

## **ADMINISTRATIVE PANEL DECISION**

### **O2 DEVELOPPEMENT v. Kolm Steiger**

#### **Case No. D2023-1505**

#### **1. The Parties**

The Complainant is O2 DEVELOPPEMENT, France, represented by Casalonga Avocats, France.

The Respondent is Kolm Steiger, France.

#### **2. The Domain Name and Registrar**

The disputed domain name <o2france.net> (the “Domain Name”) is registered with Hostinger, UAB (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 5, 2023. On April 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 7, 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 (GDPR Masked) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 11, 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 amended Complaint on April 12, 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 the Respondent 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 12, 2023.

The Center appointed Vincent Denoyelle as the sole panelist in this matter on June 1, 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 is a company specialized in home care products and services and is headquartered in France.

The Complainant was established in 1996.

The Complainant has registered trade marks for O2 including:

- French trade mark O2 registration number 4770042, filed on May 25, 2021 and registered on April 8, 2022; and
- International trade mark O2 registration number 1652805, registered on November 23, 2021.

The Complainant has also registered multiple domain names reflecting its O2 trade marks including <o2.fr>, which the Complainant registered in 2000.

The Domain Name was registered on September 2, 2022.

The Domain Name points to a holding page of the Registrar.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that the Domain Name is confusingly similar to the O2 trade mark in which the Complainant has rights, as the Domain Name reproduces the entire O2 trade mark of the Complainant with the mere addition of the term "france". The Complainant considers that such addition does not prevent confusing similarity between the Domain Name and the Complainant's trade mark.

The Complainant asserts that the Respondent has no rights or legitimate interests to justify the use of the O2 trade mark in the Domain Name. The Complainant submits that it has no relationship whatsoever with the Respondent and that no license, permission or authorization to use the O2 trade mark was ever granted to the Respondent. The Complainant also asserts that the Respondent is not commonly known by the Domain Name and that the Respondent has acquired no trade mark rights related to the term "O2". In addition, the Complainant contends that the Respondent is not making a legitimate noncommercial or fair use of the Domain Name or using the Domain Name in connection with a *bona fide* offering of goods or services given that the Domain Name merely points to a Registrar holding page. Finally, the Complainant confirms that it has sent a cease and desist letter to the Respondent and that the Respondent did not respond and thus did not provide any explanation that could substantiate a right or a legitimate interest in the Domain Name.

The Complainant contends that its trade mark O2 is known in France, where the Respondent is based and that the Respondent knew or should have known about the Complainant's O2 trade mark at the time of registration of the Domain Name. In relation to use of the Domain Name in bad faith, the Complainant asserts that the Respondent's use of the Domain Name to direct to a holding page of the Registrar is deceptive and intended to redirect traffic from the Complainant's website. The Complainant also highlights the fact that that MX servers have been set up for the Domain Name and that there is a risk that the Domain Name could be used to facilitate fraudulent activities.

##### **B. Respondent**

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

## 6. Discussion and Findings

In order to prevail the Complainant must substantiate that the three elements of paragraph 4(a) of the Policy have been met, namely:

- (i) the Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- (ii) the 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.

In the case of default by a party, as is the case here, paragraph 14(b) of the Rules makes it clear that if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

In the absence of a Response from the Respondent whereby the Respondent did not object to any of the contentions from the Complainant, the Panel will have to decide on the basis of the Complaint and supporting Annexes.

### A. Identical or Confusingly Similar

In light of the evidence provided by the Complainant, the Panel is satisfied that the Complainant has substantiated that it holds valid trade mark rights in O2, which is reproduced in its entirety in the Domain Name.

The second point that has to be considered is whether the Domain Name is identical or confusingly similar to the trade mark O2 in which the Complainant has rights. At the second level, the Domain Name incorporates the Complainant's O2 trade mark in its entirety with the mere addition of the term "france". The Panel finds that this addition does not prevent a finding of confusing similarity arising from the incorporation of the Complainant's trade mark in the Domain Name.

