

PANEL DECISION

OPENLANE Europe NV, OPENLANE, Inc. v. Name Redacted Case No. DEU2024-0020

1. The Parties

The Complainants are OPENLANE Europe NV (the “Complainant 1”), Belgium, and OPENLANE, Inc. (the “Complainant 2”), United States of America (“United States”), represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Name Redacted.¹

2. The Domain Name, Registry and Registrar

The Registry of the disputed domain name <open-lane.eu> is the European Registry for Internet Domains (“EURid” or the “Registry”). The Registrar of the disputed domain name is Romarg Srl.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 21, 2024. On June 24, 2024, the Center transmitted by email to the Registry a request for registrar verification in connection with the disputed domain name. On June 25, 2024, the Registry 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 June 25, 2024 providing the registrant and contact information disclosed by the Registry, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on June 25, 2024.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the .eu Alternative Dispute Resolution Rules (the “ADR Rules”) and the World Intellectual

¹ The Respondent appears to have used the name of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted the Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registry regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registry as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Jurgen Raedts v. Name Redacted, The Artist BV*, WIPO Case No. [DEU2023-0040](#).

Property Organization Supplemental Rules for .eu Alternative Dispute Resolution Rules (the “Supplemental Rules”).

In accordance with the ADR Rules, Paragraph B(2), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on June 26, 2024. In accordance with the ADR Rules, Paragraph B(3), the due date for Response was July 16, 2024. On July 5, 2024, the Center received an email from a third party. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 17, 2024.

The Center appointed Martin Švorčík as the sole panelist in this matter on July 22, 2024. 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 ADR Rules, Paragraph B(5).

4. Factual Background

The Complainant 1, OPENLANE Europe NV is a fully owned subsidiary of the Complainant 2, OPENLANE, Inc.

The Complainant 2, headquartered in Carmel, Indiana, United States, is a provider of digital automotive marketplaces and technology platforms bringing together the leading OEMs, dealers, fleet operators, rental companies, and financial institutions.

The Complainant 2 is owner of numerous OPENLANE trademarks, such as:

- European Union (“EU”) registration no. 018868545 for the word mark OPENLANE, registered on September 12, 2023;
- United Kingdom registration UK00003906284 for the word mark OPENLANE registered on July 21, 2023;
- United States registration 4268846 for the word mark OPENLANE, registered on January 1, 2013; and
- Canadian registration TMA757102 for the word mark OPENLANE, registered on January 15, 2010.

The Complainants operate their official website under the domain name <openlane.com> and under the domain name <openlane.eu> in Europe.

The disputed domain name was registered on January 23, 2024. The disputed domain name has been used to send phishing emails impersonating the Complainant 1, and also is being redirected to the Complainants' website at “www.openlane.eu” without their consent.

5. Parties' Contentions

A. Complainant

The Complainants state that they have 4,500 employees and over 100 operating locations across North America, Europe, the Philippines, and Uruguay. Their automotive marketplaces, technology platforms, and ancillary services support customers in over 50 countries around the globe. In 2023, it has sold over 1.3 million vehicles, translating into USD 1.6 billion in revenue.

The Complainants' digital marketplace sales are initiated online and include not only United States but also many EU countries such as Belgium, France, Germany, Italy, the Netherlands (Kingdom of the), Spain, and also the United Kingdom. It has sold over 90,000 cars across Europe.

The Complainants further state and evidence that they maintain a strong Internet presence. According to SimilarWeb, the Complainants' primary website, reachable through its primary domain name,

<openlane.com>, which Complainants have owned since 2008, received a total of more than 200,000 individual visits in the three-months period from March to May 2024, making it the 179,398th most popular website globally. The Complainants also own the domain name <openlane.eu>, which was registered on March 16, 2016, and ranks the 29,337th most popular website globally.

As for the argumentation itself, the Complainants state that the disputed domain name registration fulfils all criteria pursuant to Paragraph B(11)(d)(1) of the ADR Rules, i.e.:

- the disputed domain name is identical or confusingly similar to their trademarks OPENLANE;
- the Respondent has no rights or legitimate interests in the disputed domain name, the Respondent is not sponsored by or affiliated with the Complainants; the Respondent is not commonly known by the disputed domain name, which evidences a lack of rights or legitimate interests; the disputed domain name was used to facilitate email phishing attacks, targeting the Complainants' potential customers; and the disputed domain name is redirected to Complainants' official website without their consent.
- the Respondent registered and is using the disputed domain name in bad faith as the Respondent has registered and used the disputed domain name for purposes of launching a phishing attack, which is a clear evidence of bad faith registration and use of the disputed domain name. The Respondent is using the disputed domain name to redirect users to the Complainants' official website. The Respondent has ignored the Complainants' attempt to resolve this dispute outside of this administrative proceeding.

