

ADMINISTRATIVE PANEL DECISION

Great Healthworks, Inc. v. Dionicio Diaz, omegaxl.com
Case No. D2025-0742

1. The Parties

The Complainant is Great Healthworks, Inc., United States of America (“United States”), internally represented.

The Respondent is DIONICIO DIAZ, omegaxl.com, Dominican Republic.

2. The Domain Name and Registrar

The disputed domain name <omegaxl.com> is registered with Realtime Register B.V. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 24, 2025. On February 24, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 25, 2025, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 13, 2025, 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 March 13, 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 March 18, 2025. In accordance with the Rules, paragraph 5, the due date for Response was April 7, 2025. The Response was filed with the Center on March 19, 2025. On April 14, 2025, the Center notified the Parties that it would proceed to panel appointment.

The Center appointed Reyes Campello Estebaranz as the sole panelist in this matter on April 17, 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.

On April 24, 2025, the Respondent sent an additional supplemental filing to the Center.

4. Factual Background

The Complainant produces and commercializes internationally various nutritional supplements under the OMEGAXL or the OMEGAXL BY GREAT HEALTHWORKS brands, since 2003. It commercializes its products online through its official website “www.omegaxl.com”, as well as through various ecommerce platforms including, e.g., Amazon. The Complainant’s official website (“www.omegaxl.com”) includes a video that indicates most of its products contain green-lipped mussels from New Zealand, and the website includes various images of these mussels opened and containing supplement pearls.¹

The Complainant owns various trademark registrations for its brands, including:

- United States Trademark Registration No. 3,063,715, OMEGAXL, word, registered on February 28, 2006, in Class 5 and 29;
- United States Trademark Registration No. 3,013,041, OMEGAXL, figurative, registered on November 8, 2005, in Classes 5 and 29; and
- Dominican Republic Trademark Registration No. 233533, OMEGAXL BY GREAT HEALTHWORKS, word, registered on September 15, 2016, in Classes 5 and 29.

(Hereinafter collectively referred as the “OMEGAXL mark”).

As stated above, the Complainant further owns the domain name <omegaxl.com> (registered on January 25, 2004) that resolves to its official website an online store.

The disputed domain name was registered on February 22, 2024, and it is currently apparently inactive resolving to an Internet browser error message that indicates, “This site can’t be reached”. According to the evidence provided by the Complainant, the disputed domain name previously resolved to an active website, in English language, that prominently and repeatedly displayed the OMEGAXL mark and purportedly commercialized nutritional supplements bearing this trademark. This website reproduced the Complainant’s official website design as well as its section titles, and included several of its copyrighted product images with green-lipped mussels containing supplement pearls. The site did not include information about its owner or that of the disputed domain name and it did not indicate a lack of relationship with the Complainant. The copyright note of the website indicated, “Copyright © 2005 I omegaxl.com” at its bottom.

According to the evidence provided by the Complainant, the Respondent further had an active Facebook page, in Spanish language, under the title “Omega xl suplemento vitamino” (Omega xl vitamin supplement), which included various images of the Complainant’s products and addressed users to acquire them over the website linked to the disputed domain name indicating, “Shop – omegaxl.com”.

¹ The Panel, under its general powers, articulated inter alia in paragraphs 10 and 12 of the Rules, has consulted the Complainant’s official website and has conducted a search over the Internet for the OMEGAXL brand.

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 the disputed domain name is a misspelling of the OMEGAXL mark, hence confusingly similar to this trademark and to the Complainant's domain name <omegaxl.com>, and the content of the Respondent's website corroborates the targeting to the Complainant and its trademark.

The Complainant further contends the Respondent lacks rights and legitimate interests in the disputed domain name. The term "omegaxl" is an arbitrary term used by the Complainant and registered as a trademark for over 20 years. The Respondent is not commonly known by this term and has no license to use the OMEGAXL mark. The Respondent is either an unauthorized reseller, violating the Complainant's Terms and Conditions, or is engaging in the sale of counterfeit products.

The Complainant finally contends the disputed domain name was registered and is being used in bad faith. The Respondent knowingly registered the disputed domain name containing a common misspelling of the well-known OMEGAXL mark to capitalize on consumer recognition of this trademark, in an attempt to attract for commercial gain Internet users to its website by creating a likelihood of confusion. The practice of typosquatting constitutes an obvious evidence of the bad faith registration of a domain name. The Respondent's website as well as its Facebook page used the Complainant's trademark, trade dress, and copyrighted works without any authorization, to sell counterfeits or unauthorized products.

