names “incorporate Complainant’s trademark in its entirety with no additional matter and are therefore identical and confusingly similar to Complainant’s trademark.”

The Complainant alleges that the Respondent has no rights or legitimate interests in the disputed domain names because it is not known by either of the disputed domain names; the disputed domain name <opensocietyfoundation.online> has not been used; and the disputed domain name <opensocietyfoundations.online> has been used for a malicious purpose to send “spoofed emails that appear to come from Complainant but actually are from Respondent in an effort to unlawfully solicit information” and as part of “an illegal spoofing / phishing scheme”.

The Complainant alleges that the Respondent registered the disputed domain names in bad faith, being aware of the Complainant and its trademark, and has either used or passively held the disputed domain names in bad faith.

The Complainant accordingly requests the Panel to order transfer of the disputed domain names.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove that:

- (i) the disputed domain names are 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 names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

It is the responsibility of the Panel to consider whether the requirements of the Policy have been met, regardless of the fact that the Respondent failed to submit a response. Having considered the Complaint and the available evidence, the Panel finds the following:

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a two-fold enquiry – a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to the trademark.

Paragraph 4(a)(i) does not distinguish between registered and unregistered trademark rights. It is accepted that a trademark registered with a national authority is evidence of trademark rights for the purposes of the Policy.¹ The Panel finds that the Complainant has shown trademark rights in OPEN SOCIETY FOUNDATIONS since it provides proof of its registration of that expression with the USPTO, a national trademark authority.²

For the purposes of comparing the disputed domain names with the trademark, the generic Top-Level Domain (“gTLD”) “.online” can be disregarded.³ The Panel finds that the disputed domain name <opensocietyfoundations.online> is identical to the trademark. The Panel finds that the disputed domain name <opensocietyfoundation.online> is confusingly similar to the trademark.⁴

The Panel so finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy with respect to both disputed domain names.

B. Rights or Legitimate Interests

The Complainant has the burden to establish that the Respondent has no rights or legitimate interests in the disputed domain names. It is well settled that the Complainant may first make out a prima facie case, after which the burden of production shifts to the Respondent to rebut such prima facie case by providing evidence demonstrating rights or legitimate interests in the disputed domain names.⁵

Notwithstanding the lack of a response to the Complaint, paragraph 4(c) of the Policy states that any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate rights or legitimate interests to a domain name for purposes of paragraph 4(a)(ii) of the Policy:

“(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

¹WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“WIPO Overview 3.0”](#)), section 1.1.1.

²[WIPO Overview 3.0](#), section 1.2.1.

³[WIPO Overview 3.0](#), section 1.7.

⁴[WIPO Overview 3.0](#), section 1.9.

⁵[WIPO Overview 3.0](#), section 2.1; see also *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#).

- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

The Respondent’s name does not suggest that the Respondent might be commonly known by either of the disputed domain names, and the Panel finds no evidence that it might be so. Further, the Complainant states that there is no association between the Parties and the Panel finds that there is nothing to contradict that claim. There is no evidence that the Respondent has any trademark rights. Finally, on the evidence, one of the disputed domain names has not been used at all, and the other has been used to send the following message and most likely phish for sensitive personal or commercial information:

“Dear [].

Your email address has been randomly selected to receive a donation from OPEN SOCIETY FOUNDATION, a global charitable organization dedicated to addressing poverty and injustice.

Please reply to this email with the reference code WIX/RE/005186/OSF

to receive details on claiming the donation and completing the required documentation.”

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 names.⁶ In failing to file a response, 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 names such as those enumerated in the Policy or otherwise.

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

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out circumstances, which shall be evidence of the registration and use of a domain name in bad faith. They are:

- “(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 Complaint relies on paragraph 4(b)(iii) above, stating that:

“... Respondent disrupts Complainant’s business by using the confusingly similar Disputed Domain Names that resolve to no website, which is likely to frustrate consumers and prevent them from finding Complainant’s legitimate website. The Disputed Domain Names may ultimately harm Complainant’s goodwill and reputation, as they create the perception that Complainant is closed, never existed, or is not a legitimate business. Such use is disruptive of Complainant’s business and further demonstrates bad faith under Policy 4(b)(iii).”

⁶[WIPO Overview 3.0](#), section 2.13.1.

The Panel finds no evidence to suggest that the Parties are competitors and for that reason finds paragraph 4(b)(iii) of the Policy inappropriate. Nor, on the evidence is there a clear basis to apply any of the other paragraph 4(b) scenarios to either of the disputed domain names and so the Complainant must establish, as separate matters, registration in bad faith and use in bad faith of both disputed domain names.

The Complaint states that “Complainant’s long-term prior use of the mark shows that the Respondent had actual knowledge of Complainant’s rights in the mark.” There is no proof of long-term prior use accompanying the Complaint to support that assertion. Annexed to the Complaint are details of Complainant’s own domain name, <opensocietyfoundations.org>, showing its creation in 2010, together with a screenshot from the resolving website as it stands now stating that Complainant has made over 50,000 grants totaling more than USD 23 billion.

There is nothing further of relevance but given the importance of proof of reputation of the trademark, not only to the question of registration in bad faith, but to use (passive holding) in bad faith⁷, the Panel has made permitted research into matters of public record⁸ and notes that the Complainant was established in 1993 by business magnate George Soros and in 2010 started using the trademark to better reflect its role as a benefactor for civil society groups in countries around the world. As of 2015, Complainant had branches in 37 countries.

The Panel makes the reasonable inference based on this information that the Respondent knew of the Complainant and its trademark when it registered the disputed domain names. The use of the disputed domain name, <opensocietyfoundations.online>, underscores that finding. The Panel finds registration in bad faith of both disputed domain names.

Further, UDRP panels have held that the use of a domain name for phishing constitutes bad faith⁹ and so the Panel finds use of the <opensocietyfoundations.online> disputed domain name in bad faith under the Policy. Furthermore, UDRP panels have found that the non-use of a domain name does not prevent a finding of bad faith under the doctrine of passive holding. Having regard to the distinctiveness and reputation of the Complainant’s trademark, the Panel finds use (passive holding) of the <opensocietyfoundation.online> disputed domain name in bad faith.

Accordingly, the Panel finds that the Complainant has satisfied the third and final 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 names <opensocietyfoundation.online> and <opensocietyfoundations.online> be transferred to the Complainant.

/Debrett G. Lyons/

Debrett G. Lyons

Sole Panelist

Date: April 17, 2025

⁷ [WIPO Overview 3.0](#), section 3.3; *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

⁸ [WIPO Overview 3.0](#), section 4.8.

⁹ [WIPO Overview 3.0](#), section 3.4.