

## **ADMINISTRATIVE PANEL DECISION**

OVH v. tekathus piboonsutikul

Case No. DCO2023-0016

### **1. The Parties**

The Complainant is OVH, France, internally represented.

The Respondent is tekathus piboonsutikul, Tunisia.

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

The disputed domain name <ovhcloud.com.co> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 15, 2023. On February 15, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 15, 2023, 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 (Redacted for privacy service) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 24, 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 amendment to the Complaint on February 24, 2023.

The Center verified that the Complaint together with the amendment to the 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 February 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 19, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 22, 2023.

The Center appointed Tuukka Airaksinen as the sole panelist in this matter on March 30, 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 French company providing services related to cloud computing, domain name reservation, data hosting and Internet telephony. It is the owner of the trademark OVH CLOUD, registered as an International Trademark No. 1444311 as of April 16, 2018, and designating *inter alia* Colombia.

The disputed domain name was registered on October 27, 2022, and resolves to a website featuring pay-per-click (“PPC”) sponsored links related to the Complainant’s activity.

#### **5. Parties’ Contentions**

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

The disputed domain name is identical to the Complainant’s trademark OVH CLOUD because the only additional element is “.com.co”, which is merely a technical requirement for domain name registration.

The Respondent is not affiliated with the Complainant in any way and has not been authorized by the Complainant to use or register the disputed domain name. The Respondent is not known by the disputed domain name and cannot demonstrate any *bona fide* use, or preparation to use the disputed domain name.

The Respondent is not making any legitimate noncommercial or fair use of the domain name.

The website to which the disputed domain name resolves is a parking page on which there are sponsored links, including links to competitors of the Complainant.

The Respondent would not have registered the disputed domain name without the knowledge of the Complainant’s trademark and the intention of benefiting from it. The current use of the disputed domain name as a parking page offering sponsored links that redirect to websites where Complainant’s core activities are being offered by other companies is proof that the disputed domain name is being used in bad faith. The Respondent has been free riding on the reputation of the Complainant’s trademark registrations.

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

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

#### **6. Discussion and Findings**

In order to obtain the transfer of a domain name, a complainant must prove the three elements of paragraph 4(a) of the Policy, regardless of whether the respondent files a response to the complaint or not. The first element is that the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights. The second element a complainant must prove is that the respondent has no rights or legitimate interests in respect of the domain name. The third element a complainant must establish is that the domain name has been registered and is being used in bad faith.

## **A. Identical or Confusingly Similar**

Paragraph 4(a)(i) of the Policy requires that the Complainant establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. Consequently, the Complainant must prove that it has rights to a trademark, and that the disputed domain name is identical or confusingly similar to this trademark.

According to section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), "[t]he 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 finds that the disputed domain name is identical with the Complainant's trademark and hence the first element of the Policy has been fulfilled.

## **B. Rights or Legitimate Interests**

Paragraph 4(a)(ii) of the Policy requires that the Complainant establish that the Respondent has no rights or legitimate interests to the disputed domain name.

It is widely accepted among UDRP panels that once a complainant has made a *prima facie* showing indicating the absence of the respondent's rights or legitimate interests in a disputed domain name the burden of production shifts to the respondent to come forward with evidence of such rights or legitimate interests. If the respondent fails to do so, the complainant is deemed to have satisfied the second element of the Policy. See, e.g., *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#), and section 2.1 of the [WIPO Overview 3.0](#).

The Complainant has credibly submitted that the Respondent is neither affiliated with the Complainant in any way nor has it been authorized by the Complainant to use and register the disputed domain name, that the Respondent has no rights or legitimate interests in the disputed domain name, and that the Respondent has not made and is not making a legitimate noncommercial or fair use of the disputed domain name and is not commonly known by the disputed domain name in accordance with paragraph 4(c)(ii) of the Policy.

Section 2.9 of the [WIPO Overview 3.0](#) states: "Applying UDRP paragraph 4(c), panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users."

UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation. Section 2.5.1 of the [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the Complainant has made a *prima facie* case that has not been rebutted by the Respondent. Considering the Panel's findings below, the Panel finds that there are no other circumstances that provide the Respondent with any rights or legitimate interests in the disputed domain name. Therefore, the Panel finds that the second element of the Policy is fulfilled.

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

Paragraph 4(a)(iii) of the Policy requires that the Complainant establish that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy provides that the following circumstances,

in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

“(i) circumstances indicating that [the respondent has] registered or has acquired the 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 trademark 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 trademark 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 or 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 online 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.”

Considering that the disputed domain name is identical with the Complainant’s trademark, it is obvious that the Respondent was aware of the Complainant’s trademark when registering the disputed domain name.

The Respondent has directed the disputed domain name to a PPC website that includes links to third-party websites offering services that compete with those offered by the Complainant. The Respondent is therefore using the disputed domain name to intentionally attract, for commercial gain, Internet users to the Respondent’s website by creating a likelihood of confusion with the Complainant’s trademark.

The Panel therefore finds that the disputed domain name was registered and is used in bad faith, pursuant to the Policy, paragraph 4(a)(iv).

Therefore, the Panel finds that the third element of the Policy is fulfilled.

## **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 <ovhcloud.com.co> be transferred to the Complainant.

/Tuukka Airaksinen/

**Tuukka Airaksinen**

Sole Panelist

Date: April 12, 2023