

ADMINISTRATIVE PANEL DECISION

Thermo Finnigan, LLC v. Eric Chan, Rezyko LLC
Case No. D2023-0063

1. The Parties

Complainant is Thermo Finnigan, LLC, United States of America, represented by Thermo Fisher Scientific, United States of America.

Respondent is Eric Chan, Rezyko LLC, United States of America.

2. The Domain Name and Registrar

The disputed domain name <orbitrap.com> (the “Domain Name”) is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 5, 2023. On January 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 6, 2023, 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 (PrivacyGuardian.org) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 10, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on January 13, 2023.

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 Respondent of the Complaint, and the proceedings commenced on January 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 6, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on February 7, 2023.

The Center appointed Christopher S. Gibson as the sole panelist in this matter on February 15, 2023. 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 is a leader in serving the science community, with revenues of more than USD 40 billion and approximately 100,000 employees globally. Complainant's mission is to enable customers to make the world healthier, cleaner, and safer by providing them with tools to accelerate life sciences research, solve complex analytical challenges, improve patient diagnostics, deliver medicines to market, and increase laboratory productivity.

Complainant owns the ORBITRAP trademark, registration no. 3231187 for goods in class 9, first used in commerce as early as July 2005, and with an application date of June 1, 2005 and registration date of April 17, 2007.

Through its website and other media, Complainant offers products in association with its ORBITRAP mark, *i.e.*, laboratory equipment and products, world-wide. Complainant's customers may browse the products offered by Complainant in association with the ORBITRAP mark and contact sales and service representatives. Customers may also download brochures and technical information, review news and services on "www.thermofisher.com".

The Domain Name was registered on August 21, 2005. The Domain Name appears to redirect to a YouTube page for "Freestyle 8 Orbit the Rapper". This YouTube page contains a picture of a person, but when "played" does not have any video or musical content. The Panelist was able to confirm (using the Internet Archive WayBack Machine) that from the time the Domain Name was registered, it has redirected to various random websites, including in June 2013 to a website at "www.planetorbitrap.com" which appears to be a website operated by Complainant.

5. Parties' Contentions

A. Complainant

(i) Identical or confusingly similar

Complainant submits that as a result of its continuous and widespread use of the ORBITRAP mark, the ORBITRAP brand is widely recognized.

Complainant states the Domain Name is identical to Complainant's ORBITRAP mark and has been activated to perpetrate financial fraud on Complainant's customers. Complainant also contends that a federal registration is *prima facie* evidence of ownership of a valid mark.

(ii) Rights or legitimate interests

Complainant claims that Respondent – listed as Rezyko LLC and/or Eric Chan – has no legitimate interest in the ORBITRAP mark, which Complainant alleges was adopted to confuse Complainant's customers into believing Respondent is Thermo Finnigan. Specifically, Complainant asserts that Respondent has registered the Domain Name as the means by which to perpetrate fraud against Complainant's customers.

Complainant states it has no affiliation with Respondent or the bogus Domain Name. Complainant claims Respondent has not used, nor has it made demonstrable preparations to use, the Domain Name as part of a *bona fide* and authorized offering of goods or services. Rather, Respondent is attempting to commit fraud on Complainant's customers. Complainant has also requested the Registrar to park the Domain Name.

Complainant contends it need only make a *prima facie* case showing that Respondent has no right or legitimate interest with respect to the Domain Names; thereafter, the burden shifts to Respondent to show that he has the right or legitimate interest in the Domain Name. Complainant contends it is clear that not only does Respondent's use of the Domain Name fail to constitute a *bona fide* use, but it was instituted with the purpose of committing financial fraud upon Complainant's customers and continues to be used in bad faith. Accordingly, Respondent cannot prevail under the Policy ¶ 4(c)(ii).

(iii) Registered and used in bad faith

Complainant states that paragraph 2 of the Policy makes it the responsibility of a domain name registrant to ensure that its registration does not violate a third party's trademark rights; failure to do so is itself indicative of bad faith registration. The Domain Name is identical to the trademark registration owned by Complainant. The act of registering the identical Domain Name demonstrates that Respondent registered the Domain Name in bad faith.

Complainant asserts Respondent also demonstrates bad faith in the registration and use of the Domain Name by fraudulently benefitting from the page, and it constitutes bad faith registration and use under Policy.

Complainant submits these factors are clear and convincing evidence that Respondent's decision to register and use the Domain Name was made in bad faith. Respondent purposefully created confusion with Complainant's mark and misled consumers as to the association and sponsorship of the Domain Name for fraudulent gain.

B. Respondent

Respondent did not reply to Complainant's contentions. Respondent did submit an email on January 18, 2023, in which Respondent stated:

"I hereby reject all of the Complaint's claims in the Case referenced above. In the interest of attaining expedient resolution, as a gesture of goodwill, I hereby offer to accept a payment of USD \$900.00 via PayPal, in exchange for transferring the control of the disputed domain name to the Complainant. To accept this offer, please respond by email at [email address] by February 1, 2023.

