

ADMINISTRATIVE PANEL DECISION

OBO Bettermann Holding GmbH & Co. KG v. Darren Dittrich
Case No. D2023-3915

1. The Parties

The Complainant is OBO Bettermann Holding GmbH & Co. KG, Germany, represented by Rechtsanwaltskanzlei Fuß & Jankord PartG, Germany.

The Respondent is Darren Dittrich, United States of America (“United States”), represented by Wiley Rein LLP, United States.

2. The Domain Name and Registrar

The disputed domain name <obo.com> is registered with GoDaddy Online Services Cayman Islands Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 19, 2023. On September 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 20, 2023, 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 (unknown / Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 27, 2023, 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 amendment to the Complaint on September 29, 2023.

The Center verified that the Complaint together with the amendment to 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 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 23, 2023. The due date for Response was extended to October 27, 2023, pursuant to paragraph 5(b) of the Rules. The Response was filed with the Center on October 24, 2023. On November 16, 2023, the Complainant filed a Supplemental Filing.

The Center appointed Thomas Hoeren, Nick J. Gardner, and Edoardo Fano as panelists in this matter on November 23, 2023. The Panel finds that it was properly constituted. Each member of 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 Panel considers admissible the Complainant's Supplemental Filing, although its content could and should have been filed as part of the Complaint, and notes that the Center transmitted the Complainant's Supplemental Filing to the Respondent.

The Panel has not received any requests from the Complainant or the Respondent regarding further submissions, waivers or extensions of deadlines, and the Panel has not found it necessary to request any further information from the Parties.

The language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

4. Factual Background

The Complainant is a German multinational company founded in 1911 and doing business in more than 60 countries in the field of installation systems for the electrotechnical equipment of buildings and plants. The Complainant is generally known by the abbreviation "OBO" and owns several trademark registrations for OBO in various countries, among which:

- European Union Trademark Registration No. 000111633 for OBO and design, registered on November 26, 1999;
- United States Trademark Registration No. 2,235,160 for OBO and design, registered on March 23, 1999.

The Complainant also operates on the Internet, its main websites being "www.obo.de" and "www.obo-bettermann.com".

The Complainant provided evidence in support of the above.

In July and December 2017, two employees of the Complainant tried to buy the disputed domain name from the Respondent, without succeeding.

According to the Whois records, the disputed domain name was registered on April 12, 2000, and, both at the time of filing of the Complaint and this Decision, it redirected to the website "www.sell.com". The Complainant has further provided evidence showing that the disputed domain name had previously resolved to a website with a header "sell.com" and a message "sell.com is now offline".

The Complainant's legal representatives wrote a letter to the Registrar of the disputed domain name, asking for the details of the owner of the disputed domain name, on March 10, 2023, followed by a reminder on April 5, 2023, without receiving any reply.

The Respondent is Darren Dittrich, a United States resident, president of Sell.com, Inc., who acquired the disputed domain name more than twenty years ago in order to provide an online marketplace for classified listings called “Or Best Offer”. That marketplace was operative until the beginning of 2021.

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.

Notably, the Complainant contends that disputed domain name is identical to its trademark OBO.

Moreover, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name since it has not been authorized by the Complainant to register the disputed domain name or to use its trademark within the disputed domain name, it is not commonly known by the disputed domain name and the Respondent uses the disputed domain name without referring to any actual offerings or business activity of a recognizable company. The Complainant says that it discovered the existence of the disputed domain name in 2023, and that at that time it resolved to the website “www.sell.com”.

Finally, the Complainant submits that the Respondent has registered and is using the disputed domain name in bad faith, since the Respondent is using a privacy service, is not actually using the disputed domain name and has registered it with the only intent to re-sell it, as proved by the name of the website to which the disputed domain name redirects, namely “www.sell.com”, together with the email address present on that website, namely “[...]@sell.com”.

In its Supplemental Filing, the Complainant explains that the contacts with the Respondent in order to try and buy the disputed domain name were carried out back in 2017 by two employees on their own initiative, with no coordination with the Complainant’s management, and as a reply they were informed that the disputed domain name was for sale for an “absurdly high sum” in the 6 to 7-digit range. Prior to that year, the Complainant asserts that it played a rather subordinate role on the Internet, as its customers were exclusively from the B2B sector. The Complainant says that it is prepared to reach an amicable solution with the Respondent in order to settle the dispute quickly.

B. Respondent

The Respondent contends that the Complainant has not satisfied all the elements required under the Policy for a transfer of the disputed domain name and therefore requests the denial of the remedy requested in the Complaint.

Notably, the Respondent acknowledges as undisputable that the disputed domain name is identical to the Complainant’s trademark OBO. However, the Respondent, being the President of Sell.com, Inc., asserts that the disputed domain name was registered more than twenty years ago to be used as the acronym of the online marketplace for classified listings “Or Best Offer”, operative from 2002, fully functional by 2004 and active until 2021. The Respondent also states that the disputed domain name stands for a myriad of other acronyms, as well as registered trademarks not affiliated with the Complainant.

