

## **ADMINISTRATIVE PANEL DECISION**

Obagi Holdings Company Limited v. Domain Privacy,  
Domain Name Privacy Inc.  
Case No. D2024-5298

### **1. The Parties**

The Complainant is Obagi Holdings Company Limited, Cayman Islands, United Kingdom, represented by MSA IP – Milojevic Sekulic & Associates, Serbia.

The Respondent is Domain Privacy, Domain Name Privacy Inc., Cyprus.

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

The disputed domain name <obagi.store> is registered with Communigal Communications Ltd. (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 23, 2024. On December 24, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 30, 2024, 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 December 30, 2024, confirming the registrant and providing contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on January 3, 2025.

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 January 7, 2025. In accordance with the Rules, paragraph 5, the due date for Response was January 27, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 28, 2025.

The Center appointed Jacques de Werra as the sole panelist in this matter on February 3, 2025. 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 global skincare products company which was founded in 1988 and which develops and manufactures various skin line products. It has registered (or it controls) trademarks covering over 60 countries throughout the world, including the following trademarks ("the Trademark"):

- International Registration No. 1495947A for the trademark OBAGI (with design), registered on July 31, 2019 (owned by the Complainant);
- European Union Trade Mark No. 000164509 for the trademark OBAGI, registered on July 10, 1998 (owned by OBAGI COSMECEUTICALS LLC, which is affiliated with the Complainant);
- European Union Trade Mark No. 001164599 for the trademark OBAGI, registered on March 2, 2001 (owned by OBAGI COSMECEUTICALS LLC, which is affiliated with the Complainant).

The Complainant operates the domain name <obagi.com>, which was registered on January 26, 1998, and which it uses for its principal website to promote its products and services.

The disputed domain name was registered on December 5, 2024. It resolves to a page with sponsored links (pay-per-clicks or PPC) advertising products related to the Complainant and its field of business of dermatological and medical products, as well as Complainant's own "Obagi Retinol" products which also displays a link labelled as "The domain obagi.store may be for sale. Click here to inquire about this domain", which redirects to a GoDaddy For Sale page, where the disputed domain name is purportedly offered for the price of USD 2,888.

#### **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 the disputed domain name incorporates Complainant's well-known trademark OBAGI without any additional terms so that the disputed domain name is confusingly similar to the Trademark in which the Complainant has rights, and therefore the requirements of Paragraph 4(a)(i) are fulfilled.

The Respondent is not affiliated with the Complainant in any way and has not been authorized by the Complainant to use and register its OBAGI trademark or to seek registration of any domain name incorporating said Trademark.

The Respondent did not demonstrate use of the disputed domain name in connection with a bona fide offering of goods or services. Indeed, ever since the Complainant became aware of the disputed domain name it has resolved to a parking page with sponsored links (pay-per-clicks or PPC), displaying various links advertising products related to the Complainant and its field of business of dermatological and medical products, as well as Complainant's own "Obagi Retinol" products, with a displayed link to GoDaddy webpage on which Internet users can purchase the disputed domain name. The disputed domain name is also offered for sale on the GoDaddy domain name trading platform for the price of USD 2,888. Therefore, it is clear that

the Respondent has no intention to develop a legitimate activity through the disputed domain name, and that the Respondent is trying to capitalize on Complainant's global fame through sale of domain name identical with Complainant's Trademark, which cannot under any circumstances be observed as bona fide offering of goods or services. To the best of the Complainant's knowledge, the Respondent has not been commonly known by the name "obagi". Also, the Complainant is not familiar with any trademark registrations made by the Respondent for "obagi" trademarks.

The Complainant further states that e-mail servers (MX Records) were configured in respect of the disputed domain name. Thus, there is a real possibility that Internet users were receiving emails from the email addresses with extensions "@obagi.store" on the assumption that they were communicating directly with the Complainant or an entity affiliated with this company. In that sense, Respondent may have used such e-mail addresses to impersonate the Complainant, and Internet users searching for the Complainant's products might have been tricked into disclosing their personal data and sensitive information (e.g., social security numbers, medical conditions, bank account numbers, etc.). Accordingly, it cannot be inferred that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name. In accordance with section 2.13 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), use of a disputed domain name for illegal activity (such as phishing) can never confer rights or legitimate interests on a respondent.

On this basis, the Complainant claims that the Respondent has no rights or legitimate interests in respect to the disputed domain name in accordance with Paragraph 4(a)(ii) of the Policy.

