

PANEL DECISION

Oracle France, S.A.S., Oracle International Corporation v. Rūdis Berzins
Case No. DEU2024-0027

1. The Parties

The Complainants are Oracle France, S.A.S., France, and Oracle International Corporation, United States of America ("United States"), represented by Kilpatrick Townsend & Stockton LLP, United States.

The Respondent is Rūdis Berzins, Latvia.

2. The Domain Name, Registry and Registrar

The Registry of the disputed domain name <metroracle.eu> is the European Registry for Internet Domains ("EURid" or the "Registry"). The Registrar of the disputed domain name is Registrar.eu.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 26, 2024. On August 27, 2024, the Center transmitted by email to the Registry a request for registrar verification in connection with the disputed domain name. On August 28, 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 (Not Disclosed) and contact information in the Complaint. The Center sent an email communication to the Complainants on August 28, 2024 providing the registrant and contact information disclosed by the Registry, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint on August 28, 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 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 August 30, 2024. In accordance with the ADR Rules, Paragraph B(3), the due date for Response was September 19, 2024. The Respondent sent an email to the Center on September 5, 2024. The Center sent an email regarding possible settlement on September 6, 2024. The Complainants requested for suspension of the proceeding on September 13, 2024. The Center confirmed on the same day that the proceeding was suspended until October 13, 2024. On October 12,

2024, the Complainants requested reinstitution of the proceeding. The Center notified the reinstitution of the proceeding on October 14, 2024 and the due date for Response was October 20, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 25, 2024.

The Center appointed Federica Togo as the sole panelist in this matter on October 30, 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 Complaint was filed by Oracle France, S.A.S. (an undertaking established in France) and by Oracle International Corporation (established in the United States).

It results from the Complainants' undisputed allegations that they are providers of network computing hardware, computing systems, computer software, services and solutions, and a developer of enterprise and Internet-based products and technologies, including integrated cloud applications, platform services, and engineered systems.

Oracle International Corporation is the registered trademark owner of many trademarks worldwide for ORACLE, e.g. German trademark registration no. 2097131, ORACLE (word) registered on June 1, 1995 for services in classes 35, 36, 39, 41, and 45; European Union trademark registration no. 002843019, ORACLE (word) registered on June 16, 2004 for services in classes 9, 16, 35, 36, 38, 41, and 42. In addition, it results from the Complainants' undisputed allegations that Oracle France, S.A.S., as the operating entity in France, relies on the trademark rights of Oracle International Corporation for its business operations.

They operate the website available at the domain name <oracle.com>.

According to the information resulting by the registrar verification, the disputed domain name <metroracle.eu> was registered by the current Respondent on June 21, 2024, and currently resolve to an inactive page (displaying the message "Web server is returning an unknown error, Error code 520".)

5. Parties' Contentions

A. Complainants

Firstly, the Complainants contend that the disputed domain name is confusingly similar to its trademark, since it fully incorporates the Complainants' well-known ORACLE trademark. Furthermore, the inclusion of random letters such as "metr" in the disputed domain name does not sufficiently distinguish it from the ORACLE mark.

The Complainants further contend that the Respondent has no rights or legitimate interests in the disputed domain name. According to the Complainants, there is no relationship between the Complainants and the Respondent. The Respondent has no rights to own or use any domain name incorporating the Complainants' famous ORACLE marks, and nothing suggests the Respondent is commonly known by the disputed domain name. The Respondent has used the disputed domain name to attract and redirect web traffic to a website that is full of sexually explicit content, and which provides downloads of pornographic videos. However, the Respondent failed to provide any evidence thereof. Given the notoriety of the Complainants' ORACLE marks, as well as the fact that the Respondent has no rights in that mark, it is plain that the Respondent did not register the disputed domain name for any legitimate or fair use purpose. Rather, it appears undeniable that the Respondent registered the disputed domain name in order to use the Complainants' ORACLE marks for profit.

Finally, the Complainants contend that the disputed domain name was registered and is being used in bad faith. According to the Complainants, the Respondent registered and is using the disputed domain name in bad faith to divert internet traffic, display adult-oriented content, facilitate the sale and distribution of pornography, and generate advertising revenue through extensive pay-per-click advertising for the Respondent's financial gain. However, the Respondent failed to provide any evidence thereof. The primary purpose of the disputed domain name is to attract potential subscribers who will pay to access explicit material and to capitalize on pay-per-click advertising. This exploitation of the ORACLE mark to draw visitors to a site that profits from explicit material demonstrates a blatant disregard for the Complainants' rights and a clear intent to benefit commercially from the ORACLE mark's goodwill.

B. Respondent

The Respondent did not reply to the Complainants' contentions. However, the Respondent sent an email on September 5, 2024 providing the transfer code of the disputed domain name.

6. Discussion and Findings

According to Recital 17 Regulation (EU) 2019/517 of the European Parliament and of the Council of 19 March 2019 on the implementation and functioning of the .eu top-level domain name and amending and repealing Regulation (EC) No 733/2002 and repealing Commission Regulation (EC) No 874/2004 ("the Regulation"), an ADR procedure may be initiated by any party where the registration is speculative or abusive. In the present case, the question is therefore, whether the registration is speculative or abusive.