The Respondent has provided a sworn declaration that it had no knowledge of the Complainant or its trademark and did not register the disputed domain name to target the Complainant. The Respondent asserts that it had never heard of the Complainant and its trademark before the Complainant itself contacted the Respondent seeking to buy the disputed domain name, and therefore it did not target the Complainant. The Respondent contends that it registered the disputed domain name in good faith as it consists of a short, powerful and extremely valuable domain name, and reflects a common acronym, “Or Best Offer”, that is the way it was used in connection with an online marketplace for classified listings from 2002 to 2021. The

Respondent therefore submits that it has demonstrated a use of the disputed domain name in connection with *bona fide* offerings, as well as having been commonly known by the disputed domain name, without any intent to capitalize on the Complainant's trademark. When the disputed domain name was no longer used in 2021, the Respondent decided to hold it as an investment due to its intrinsic value as a three-letter domain name.

The Respondent did not try to sell the disputed domain name to the Complainant or to any Complainant's competitors, on the contrary, it was contacted twice by representatives of the Complainant in 2017 with the request to buy the disputed domain name, to which request it replied that, although the disputed domain name was not for sale, it would consider an offer, stating that it had already received up to 7-figure offers over the years. The Complainant did not make an offer in response.

The Respondent therefore states that the Complainant's allegations that it discovered the existence of the disputed domain name only in 2023, that the disputed domain name was just used as a placeholder with reference to the domain name <sell.com>, and that it was not possible to contact the disputed domain name holder, are all false.

As regards the registration and use of the disputed name in bad faith, the Respondent asserts that the Complainant's allegations are not proving this, as the use of a privacy service is not in and of itself an indication of bad faith, the disputed domain name, currently inactive, was used for almost twenty years in *bona fide* offering of classified listings, and the redirection of the disputed domain name to the website "www.sell.com", where the Respondent's email address "[...]@sell.com" is shown, does not necessarily mean that the disputed domain name is for sale, and even if that were the case, it would not consist of a use in bad faith of the disputed domain name, since the Respondent did not try to sell it to the Complainant or to the Complainant's competitors in a manner that would leverage any value in the Complainant's trademark.

Finally, the Respondent requests that the Panel issue a finding of Reverse Domain Name Hijacking ("RDNH") since the Complainant brought this Complaint without any genuine evidence of targeting or awareness of the Complainant at the time that the disputed domain name was registered. It also states that the Complainant brought this Complaint after unsuccessfully trying to purchase the disputed domain name.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements, which the Complainant must satisfy in order to succeed:

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

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.

Based on the available record, the Panel finds 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.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

It is also well accepted that a generic Top-Level Domain (“gTLD”), in this case “.com”, is typically ignored when assessing the confusing similarity between a trademark and a domain name. [WIPO Overview 3.0](#), section 1.11.1.

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.

While 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 often impossible 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. 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.

The Complainant in its Complaint, and as set out above, has arguably established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, based on the facts as described in the Complaint. It asserts that the Respondent, who is not currently associated with the Complainant in any way, is not commonly known by the disputed domain name and is not making a *bona fide* offering of goods or services.

The *prima facie* case presented by the Complainant is enough to shift the burden of production of evidence to the Respondent to demonstrate that it has rights or legitimate interests in the disputed domain name.

Having reviewed the available record, including the further facts that are detailed in the Response, the Panel finds that, before notice to the Respondent of the dispute, the Respondent used the disputed domain name in connection with a *bona fide* offering of goods or services. [WIPO Overview 3.0](#), section 2.2.

As mentioned above, the Respondent claims to have registered the disputed domain name as a common acronym, standing for “Or Best Offer”, to be used in connection with an online marketplace for classified listings, as well as for its inherent value as a valuable three-letter “.com” domain name.

As discussed further under the third element below, the Panel considers that the Respondent selected and acquired the disputed domain name for its *bona fide* business and because of its perceived value, rather than because it corresponds to the Complainant’s trademark, and the Panel considers it unlikely that the Respondent was aware of the Complainant’s trademark at the time it selected and acquired the disputed domain name.

As stated in section 2.1 of the [WIPO Overview 3.0](#), “[...] Over the course of many UDRP cases, panels have acknowledged further grounds which, while not codified in the UDRP as such, would establish respondent rights or legitimate interests in a domain name. For example, generally speaking, panels have accepted that aggregating and holding domain names (usually for resale) consisting of acronyms, dictionary words, or common phrases can be *bona fide* and is not per se illegitimate under the UDRP”.

In addition, section 2.10.2 of the [WIPO Overview 3.0](#) states that: “For a respondent to have rights or legitimate interests in a domain name comprising an acronym, the respondent’s evidence supporting its explanation for its registration (and any use) of the domain name should indicate a credible and legitimate intent which does not capitalize on the reputation and goodwill inherent in the complainant’s mark”.