B. Respondent

The Respondent filed his Response in Spanish language, indicating his intention is to cooperate and not to renew the disputed domain name. He further indicated the disputed domain name was acquired with no lucrative purpose for a marketing research, which was conducted from February 22, 2024 to April 22, 2024, and it is already finalized.

On an additional unsolicited supplemental filing, in English language, the Respondent clarified he had not been hired to conduct the said marketing study, but was linked to a student thesis, and he indicated, "The page was presented internally to other students as an example and did not involve any promotional activities or external marketing efforts".

6. Discussion and Findings

The Complainant has made the relevant assertions as required by the Policy and the dispute is properly within the scope of the Policy. The Panel has authority to decide the dispute examining the three elements in paragraph 4(a) of the Policy, taking into consideration all of the relevant evidence, annexed materials and allegations, and performing some limited independent research under the general powers of the Panel articulated, inter alia, in paragraph 10 of the Rules.

A. Preliminary Issue: Language of the Proceedings, and Unsolicited Supplemental Filing

Pursuant to paragraph 11 of the UDRP Rules, unless otherwise agreed by the parties, the default language of the proceeding is the language of the registration agreement, subject to the authority of the panel to determine otherwise.

The Panel notes the language of the registration agreement is English, and the parties have not agreed otherwise. The Panel further notes, albeit the Respondent has filed his Response in Spanish, he used English to redact the content of the website that was linked to the disputed domain name as well as in his unsolicited supplemental filing, so the Panel considers the Respondent has understanding knowledge of this language. Therefore, the Panel considers English the language of the proceedings, albeit, to conduct the proceedings with due expedition, a translation of the Response will not be requested.

Regarding the Respondent's unsolicited supplemental filing, the Panel notes it reiterates the content of the response. The unsolicited supplemental filing adds some information about the alleged "marketing study" indicating it was conducted in the context of a "student thesis", but provides no evidence about such research or the thesis. The Panel does not consider the Respondent's unsolicited supplemental filing necessary to decide the case, although it will be taken into account that it was redacted in English. Unsolicited supplemental filings are generally discouraged, unless specifically requested by the panel. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 4.6.

B. 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, namely the OMEGAXL mark. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name with an additional letter "x", using a double "x" ("xx") instead of a single "x", which may constitute a common, obvious, or intentional misspelling of the mark. The Panel finds the disputed domain name contains sufficiently recognizable aspects of the OMEGAXL mark. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7, and 1.9.

Therefore, the Panel finds the first element of the Policy has been established.

C. 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 Panel is aware that the term "omega" is included in the dictionary as the last letter of the Greek alphabet, and followed by numbers 3 or 6 (omega-3 or omega-6), designates unsaturated fatty acids which are essential nutrients often included in supplements. However, the mere registration of a domain name, even one that is comprised of a dictionary word or phrase, does not by itself automatically confer rights or

legitimate interests therein (see [WIPO Overview 3.0](#), section 2.10.1), and the disputed domain name includes the term “omega” followed by the letters “xxl” in clear allusion to the OMEGAXL mark.

The Respondent has indicated he registered and used the disputed domain name with no lucrative purpose in the context of a marketing research (for a student thesis). The Panel notes, however, the Respondent provides no evidence in support of such allegations, although it should have been easy for him to provide any evidence regarding the findings of the research (already finalized), a copy of his thesis, or any other material evidence of the same. While fair use need not always be categorically noncommercial in nature, it is indeed needed unambiguous evidence that the site is not primarily intended for commercial gain to consider there is a lack of intent to unfairly profit from the Complainant’s reputation. [WIPO Overview 3.0](#), section 2.5.3.

The Panel further finds the evidence related to the Respondent’s Facebook page, which included copyrighted images of the Complainant’s products and the expression “Shop – omegaxl.com” corroborates a commercial purpose in the Respondent’s website, and contradicts his allegations of a non-lucrative purpose.