According to Article 4 (4) of the Regulation and Paragraph B 11(d)(1) of the ADR Rules, the Complainants bear the burden of proving the following:

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

Given the similarities between the ADR Rules and the Uniform Domain Name Dispute Resolution Policy ("UDRP"), the Panel will also refer to UDRP jurisprudence where instructive.

6.1 Procedural Issues

A. Consolidation of the Complainants

The Complaint was filed by Oracle France, S.A.S. (an undertaking established in France) and by Oracle International Corporation (established in the United States). As set forth in section 4.11.1 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"): "In assessing whether a complaint filed by multiple complainants may be brought against a single respondent, 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 fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation."

In the light of the above, the Panel finds that the Complainants have a specific common grievance against the Respondents because they share a common legal interest in the trademark rights on which this Complaint is based since the Complainants allege a corporate connection. Against this background, the Panel does not see reasons why a consolidated Complaint brought by the Complainants against the Respondent would not be fair and equitable. Moreover, the Respondent failed to come forward with any allegations or evidence to object the consolidation. For reasons of procedural efficiency, fairness and equity

the Panel therefore accepts the joint Complaint. Therefore, throughout the remainder of the current Decision, the Panel will refer to both the Complainants as “the Complainant”.

B. Eligibility

The Complainant has requested the transfer of the disputed domain name. The requested transfer of the disputed domain name to a Complainant can only be granted in case the Complainant is eligible to register .eu domain names according to Article 3 of the Regulation, see also Paragraph B(11)(b) of the ADR Rules. If the general eligibility criteria are not met, the remedy that the Panel may otherwise grant will be restricted to revocation of the disputed domain name.

While Oracle France, S.A.S. is an undertaking that is established in the Union (in particular in France), Oracle International Corporation is an undertaking established in the United States. In the light of the above, the Panel holds that only Oracle France, S.A.S. meets the general eligibility criteria within the meaning of Article 3 of the Regulation and is therefore entitled to obtain transfer of the disputed domain name.

6.2 Substantive Issues

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

Pursuant to Article 4 (4) of the Regulation and Paragraph B(11)(d)(1) of the ADR Rules, the Complainant must, first of all, establish that the disputed domain name is identical or confusingly similar to a name in respect of which a right is recognised or established by Union or national law of a Member State.

It results from the undisputed evidence before this Panel that the Complainant Oracle International Corporation is the registered owner of German trademark registration no. 2097131, ORACLE (word) registered on June 1, 1995 for services in classes 35, 36, 39, 41, and 45; European Union trademark registration no. 002843019, ORACLE (word) registered on June 16, 2004 for services in classes 9, 16, 35, 36, 38, 41, and 42.

The entirety of the mark ORACLE is reproduced within the disputed domain name.

With comparative reference to the [WIPO Overview 3.0](#), section 1.7, in cases where a disputed domain name incorporates - in particular - the entirety of a trademark, the disputed domain name will normally be considered confusingly similar to that mark for the purposes of ADR Rules.

Although the addition of other terms, here “metr”, may bear on assessment of the second and third elements, the Panel finds the addition of such term and character[s] does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the ADR Rules. [WIPO Overview 3.0](#), section 1.8.

Furthermore, it is the consensus view among the panels that the applicable Top-Level Domain “.eu” may be disregarded in determining identity or confusing similarity, since it is viewed as a standard registration requirement.

Hence, this Panel finds that the disputed domain name is confusingly similar to a name in respect of which a right is recognised or established by Union or national law of a Member State so that the Panel will proceed with the examination.

B. Rights or Legitimate Interests

The Panel finds that there is no information to suggest rights or legitimate interests of the Respondent to use the Complainant’s ORACLE trademark, pursuant to Article 4 (4) of the Regulation and Paragraph

B(11)(d)(1)(ii) of the ADR Rules.

Paragraph B(11)(e) of the ADR Rules contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name. In the Panel's view, based on the undisputed allegations stated above, the Complainant has made a prima facie case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name.

With comparative reference to the [WIPO Overview 3.0](#), section 2.1, although the overall burden of proof in ADR 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.

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 ADR Rules or otherwise.

The Complainant is therefore deemed to have satisfied Paragraph B(11)(d)(1)(ii) of the ADR Rules.

C. Registered or Used in Bad Faith

It results from the undisputed evidence before the Panel that the disputed domain name has been registered or is being used in bad faith, pursuant to Article 4 (4) of the Regulation and Paragraph B(11)(d)(1)(iii) of the ADR Rules.

In fact, the Panel shares the view of other panels and finds that the Complainant's trademark ORACLE is well known. Therefore, this Panel has no doubt that the Respondent positively knew or should have known the Complainant's trademark when registering the disputed domain name. Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith, with comparative reference to the [WIPO Overview 3.0](#), section 3.1.4. The Panel shares this view.

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. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's trademark, and the composition of the disputed domain name, and the Respondent has provided what appears to be fake or incomplete address when registering the disputed domain name (the courier service was not able to deliver the written notice due to the bad address), 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.

7. Decision

For the foregoing reasons, in accordance with Paragraph B(11) of the ADR Rules, the Panel orders that the disputed domain name <metroracle.eu> be transferred to the Complainant Oracle France, S.A.S.¹

/Federica Togo/

Federica Togo

Sole Panelist

Date: November 13, 2024

¹ 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.