

ADMINISTRATIVE PANEL DECISION

Inera AB v. Oskar Zajączkowski
Case No. D2024-0773

1. The Parties

Complainant is Inera AB, Sweden, represented by Abion AB, Sweden.

Respondent is Oskar Zajączkowski, Poland.

2. The Domain Name and Registrar

The disputed domain name <inera.cloud> (the “Domain Name”) is registered with OVH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 20, 2024. On February 20, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On February 21, 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 to Complainant on February 27, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on February 29, 2024.

On February 27, 2024, the Center informed the Parties in Polish and English, that the language of the registration agreement for the Domain Name is Polish. On February 29, 2024, Complainant confirmed its request that English be the language of the proceeding. Respondent did not submit any comment on Complainant’s submission but sent an informal email in Polish to the Center on February 27, 2024.

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 Respondent in English and Polish of the Complaint, and the proceedings commenced on March 6, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 26, 2024. On March 13, 2024, the proceeding was

suspended upon Complainant's request. Respondent sent further informal emails to the Center in English on March 13, March 27, March 28, 2024, and April 8, 2024. On April 12, 2024, the proceeding was reinstated. On April 29, 2024, the Center informed the Parties that it would proceed to panel appointment.

The Center appointed Robert A. Badgley as the sole panelist in this matter on May 15, 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

Complainant describes itself as "a digitization company that contributes to developing welfare." Complainant provides no evidence about when it was formed, or how long it has been in the "digitization" business, or how extensive its activities are.

According to Complainant, it holds, "among others, the [European Union] trademark registration No. 017754681, Swedish trademark registration No. 201007080 [for the stylized mark INERA] in class 44 and No. Swedish trademark registration 200909504 [for the word mark INERA] in class 44."¹

A summary of the foregoing trademark registrations is annexed to the Complaint, but the actual trademark registration certificates are not in the record. Also, the date on which Complainant first used the mark INERA (either as a word mark or as a stylized mark) is not apparent from the record.

Beyond the asserted trademark registrations, the record is devoid of any evidence about the extent to which Complainant's INERA mark is recognized or used as a source identifier for Complainant's "digitization" products or services.

The Domain Name was registered on December 8, 2023. The Domain Name does not resolve to an active website. There is nothing in the record to indicate that the Domain Name has been put to any use since it was registered.

On February 8, 2024, Complainant's counsel sent a cease-and-desist letter to the Registrar, which letter stated that Complainant has held its INERA trademark registrations "since 2010" and that Respondent's registration of the Domain Name "constitutes trademark infringement." According to Complainant, no reply was made to this letter.

5. Parties' Contentions

A. Complainant

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

B. Respondent

Respondent did not formally reply to Complainant's contentions. As noted above, Respondent did send several emails to the Center, all apparently dealing with the UDRP proceeding and possible resolution of the dispute. Some of these communications are set forth below.

¹ According to the Panel's independent research, Complainant owns Swedish trademark registrations for INERA nos. 409622 and 414284 registered on February 26, 2010, and November 19, 2010, respectively. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.8, about a panel's general powers to conduct limited factual research into matters of public record.

On February 29, 2024, Respondent stated in an email to Complainant: "I still don't understand what the complaint is about, could it be explained?"

On March 7, 2024, Respondent sent the following email to the Center: "I really want to suspend the dispute, I'm not yet 18 and I don't have that kind of money, I'm very sorry for the problem, I promise it won't happen again."

On March 13, 2024, Respondent sent the following email to the Center: "please let me know where I should sign, should it be a printout and a photo of the printout?"

On March 27, 2024, Respondent sent the following email to the Center: "If the domain has been blocked, how can I help you?"

On April 8, 2024, Respondent sent the following emails to the Center: "hey, please give me this settlement form," and "please give me instructions on how to sign it."

On April 11, 2024, Respondent sent the following email to the Center: "If I agree to this, do I have to pay for anything?"

On April 13, 2024, Respondent sent the following email to the Center: "Currently, I don't have time for any arguing. I also have my job, so please understand, although I'm not sure if it will help you because I don't have that domain on my OVH account."

On April 29, 2024, Respondent sent the following email to the Center: "I write for the first time that the domain has been completely canceled at OVHCloud and I have no access to manage it at all."

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Polish. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that translation of the Complaint would entail significant additional costs for the Complainant and delay the proceeding.

The Respondent did not make any specific submissions with respect to the language of the proceeding, but sent multiple informal email communications in English.

In exercising its discretion to use a language other than that of the registration agreement, 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 (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

Consent to Remedy

Despite the Parties suspension of the proceeding for purposes of settlement negotiations, it appears that the Complainant ultimately requested reinstatement. Moreover, the Respondent's communications (as quoted above) reflect remaining questions as to the settlement agreement between the Parties and its implications for the Respondent.

The Panel takes note of [WIPO Overview 3.0](#), section 4.10, providing that, "Where parties to a UDRP proceeding have not been able to settle their dispute prior to the issuance of a panel decision using the "standard settlement process" described above, but where the respondent has nevertheless given its consent on the record to the transfer (or cancellation) remedy sought by the complainant, many panels will order the requested remedy solely on the basis of such consent [...] In some cases, despite such respondent consent, a panel may in its discretion still find it appropriate to proceed to a substantive decision on the merits. Scenarios in which a panel may find it appropriate to do so include [...] (iv) where there is ambiguity as to the scope of the respondent's consent..."

In view of the Respondent's remaining questions concerning the settlement agreement, the Panel finds it appropriate to proceed to a substantive decision on the merits.

A. Identical or Confusingly Similar

The Panel concludes that Complainant has rights in the trademark INERA through registration demonstrated in the record. The Panel also concludes that the Domain Name is identical to that mark.

Complainant has established Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] 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
- (ii) you [Respondent] (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 [Respondent] 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 Panel need not address this element, given its decision below in the "Bad Faith" section.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation," are evidence of the registration and use of the Domain Name in "bad faith":

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily

- for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) that 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 Respondent has engaged in a pattern of such conduct; or
 - (iii) that 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, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes, on this record, that Complainant has fallen short of carrying its burden to prove that Respondent has registered and used the Domain Name in bad faith. Above all, the Panel cannot conclude, on this record and on a balance of probabilities, that Respondent more likely than not had Complainant's INERA trademark in mind when registering the Domain Name.

Complainant has provided no evidence that its Swedish trademark INERA is so well known that Respondent, located in Poland, was likely to have known the mark when he registered the Domain Name. The record is devoid of evidence concerning Complainant's actual products or services, the extent to which they are advertised and marketed, the extent of Complainant's sales, the extent to which the INERA mark is recognized by the consuming public, and other indicia relevant to an allegation that a respondent has targeted a complainant's trademark for purposes of a UDRP claim.

Although INERA appears to be a coined term and hence an inherently distinctive trademark, inherent distinctiveness is not in itself evidence of renown. The Panel also notes that INERA is a relatively short word (five letters), is used as a trademark by third parties², and domain names consisting of few letters (especially three or four) are often viewed as desirable regardless of their possible association with an existing trademark.

The fact that Complainant's cease-and-desist letter asserts that Respondent's mere registration of the Domain Name, which did not even resolve to an active website, constituted "trademark infringement" underscores for the Panel that Complainant does not seem to appreciate that actual targeting of the Complainant's trademark is required under the UDRP (as opposed to trademark law in various jurisdictions).

Given the paucity of evidence of trademark targeting and the fact that the burden of proof rests with Complainant, this Complaint must fail.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: May 29, 2024

² See [WIPO Overview 3.0](#), section 4.8.