Sincerely,
Eric Chan
President, Rezyko, LLC."

Complainant sent an email on February 1, 2023 to confirm that settlement negotiations are not taking place between the parties.

6. Discussion and Findings

In order to succeed on its Complaint, Complainant must demonstrate that the three elements set forth in paragraph 4(a) of the Policy have been satisfied. Those elements are as follows:

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

A. Identical or Confusingly Similar

Complainant has demonstrated that it has trademark rights in its ORBITRAP trademark, both through registration and use.

The Panel finds that both Domain Name incorporates the ORBITRAP mark in its entirety, with no variation other than the addition of the gTLD extension “.com”.

Accordingly, the Panel finds that the Domain Names are identical to a trademark in which Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(a)(ii) of the Policy, Complainant must prove that Respondent has no rights or legitimate interests in respect of the Domain Name. A complainant is normally required to make out a *prima facie* case that the respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the respondent carries the burden of production of demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

Here, the Panel finds that Complainant has made out a *prima facie* case. Complainant has indicated that Respondent has no rights or legitimate interests in the Domain Name identical to Complainant's ORBITRAP trademark. Complainant has no affiliation with Respondent and Complainant has not authorized Respondent to offer any goods or services under the mark. Complainant further states Respondent has not used, nor has it made demonstrable preparations to use, the Domain Name as part of a *bona fide* offering of goods or services. Rather, Complainant asserts that Respondent has registered the Domain Name as the means by which to perpetrate fraud against Complainant's customers.

Accordingly, the Panel finds that Complainant has made a *prima facie* showing of Respondent's lack of rights or legitimate interests in respect of the Domain Name, which has not been rebutted by Respondent. The Panel therefore finds that Complainant has established the second element of the Policy in accordance with paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

The third element of paragraph 4(a) of the Policy requires that Complainant demonstrate that Respondent registered and is using the Domain Name in bad faith. WIPO Overview of Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 3.1 states, “bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark”.

Here, the Panel determines that the Domain Name was registered and is being used in bad faith. The Panel observes that the Domain Name is identical to Complainant's ORBITRAP trademark. While Complainant has put in only minimal evidence in support of its Complaint, Complainant has asserted that the act of registering the identical Domain Name demonstrates that Respondent registered the Domain Name in bad faith, and that Respondent purposefully created confusion with Complainant's mark and misled consumers as to the association and sponsorship of the Domain Name for fraudulent gain. In the face of these allegations, Respondent has not submitted a response, but only an email in which Respondent purported to reject all of Complainant's claims and offered to accept a payment of USD 900 to settle the case.

The Panel observes that Complainant and Respondent are both located in the United States and Respondent registered the Domain Name on August 21, 2005, shortly after Complainant commenced using its ORBITRAP trademark in July 2005. At the time of filing the Complaint, the Domain Name redirected to a YouTube page for “Freestyle 8 Orbit the Rapper”. While at first glance this redirect might indicate the Domain Name is being used to promote an artist called “Orbit the Rapper”, the Panel has found no evidence

in the record, nor has Respondent submitted any, to suggest a relationship between Respondent, the Domain Name and any third-party artist called Orbit the Rapper. Instead, the Panel visited the YouTube page to which the Domain Name redirects and found that it is inoperative and does not provide any video or music content. Further, the Panelist was able to confirm (using the Internet Archive) that from the time the Domain Name was registered in 2005, it has been used to redirect to various random websites, including in June 2013 to a website at “www.planetorbitrap.com”, which is a site that has been operated by Complainant promoting Complainant’s ORBITRAP branded products. The Panel takes notice of the prior use of the Domain Name for these purposes. See [WIPO Overview 3.0](#), section 4.8, which provides that under the general powers articulated in paragraphs 10 and 12 of the Rules, “a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision” and “this may include visiting the website linked to the disputed domain name in order to obtain more information about the respondent or its use of the domain name, consulting historical resources such as the Internet Archive (“www.archive.org”) in order to obtain an indication of how a domain name may have been used in the relevant past....”

Based on all of the above evidence, the Panel finds, on the balance of the probabilities, that Respondent, when registering the Domain Name, was aware of Complainant and its ORBITRAP mark, and intentionally targeted the mark, when registering the Domain Name. Complainant’s trademark registration predates registration of the Domain Name, which was registered soon after Complainant started using its ORBITRAP trademark. Respondent at one time used the Domain Name to redirect to a website that has been used by Complainant to promote its ORBITRAP branded products. The current use of the Domain Name to redirect to a static and seemingly inoperable YouTube site for a rap artist does not appear to be genuine.

In conclusion, the Panel determines that, for all of the above reasons, the Domain Name was registered and is being used in bad faith. Accordingly, Complainant has satisfied 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 Domain Name, <orbitrap.com>, be transferred to Complainant.

/Christopher S. Gibson/

Christopher S. Gibson

Sole Panelist

Date: March 19, 2023