The Complainant further alleges that the Respondent registered the disputed domain name in bad faith because it is implausible that the Respondent was unaware of the Complainant and its products when it registered the disputed domain name. Bad faith can be found where a respondent "knew or should have known" of a complainant's trademark rights and nevertheless, registered domain names in which he had no right or legitimate interest. In accordance with section 3.2.2 of [WIPO Overview 3.0](#), previous panels have consistently considered that where the complainant's mark is widely known or highly specific, a respondent cannot credibly claim to have been unaware of the mark. In that sense, it should be noted that the Complainant's OBAGI trademark is well-known, and it has been present in the worldwide market for more than 35 years, and it is indeed difficult to imagine that the Respondent did not have the Complainant in mind when registering the disputed domain name.

In addition, the Complainant claims that another fact indicates Respondent's bad faith in connection with the registration of the disputed domain name is that the Respondent employs a privacy shield to prevent the Complainant and panel from knowing the identity of the actual registrant of the disputed domain name, and eventually to avoid being notified of a UDRP proceeding filed against it. In accordance with section 3.6 of [WIPO Overview 3.0](#), where it appears that a respondent employs a privacy or proxy service merely to avoid being notified of a UDRP proceeding filed against it, panels tend to find that this supports an inference of bad faith. Furthermore, in accordance with section 4.4.6 of [WIPO Overview 3.0](#), particularly noting paragraph 8(a) of the Policy, panels have found that where a "disclosed" registrant is in turn what appears to be yet another privacy or proxy service, as in the case at hand (sometimes referred to as a "Russian doll" scenario), such multi-layered obfuscation or possible cyberflight may support an inference of a respondent's bad faith, e.g., in an attempt to shield illegitimate conduct from a UDRP proceeding.

The Complainant further claims that the Respondent uses the disputed domain name in bad faith because the Respondent's registration of the disputed domain name was made primarily for the purpose of selling it for valuable consideration and taking advantage of Complainant's reputation. In accordance with paragraph 4(b)(i) of the Policy, circumstances indicating that the domain name has been registered or acquired 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 that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name, constitutes evidence of bad faith registration or use of a domain name.

In this case, the disputed domain name resolves to a parking page comprising of PPC sponsored links, advertising products related to the Complainant and its field of business, which indicates that the Registrant is using the disputed domain name in order to make a commercial gain by abusing the Complainant's reputation. In that sense, such absence of any conceivable good faith use supports a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's trademark (see section 3.1.4 of [WIPO Overview 3.0](#)).

These circumstances (among others invoked by the Complainant) confirm that the disputed domain name is used in bad faith. Consequently, it is established that the Respondent both registered and used the disputed domain name in bad faith in accordance with paragraph 4(a)(iii) of the Policy.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **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 3.0](#), section 1.7.

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 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.

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

In this case, the Panel notes that the Complainant has established that the disputed domain name resolves to a parking page with sponsored links (pay-per-clicks or PPC), displaying various links advertising products related to the Complainant and its field of business of dermatological and medical products, as well as Complainant's own "Obagi Retinol" products, with a displayed link to GoDaddy webpage on which Internet users can purchase of the disputed domain name. The disputed domain name is also purportedly offered for sale on the GoDaddy domain name trading platform for the price of USD 2,888.

The Panel also notes that the Complainant provides evidence that e-mail servers (MX Records) were configured in respect of the disputed domain name, so there is a possibility that Internet users were receiving emails from the email addresses with extensions "@obagi.store" on the assumption that they were communicating directly with the Complainant or an entity affiliated with this company. In that sense, Respondent may have used such e-mail addresses to impersonate the Complainant.

In this respect, Panels have held that the use of a domain name for an illegal activity here, claimed phishing, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. However, the Panel notes that the Complainant has not demonstrated that the disputed domain name has actually been used for such an illegal activity resulting from the use of misleading emails.

In any event, noting the Complainant's prima facie case and the Respondent's failure to come forward with relevant counter evidence, the Panel finds that the second element of the Policy has been established.

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

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

In the present case, the Panel notes that the Respondent has registered and used the disputed domain name in bad faith because the Respondent cannot be considered to have registered the disputed domain name without having in mind the Complainant and the Trademark and because the disputed domain name resolves to a parking page comprising of PPC sponsored links, advertising products related to the Complainant and its field of business, which indicates that the Respondent is using the disputed domain name in order to make a commercial gain by abusing the Complainant's reputation. This constitutes evidence of bad faith under paragraph 4(b)(iv) of the Policy. In addition, the disputed domain name is also purportedly offered for sale on the GoDaddy domain name trading platform for the price of USD 2,888 which, especially noting the composition of the disputed domain name, falls under paragraph 4(b)(i) of the Policy (circumstances indicating that the domain name has been registered or acquired 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 that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name, constitutes evidence of bad faith registration or use of a domain name).

On this basis, the Panel finds that the Complainant has established 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 disputed domain name <obagi.store> be transferred to the Complainant.

*/Jacques de Werra/*

**Jacques de Werra**

Sole Panelist

Date: February 21, 2025