

ADMINISTRATIVE PANEL DECISION

Ornua Co-operative Limited v. William Cameron
Case No. DCO2024-0058

1. The Parties

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

The Respondent is William Cameron, United States of America.

2. The Domain Name and Registrar

The disputed domain name <ornua.co> is registered with NameCheap, Inc. (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 7, 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 (Redacted for Privacy) 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 on 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 08, 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 08, 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 <ornua.co> was registered on March 12, 2024, and currently does not resolve to any active website. According to the screenshot submitted as Annex 6 to the Complaint, prior to the start of the proceeding the disputed domain name resolved to a pay-per-click webpage with third party links related to "Boob Job in Turkey", "Dabella Windows", and "Best Text Blast Service".

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 underlines that the disputed domain name is identical to the trademark ORNUA in which it has rights as the it reproduces the trademark in its entirety with the mere addition of the country-code Top-Level Domain ("ccTLD") ".co", which is viewed as a standard registration requirement and is disregarded under the first element of confusing similarity.

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 with pay-per-click links and was thus not used in connection with a bona fide offering of goods or services; iv) any other use of the disputed domain name would mislead and divert consumers away from the Complainant and have the genuine potential to dilute and/or tarnish the Complainant's registered trademark rights.

With reference to the circumstances evidencing bad faith, the Complainant indicates that, since the registration and use of its ORNUA marks long predate 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 submits that, by registering a domain name that is identical to the Complainant's well-known trademark ORNUA, the Respondent made a deliberate and opportunistic attempt to create a likelihood of confusion with the Complainant's well-known mark.

The Complainant also states that the fact that the Respondent concealed its identity through the use of a Whois privacy service and that it used the disputed domain name in connection with a pay-per-click page further demonstrate the Respondent's bad faith.

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 entirety of the mark is reproduced within the disputed domain name without any variation. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

In addition, the ccTLD ".co" can be disregarded under the first element confusing similarity test, being a standard registration requirement. [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 the Respondent’s rights over the disputed domain name, or that the Respondent might be commonly known by the disputed domain name.

As mentioned above, the disputed domain name, currently not redirected to an active website, resolved prior to the start of the proceeding to a parking page displaying pay-per-click links unrelated to the Complainant’s business. Panels have recognized that the use of a domain name to host a page comprising pay-per-click links does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the complainant’s mark or otherwise mislead Internet users. Such use would be, instead, permissible where the domain name consists of an actual dictionary word or phrase and is used to host pay-per-click links genuinely related to the dictionary meaning of the word or phrase comprising the domain name, and not to trade off the complainant’s trademark. [WIPO Overview 3.0](#), section 2.9.

Considering the distinctiveness of the Complainant’s trademark and the identity of the disputed domain name with the Complainant’s mark and its prior and official domain name <ornua.com>, the Panel finds that the Respondent’s use of the disputed domain name does not amount to a bona fide offering of goods or services or a legitimate noncommercial or fair use as the very selection of the disputed domain name by the Respondent suggests that it intended to capitalize off the goodwill of the Complainant’s trademark to attract users to its website and derive revenues from the pay-per-click links published therein.

Moreover, the disputed domain name is inherently misleading. UDRP panels have found that domain names identical to a complainant’s trademark carry a high risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

Therefore, the Panel finds the second element of the Policy has been established.

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 nature of the ORNUA mark,

which is a coined mark with no common usage apart from the Complainant's trademark derived from the Irish Words "Ór Nua" meaning "new gold"; and iv) the identity of the disputed domain name with the Complainant's ORNUA mark and its domain name <ornua.com>, the Respondent likely registered the disputed domain name having the Complainant and its trademark in mind and intended to target the Complainant and its trademark at the time of registration of the disputed domain name, which occurred only on March 12, 2024.

The Panel also finds that, in view of the prior use of the disputed domain name in connection with a pay-per-click website, the Respondent intentionally attempted to attract Internet users to its website for commercial gain, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of its website according to paragraph 4(b)(iv) of the Policy.

The Panel also notes that the disputed domain name is currently not resolving to an inactive website and is, therefore, 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 identity of the disputed domain name with the trademark, the Respondent's failure to submit a response, 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, the Panel finds that the Complainant has also established the third 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 name <ornua.co> be transferred to the Complainant.

/Luca Barbero/

Luca Barbero

Sole Panelist

Date: October 4, 2024