The Complainants submitted further evidence on July 17, 2024 demonstrating the continuous fraudulent activities of sending phishing emails by the Respondent using the disputed domain name.

B. Respondent

The Respondent did not reply to the Complainants' contentions.

However, the Center received on July 5, 2024 an email from a third party stating that the registration of the disputed domain name has been made without his/her knowledge or authorization by using his/her identity and contact details.

6. Discussion and Findings

6.1 Procedural Issues

First of all, while the ADR Rules do not directly contemplate the consolidation of multiple complainants in a single complaint, panels look at whether: (i) the complainants have a specific common grievance against the respondent, or the Respondent has engaged in common conduct that has affected the complainants in a similar way, and (ii) it would be equitable and procedurally efficient to permit the consolidation. In this case, the Complainant 1, OPENLANE Europe NV is a wholly owned subsidiary of the Complainant 2, OPENLANE, Inc. Therefore, they share a common legal interest in the trademarks held by the Complainant 2, and therefore they have a common interest in this proceeding and share a common grievance. The Panel finds that in this case the consolidation would be equitable and procedurally efficient, therefore the Panel accepts the consolidation of the Complainants.

Due to the similarities of the ADR Rules and the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Panel will also take into account the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)").

According to Paragraphs B8 and B7(d) of the ADR Rules the Panel admits supplemental filing from the Complainants dated July 17, 2024, as these new phishing emails were sent by the Respondent during the proceeding.

6.2 Substantive Issues

Pursuant to Paragraph B(11)(d)(1) of the ADR Rules the Panel shall issue a decision granting the remedies requested by the complainant in the event that the complainant proves the following elements:

- (i) the domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or European Union law and; either
- (ii) the domain name has been registered by the Respondent without rights or legitimate interest in the name; or
- (iii) the domain name has been registered or is being used in bad faith.

A. Identical or Confusingly Similar to a name in respect of which a right or rights are recognized or established by national law of a Member State and/or European Union law

The Complainants proved that they are owners of multiple trademarks OPENLANE in including an EU registration.

After comparison of the disputed domain name and the trademarks of the Complainants, it is evident for the Panel that the disputed domain name consists of the Complainants' OPENLANE trademark, to which a hyphen was added between "open" and "lane", resulting in the disputed domain name that is confusingly similar to the Complainants' OPENLANE trademark. The ".eu" Top-Level Domain is typically disregarded for the purposes of the comparison with the Complainants' trademarks on the basis that it is a standard technical requirement for registration.

Therefore, the requirements under the first element of Paragraph B(11)(d)(1)(i) of the ADR Rules were met.

B. Rights or Legitimate Interests

Under Paragraph B(11)(e) of the ADR Rules, rights or legitimate interests may be demonstrated where:

- (i) prior to any notice of the dispute, the respondent has used the disputed domain name or a name corresponding to the domain name in connection with the offering of goods and services or has made demonstrable preparations to do so;
- (ii) the respondent, being an undertaking, organization or natural person, has been commonly known by the domain name, even in absence of a right recognised or established by national and/or European Union law;
- (iii) the respondent is making a legitimate and non-commercial or fair use of the domain name, without intent to mislead consumers or harm the reputation of a name in respect of which a right is recognised or established by national and/or European Union law.

While the overall burden of proof in ADR Rules proceedings lies with the complainant, panels have acknowledged that proving a respondent lacks rights or legitimate interests in a domain name can often result in the challenging task of "proving a negative," which requires information typically within the respondent's knowledge or control. Consequently, when a complainant establishes a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to provide relevant evidence demonstrating their rights or legitimate interests in the domain name. If the respondent fails to present such evidence, the complainant is deemed to have satisfied the second element (see [WIPO Overview 3.0](#), section 2.1).