The Panel does not consider that the right to register such acronyms is unlimited since, by knowing of a complainant's trademark, and registering a domain name that copies the trademark, or by using it to target the trademark owner, the registrant of that domain name would put at risk its claim to have acquired rights or legitimate interests in the domain name. However, in the present case, the Panel deems that the above factors are absent as there is no evidence suggesting that the Respondent has targeted the Complainant. [WIPO Overview 3.0](#), section 2.10.

Based on the available record, the Panel finds the second element of the Policy has not been established.

C. Registered and Used in Bad Faith

Although the Panel's finding under the above section 6.B would be sufficient to enable a decision to be reached in relation to this Complaint, the Panel also finds that there is no evidence that the disputed domain name has been registered and used in bad faith.

Paragraph 4(b) of the Policy provides that "for the purposes of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that [the respondent has] registered or ha[s] 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 the complainant, for valuable consideration in excess of [its] documented out-of-pocket costs directly related to the domain name; or

(ii) that [the respondent has] 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 [the respondent has] engaged in a pattern of such conduct; or

(iii) that [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) that by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] 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 [the respondent's] website or location or of a product or service on [the respondent's] website or location".

The Complainant claims the Respondent has registered and is using the disputed domain name in bad faith, since the Respondent is using a privacy service, is not actually using the disputed domain name and has registered it with the only intent to re-sell it. On the other hand, the Respondent submits that the disputed domain name was not registered and is not used in bad faith, since the Respondent was not aware of the Complainant's trademark at the time it registered the disputed domain name, nor was the disputed domain name registered with an intent to profit from or otherwise abuse the Complainant's trademark rights, but instead in order to provide an online marketplace for classified listings, in the ordinary course of its legitimate business in good faith.

The Panel finds that the Complainant has not provided adequate evidence to demonstrate that the Respondent targeted its trademark when registering the disputed domain name in the year 2000. On the contrary the Complainant itself, in its Supplemental Filing, asserts that prior to 2017, when it first tried to buy the disputed domain name, it played a rather subordinate role on the Internet, as its customers were exclusively from the B2B sector.

As stated in section 3.2.2 of the [WIPO Overview 3.0](#) "[...] On the other hand, where the complainant's mark is not inherently distinctive and it also corresponds to a dictionary term or is otherwise inherently attractive as a domain name (e.g., it is a short combination of letters), if a respondent can credibly show that the complainant's mark has a limited reputation and is not known or accessible in the respondent's location,

panels may be reluctant to infer that a respondent knew or should have known that its registration would be identical or confusingly similar to the complainant's mark".

The evidence in the case file as presented does not indicate that the Respondent's aim in registering the disputed domain name was to profit from or exploit the Complainant's trademark.

As regards the use of the disputed domain name, the Respondent genuinely used it for almost twenty years in connection with an online marketplace for classified listings, and when it was contacted twice in 2017 by two Complainant's employees with the request to sell the disputed domain name, the Respondent replied both times that the disputed domain name was not for sale, although it would have considered offers in the range of 6 to 7-digit. This consideration, considered "absurdly high" by the Complainant, seems to the Panel to be not particularly surprising – or at least subject to different interpretations – given that three-letter domain names are generally thought to be valuable.

Finally, the Panel considers that the Complainant's assertion that its two employees, who tried to buy the disputed domain name back in 2017, acted on their own initiative, with no coordination with the Complainant's management, is rather difficult to believe and in any case irrelevant to the ultimate disposition of this matter.

Based on the available record, the Panel finds the third element of the Policy has not been established.

D. Reverse Domain Name Hijacking

Paragraph 15(e) of the UDRP Rules provides that, if "after considering the submissions the Panel finds that the complaint was brought in bad faith, for example in an attempt at RDNH or was brought primarily to harass the domain-name holder, the Panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding".

The Rules define RDNH as "using the Policy in bad faith to attempt to deprive a registered domain-name holder of a domain name".

The Respondent has sought a finding of RDNH be made against the Complainant.

The Panel also bears in mind that the Complainant in this case is represented by Counsel and, therefore, it should be held to a higher standard. [WIPO Overview 3.0](#), section 4.16.

As detailed in the above analysis of the second and third elements, the Panel finds that the Complainant and its Counsel have contravened the above RDNH bases, because they knew or should have known that there was no evidence of the Respondent's bad faith directed towards the Complainant, making the assertion that the Respondent must have been targeting the Complainant highly unlikely. Finally, as it has been stated in previous decisions, a complainant is at risk of a RDNH declaration when its attempt to try and buy a domain name is not successful, and it tries to obtain it by using, or rather "abusing", the UDRP.

Paragraph 15(e) of the Policy provides that, if after considering the submissions, the Panel finds that the Complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or to harass the domain-name holder, the Panel shall declare in its decision that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding. The mere lack of success of the complaint is not, on its own, sufficient to constitute reverse domain name hijacking. [WIPO Overview 3.0](#), section 4.16. In the present case for the reasons explained above the Panel finds that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Edoardo Fano/

Edoardo Fano
Presiding Panelist

/Thomas Hoeren/

Thomas Hoeren
Panelist

/Nick J. Gardner/

Nick J. Gardner
Panelist
Date: December 7, 2023