The Panel finds, according to the evidence provided by the Complainant, the disputed domain name has been used in connection to an online shop that purportedly commercialized supplements bearing the OMEGAXL mark at discounted prices, which displayed this trademark repeatedly within its content, reproduced the Complainant’s official website design and section titles, and used copyrighted images of its products. Furthermore, the Respondent’s website included no information about its owner or that of the disputed domain name, and no information about its lack of relationship with the Complainant and its trademark. All these circumstances indicate, in the Panel’s view, a commercial purpose, as well as an intention to generate confusion and deceive Internet users impersonating the Complainant and giving the impression of being its official website.

Panels have held a nominative fair use by resellers or distributors of a domain name containing the relevant mark may be considered a bona fide offering of goods or services and may be legitimate under certain circumstances outlined in the “Oki Data test” (in reference to *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)), however, these circumstances are not present here, as the website that was linked to the disputed domain name did not accurately and prominently disclose the lack of relationship with the Complainant, but, on the contrary, tried to impersonate the Complainant and generate confusion with the Complainant’s official website (“www.omegaxl.com”). Additionally, the Respondent has not alleged any bona fide offering of the Complainant’s goods and services, but simply a non-lucrative or noncommercial use in the context of an alleged (and not evidenced) marketing study, so the said provisions outlined in the *Oki Data Americas, Inc. v. ASD*, supra, would not apply.

Furthermore, with reference to the use of the disputed domain name in connection to a website that impersonated the Complainant and generated confusion, panels have held that the use of a domain name for illegitimate or illegal activity here, claimed impersonation/passing off, or other types of fraud can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. Additionally, the composition of the disputed domain name, which incorporates an obvious or intentional misspelling of the OMEGAXL mark, using a double “xx” instead of the single form “x”, further underpins the impersonation nature of the disputed domain name. See, e.g., *Leonardo Interactive Pty Ltd. v. Nilmini Rathnayaka*, WIPO Case No. [D2025-0324](#).

The Panel further notes the Respondent’s reaction to the Complaint taking down the content that was linked to the disputed domain name and providing no evidence of its previous use, and considers that all the circumstances of the case lead to consider the Respondent lacks of any rights or legitimate interests.

The Panel finds the second element of the Policy has been established.

D. 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 the extensive presence of the Complainant and the OMEGAXL mark over the Internet. The Panel has verified that any search over the Internet for the term “omegaxl” reveals the Complainant, its products and its trademark, as well as the prominent presence of the Complainant and its trademark in numerous supplements ecommerce platforms. This fact together with the continuous use over 20 years of the OMEGAXL mark in the market, leads the Panel to consider this trademark is at least internationally notorious within its relevant field of nutritional supplements.

The Panel further finds the facts of this case show the Respondent has intentionally targeted the OMEGAXL mark, and has used the disputed domain name to attract, for commercial gain, Internet users to a website that impersonated the Complainant. The Respondent has not provided any evidence in support of his alleged noncommercial fair use of the disputed domain name, and the Respondent’s website, notably, included the OMEGAXL mark, had a design and structure similar to the Complainant’s official website, included copyrighted images of the Complainant’s products. All these circumstances, together with the use of a misspelling of the mark in the composition of the disputed domain name indicate an illegal intention to impersonate the Complainant and deceive Internet users for a commercial gain.

Panels have held that the use of a domain name for illegitimate or illegal activity here, claimed impersonation/passing off, or other types of fraud constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent’s registration and use of the disputed domain name constitutes bad faith under the Policy.

Furthermore, the act of “typosquatting” or registering a domain name that is an intentional, common, or obvious misspelling of a mark in which a party has rights has often been recognized as evidence of bad faith registration per se. See [WIPO Overview 3.0](#), section 3.2.1, and numerous decisions, e.g., *Neurocrine Biosciences, Inc. v. Name Redacted*, WIPO Case No. [D2024-1130](#).

The current non-use of the disputed domain name does not alter this conclusion, as panels have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the notoriety of the Complainant’s trademark, and the composition of the disputed domain name, including an intentional obvious misspelling of the mark, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Therefore, the Panel finds that the Complainant has established the third element of the Policy.

Finally, according to the Complainant’s allegations, the Panel considers the fact the Respondent’s website included only discounted products allegedly bearing the OMEGAXL mark, may indicate these products were counterfeits or unauthorized (or parallel import) products, however, the Panel finds there is no sufficient evidence in the record to establish the use of the disputed domain name in this type of fraud.

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 <omegaxxl.com> be transferred to the Complainant.

/Reyes Campello Estebarez/

Reyes Campello Estebarez

Sole Panelist

Date: May 1, 2025