Upon reviewing the record, the Panel finds that the Complainant has made prima facie evidence of the validity of the OPENLANE trademarks. These registrations are also prima facie proof of the Complainants' ownership of these trademarks, and of the Complainants' exclusive rights to use these trademarks in connection with the goods and/or services for which these trademarks were registered in the corresponding jurisdictions.

From the evidence, it is also clear that the Respondent is not sponsored by or associated with the Complainants in any manner. Moreover, the Complainants have not granted the Respondent any permission, license, or authorization to use the Complainants' trademark in any capacity, including within domain names.

The Respondent is not commonly known by the disputed domain name, which indicates a lack of rights or legitimate interests. For reasons related to potential identity theft, the Panel will not disclose the actual identity of the Respondent.

The Panel further states that the Complainants proved that the Respondent registered the disputed domain name on January 23, 2024, which is after the Complainants' registration of its OPENLANE trademarks and the Complainants' registration of the <openlane.eu> domain name on March 16, 2016, the Complainants' possession of the <openlane.com> domain name since 2008, and the Complainants' commercial use of the OPENLANE trademark since 2008. The use of the disputed domain name carries a risk of implied affiliation with the Complainants and cannot be considered as fair use of the disputed domain name (see [WIPO Overview 3.0](#) at section 2.5.1).

From the evidence provided by the Complainants, the Panel finds out that the disputed domain name was used for email phishing attacks to fraudulently lure the Complainants' potential customers to enter a vehicle purchase. Such conduct of the Respondent demonstrates a lack of legitimate interests or rights in the disputed domain name. Panels have recognized that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. See [WIPO Overview 3.0](#) at section 2.13.1.

Additionally, the disputed domain name is currently redirected to Complainants' official website without their consent. The Respondent is therefore not using the disputed domain name to provide a bona fide offering of goods or services as allowed under Paragraph B(11)(e)(1) of the ADR Rules, nor a legitimate non-commercial or fair use as allowed under Paragraph B(11)(e)(3) of the ADR Rules.

The Panel therefore accepts the Complainants' prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name and that the Complainants have satisfied the condition set out at Paragraph B(11)(d)(1)(ii) of the ADR Rules.

C. Registered or Used in Bad Faith

As the two conditions stipulated in Paragraph B(11)(d)(1)(i) and (ii) of the ADR Rules have already been fulfilled, the Panel does not need to examine whether the Respondent has registered or is using the disputed domain name in bad faith, under Paragraph B(11)(d)(1)(iii) of the ADR Rules.

However, the Panel has done it by its own discretion and finds out that in fact all as the conditions of the bad faith stipulated in Paragraph (B)11(d)(1)(iii) of the ADR Rules have been met:

- the Complainants have proved that they are well known by the OPENLANE trademark and designation.
- the Respondent has used the disputed domain name for a fraudulent email scheme and redirects users to Complainants' official website at "www.openlane.eu" without their consent. Such conduct shows that the disputed domain name was intentionally used to attract Internet users for commercial gain to the Respondent's website or other online location by creating a likelihood of confusion, as they may believe the disputed domain name is sponsored, affiliated, or endorsed by the Complainants.
- the Respondent has registered and used the disputed domain name for purposes of launching a phishing attack, which continued even after filing of the Complaint as the Complainants evidenced.
- the Respondent did not file any Response, and has not replied to cease and desist letter of the Complainants.

Furthermore, the Respondent's use of a third party's name and contact details when registering the disputed domain name reinforces the Panel's finding of bad faith.

The Panel therefore concludes that the Respondent has both registered and used the disputed domain name in bad faith and that the condition set out at Paragraph B(11)(d)(1)(iii) of the ADR Rules has also been satisfied.

7. Decision

For the foregoing reasons, in accordance with Paragraph B(11) of the ADR Rules, the Panel orders that the disputed domain name <open-lane.eu> be transferred to the Complainant.²

/Martin Švorčík/

Martin Švorčík

Sole Panelist

Date: August 2, 2024

² (i) The decision shall be implemented by the Registry within thirty (30) days after the notification of the decision to the Parties, unless the Respondent initiates court proceedings in a Mutual Jurisdiction, as defined in Paragraph A(1) of the ADR Rules.

(ii) As the Complainant 1 OPENLANE Europe NV is located in Belgium, a Member State of the European Union, it satisfies the general eligibility criteria for registration of the disputed domain name set out in Article 3 of the Regulation (EU) 2019/517. Therefore, the Complainant is entitled to request the transfer of the disputed domain name.