

ADMINISTRATIVE PANEL DECISION

Ostrum Asset Management v. 吴清儒 (wu qing ru)

Case No. D2023-1387

1. The Parties

The Complainant is Ostrum Asset Management, France, represented by Inlex IP Expertise, France.

The Respondent is 吴清儒 (wu qing ru), China.

2. The Domain Name and Registrar

The disputed domain name <ostrum.xyz> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on March 30, 2023. On March 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 3, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. The Center sent an email communication to the Complainant on April 3, 2023, providing the registrant and further contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint in English on April 5, 2023.

On April 3, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On April 5, 2023, the Complainant submitted a request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 in Chinese and English of the Complaint, and the proceedings commenced on April 13, 2023. In accordance with the

Rules, paragraph 5, the due date for Response was May 3, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 4, 2023.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on May 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

The Complainant and its affiliates are active in the financial and investment industry. The Complainant particularly offers asset management solutions and institutional investment services, and also offers a technological platform to its clients. The Complainant has extensive business operations, managing EUR 389 billion of assets, including almost 75% in insurance-related assets and EUR 515 billion of assets administered through its services platform.

The Complainant submits evidence that it owns a trademark portfolio for OSTRUM (word and logo marks), including, but not limited to, French trademark registration number 4375830 for the word mark OSTRUM, filed on/registered from July 12, 2017, and European Union trademark registration number 016979551 for the OSTRUM word mark, registered on October 24, 2017. The Complainant also has an extensive online presence, and owns through itself or its affiliated company a portfolio of official domain names, including <ostrum.com> registered on July 16, 1999.

The disputed domain name was registered on March 21, 2023, and is therefore of a later date than the abovementioned trademarks of the Complainant. The Complainant submits evidence that the disputed domain name directs to an active, parked page on the Dan.com domain name resales platform, offering the disputed domain name for sale for USD 1,450.

5. Parties' Contentions

A. Complainant

The Complainant essentially contends that the disputed domain name is confusingly similar to its trademarks for OSTRUM, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name was registered, and is being used in bad faith.

The Complainant claims that its trademarks are distinctive and well-known, and submits company and marketing information as well as trademark search results and search engine search results for OSTRUM. The Complainant particularly contends that there is no business or legal relationship between the Complainant and the Respondent and that the Complainant has neither authorized nor licensed the Respondent to use its trademarks in any way. Moreover, the Complainant contends that the Respondent is attempting to sell the disputed domain name for an amount in excess of the Respondent's out-of-pocket costs and that there are no justifications for the use of its trademarks in the disputed domain name. The Complainant argues that the Respondent does not appear to engage in any legitimate noncommercial or fair use of the disputed domain name, nor any use in connection with *bona fide* offering of goods or services. The Complainant contends that, on the contrary, the aforementioned elements suggest that the Respondent reserved the disputed domain name to take unfair advantage of the Complainant's reputation. The Complainant concludes that the registration and use of the disputed domain name in the aforementioned circumstances constitutes registration and use of the disputed domain name in bad faith.

The Complainant requests that the disputed domain name be transferred to it.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Issue: Language of the Proceeding

Pursuant to paragraph 11(a) of the Rules, the language of the proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the proceeding.

According to the Registrar's verification response, the Registration Agreement for the disputed domain name is in Chinese. Nevertheless, the Complainant filed both its Complaint and its amended Complaint in English, and requests that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding, and did not submit any arguments on the merits of this proceeding.

The Panel has carefully considered all elements of this case, and considers the following elements particularly relevant: the Complainant's request that the language of the proceeding be English; the lack of comment on the language of the proceeding and the lack of response on the merits of this proceeding by the Respondent (the Panel notes that the Respondent was invited in a timely manner by the Center in both Chinese and English to present his response and arguments in either Chinese or English, but chose not to do so); the fact that the disputed domain name contains the Complainant's trademark in its entirety and that the disputed domain name is written in Latin letters and not in Chinese characters; and, finally, the fact that Chinese as the language of this proceeding could lead to unwarranted delays and costs for the Complainant. In view of all these elements, the Panel grants the Complainant's request, and the language of this proceeding shall be English.