Then there is the addition of the generic Top-Level Domain ("gTLD") ".net". As is generally accepted, the addition of a gTLD such as ".net" is merely a technical registration requirement and as such is typically disregarded under the first element confusing similarity test.

Thus, the Panel finds that the Domain Name is confusingly similar to the trade mark in which the Complainant has rights.

### B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out relevant circumstances that could demonstrate that a respondent has rights or legitimate interests in a domain name, namely: "Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate [the respondent's] rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

- (i) before any notice to [the respondent] of the dispute, [the respondent's] 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) [the respondent] (as an individual, business, or other organization) ha[s] been commonly known by the domain name, even if [the respondent] ha[s] acquired no trade mark or service mark rights; or

- (iii) [the respondent] is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.”

Numerous previous UDRP panels have found under the UDRP that once the Complainant makes a *prima facie* showing that the registrant does not have rights or legitimate interests in the Domain Name, the burden of production shifts to the Respondent to rebut the showing by providing evidence of its rights or legitimate interests in the Domain Name.

Having reviewed the Complainant's assertions and evidence, the Panel is satisfied that the Complainant has made a *prima facie* showing that the Respondent does not have rights or legitimate interests in the Domain Name.

The Complainant has stated that it has no relationship whatsoever with the Respondent and that it has not licensed or otherwise authorized the Respondent to make any use of its O2 trade mark. There is no indication that the Respondent is commonly known by the Domain Name.

The fact that the Domain Name does not currently seem to direct to an active website suggests that the Domain Name is held passively by the Respondent. Given the overall circumstances of the present case including the fact that the Complainant has substantiated the use in commerce of the O2 trade mark in France where the Respondent is based and that the Respondent has not provided any explanation as to how it could be justified in using the O2 trade mark in the Domain Name, the Panel considers that it is appropriate to infer that the passive holding of the Domain Name is not *bona fide*, legitimate, or fair.

Furthermore, the nature of the Domain Name, comprising the Complainant's trade mark in combination with the term “france”, carries a risk of implied affiliation. See section 2.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

Thus, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

### **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy sets out a number of relevant non-exhaustive circumstances, which can be deemed to constitute evidence of registration and use of a domain name in bad faith, namely:

- (i) circumstances indicating that [the respondent has] registered or acquired [a disputed] 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 trade mark or service mark or to a competitor of that complainant, for valuable consideration in excess of [the respondent's] documented out-of-pocket costs directly related to the domain name; or
- (ii) [the respondent has] registered the domain name in order to prevent the owner of the trade mark 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) [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website or other on-line 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 Domain Name reproduces the O2 trade mark of the Complainant. As part of the Panel's general powers under the Rules, the Panel has undertaken limited factual research into matters of public record as the Panel considered such information useful to assessing the case merits and reaching a decision under the third element. The Panel carried out an Internet search on the French version of Google for the term "O2 france" and most of the results on the first page including the first results on that page refer to the Complainant and its O2 trade mark. In addition, the Complainant has provided evidence and data to substantiate the goodwill acquired by the Complainant in its O2 trade mark in France, where the Respondent is based, and the substantial use of the O2 trade mark in commerce in France, on the Internet and social networks. In light of all of this, the Panel infers that the Respondent decided to register the Domain Name with the Complainant's trade mark in mind and targeted it specifically.

Thus, the Panel finds that the Domain Name was registered in bad faith.

As for use of the Domain Name in bad faith, given the circumstances described in the Complaint and the documentary evidence provided by the Complainant, the Panel is satisfied that the Domain Name is used in bad faith. The Domain Name's use to point to a holding page of the Registrar does not offer any indication as to how the Domain Name could be considered as being used in good faith.

The fact that the Respondent chose not to object to the Complainant's assertions, even after being put on notice by the Complainant prior to initiating the present proceedings can only reinforce the Panel's view that the Domain Name is used in bad faith.

Thus, the Panel finds that the Domain Name was registered and is being used in bad faith.

## **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, <o2france.net>, be transferred to the Complainant.

*/Vincent Denoyelle/*

**Vincent Denoyelle**

Sole Panelist

Date: June 9, 2023