6.2. Discussion and Findings on the merits

The Policy requires the Complainant to prove three elements:

- (i) the disputed domain name is 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 name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

Based on the evidence and arguments submitted, the Panel's findings are as follows:

A. Identical or Confusingly Similar

The Panel finds that the Complainant has shown that it has valid rights in the mark OSTRUM, based on its intensive use and registration of the same as trademarks in a number of jurisdictions.

Moreover, as to whether the disputed domain name is identical or confusingly similar to the Complainant's mark, the disputed domain name consists of only the Complainant's registered trademark for OSTRUM, followed by the generic Top-Level Domain ("gTLD"), ".xyz". The Panel refers to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.11.1, which states: "The applicable Top Level Domain ("TLD") in a domain name (e.g., '.com', '.club', '.nyc') is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test." The Panel concludes that the disputed domain name contains only the Complainant's trademark

OSTRUM, and that the disputed domain name is therefore identical to this trademark owned by the Complainant.

Accordingly, the Panel finds that the disputed domain name is identical to the Complainant's registered trademark, and that the Complainant has satisfied the requirements of the first element under the Policy.

B. Rights or Legitimate Interests

On the basis of the evidence and arguments submitted, the Panel finds that the Complainant makes out a *prima facie* case that the Respondent is not, and has never been, an authorized reseller, service provider, licensee or distributor of the Complainant, is not a *bona fide* provider of goods or services under the disputed domain name and is not making legitimate noncommercial use or fair use of the disputed domain name.

The Panel also notes that the Respondent is not commonly known by the disputed domain name. As such, the Panel finds that the burden of production regarding this element shifts to the Respondent (see [WIPO Overview 3.0](#), section 2.1). However, no evidence or arguments have been submitted by the Respondent in reply.

Moreover, upon review of the facts and evidence submitted, the Panel notes that the disputed domain name directs to an active parking webpage, containing only an offer for sale of the disputed domain name for USD 1,450 which is an amount which is ostensibly in excess of the out-of-pocket costs related to the disputed domain name. The Panel also notes that there are no elements in this case that point to the Respondent having made any reasonable and demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. In the Panel's view, these elements show that the Respondent's intention was not to make any use of the disputed domain name as a *bona fide* provider of goods or services, or to make legitimate noncommercial use or fair use of the disputed domain name. Instead, it shows the Respondent's clear intention to mislead and divert Internet users for commercial gain to this parking webpage offering the disputed domain name for sale, by taking unfair advantage of the goodwill and reputation of the Complainant's trademarks for OSTRUM.

On the basis of the foregoing, the Panel considers that none of the circumstances of rights or legitimate interests envisaged by paragraph 4(c) of the Policy apply, and that the Complainant has satisfied the requirements of the second element under the Policy.

C. Registered and Used in Bad Faith

The registration of the disputed domain name, which is identical to the Complainant's intensively used trademarks for OSTRUM, is clearly intended to mislead and divert consumers away from the Complainant's official websites to the website linked to the disputed domain name. Based on these facts, the Panel finds that the Respondent's registration of the disputed domain name constitutes an intentional attempt to target the Complainant's widely-known trademark, of which the Respondent could not reasonably be unaware. Furthermore, even a cursory Internet search at the time of registration of the disputed domain name would have shown that the Complainant owned the registered trademarks in OSTRUM and uses them extensively including online. Given the above elements, the Panel finds that the registration of the disputed domain name was obtained in bad faith.

As to use of the disputed domain name in bad faith, the website linked to the disputed domain name currently directs to an active parking webpage, containing only an offer for sale of the disputed domain name for USD 1,450. There are no elements in this case that point to the Respondent having made any reasonable and demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. This leads the Panel to conclude that the Respondent is using the disputed domain name merely to sell it most likely in excess of the out-of-pocket costs related to the disputed domain name. In this regard, paragraph 4(b)(i) of the Policy states that such use constitutes direct evidence of bad faith. Based on the aforementioned elements, the Panel concludes that it has been demonstrated that the Respondent is using the disputed domain name in bad faith.

Finally, the Respondent has failed to provide any response or evidence to establish his good faith or absence of bad faith. The Panel therefore finds that the Complainant has satisfied the requirements of the third element under 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 <ostrum.xyz> be transferred to the Complainant.

/Deanna Wong Wai Man/

Deanna Wong Wai Man

Sole Panelist

Date: May 28, 2023