Decision for dispute CAC-UDRP-105609

Case number	**CAC-UDRP-105609**
Time of filing	**2023-07-10 09:00:21**
Domain names	**otkp-metal.com, otkp-steel.com, otkp-ss.com**

Case administrator

Organization	**Iveta Špiclová (Czech Arbitration Court) (Case admin)**

Complainant

Organization	**Outokumpu Oyj**

Complainant representative

Organization	**Berggren Oy**

Respondent

Organization	**zhuo yang gang tie shang hai you xian gong si**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain names.

IDENTIFICATION OF RIGHTS

The Complainant submitted evidence that it is the registered owner of numerous trademarks around the world and asserted, in particular, the following registrations:

- the EU trademark no. 3602001 “OUTOKUMPU” (figurative) registered on 25 May 2005;
- the US trademark no. 2305033 “OUTOKUMPU” (word) registered on 4 January 2000; and
- the Finnish trademark no. 111621 “OUTOKUMPU” (figurative) registered on 6 May 1991.

FACTUAL BACKGROUND

The Complainant is a globally operating major stainless-steel producer based in Finland and listed on the Helsinki Stock Exchange. The Complainant's market share in the global market is approximately 6%. In Europe, it is the market leader with some 30% market share and the clear number two in the Americas with a market share of approximately 22%. The Complainant employs some 9,000 professionals in more than 30 countries, with the headquarters in Helsinki, Finland. The corporate history as well as the company name of the Complainant traces its roots back to 1914.

The disputed domain names were all registered on 22 March 2023.

The Registrar confirmed that the Respondent is the current registrant of the disputed domain names, and that the language of the registration agreement is Chinese.

The Respondent has not filed a Response.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The Complainant made the following contentions:

The “OUTOKUMPU” trademark of the Complainant is well-known and enjoys a significant reputation around the world due to its consistent and extensive use throughout the years especially related to stainless steel products.

The disputed domain names are obvious abbreviations of the Complainant’s well-known trademark, and also considering the content of the websites, are confusingly similar to the Complainant’s earlier “OUTOKUMPU” trademarks as well as the registered “Outokumpu” company name.

It is evident the Respondent has no right or legitimate interest in respect of the disputed domain names which were registered and are used in bad faith. The disputed domain names and websites take advantage of the goodwill and reputation, as well as the intellectual property rights of the Complainant for the purpose of misleading current and possible new clients of the Complainant.

The Complainant brings to the attention of the Panel the earlier decision CAC-UDRP-105118 and submits that the Respondent has been involved in continued abusive conduct.

The Respondent has clearly been aware of the Complainant’s business and had the clear intention to target its rights for commercial purposes by registering the disputed domain names and publishing the related fraudulent websites. The use and registration of the disputed domain names by the Respondent, considering the facts and circumstances of the registration and use of the disputed domain names and the prior rights held by the Complainant, has been done with a clear intention to attract, for commercial gain, Internet users to the Respondent’s website. As is evident from the content of the websites, the Respondent has been impersonating the Complainant and leading the consumers to believe that the related websites would be owned and managed by the Complainant. At the very least the Respondent is creating a likelihood of confusion with the Complainant’s registered and well-known “OUTOKUMPU” trademark and company name as to the source, sponsorship, affiliation, and endorsement of the Respondent’s websites.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain names (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Complainant requested that the language of the proceedings be changed to English considering the circumstances of the proceedings, the language of the related domains, websites, and documentation. The Rules provide that the language of proceedings is the language of the registration agreement (in this case, Chinese) - “unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding”. CAC notified the Complaint to the Respondent at the contact e-mails in both English and Chinese. Given that the Respondent has not submitted its Response and has not accessed the platform, it has failed to address the issue of the language of proceedings.

Taking into consideration the facts of the matter as well as the Complainant's arguments, and having regard to the principle of fairness, equality and efficiency of proceedings, the Panel has decided to accept the change of the language of the proceedings to English. Given the flagrant infringement of the Complainant's various rights by imitating its website, given the use of English language on the websites operated on the disputed domains, and given the fact that the Respondent received notification of the Complaint in the language of the registration agreement (i.e. Chinese), the Panel considers it justified to allow the change of language of proceedings to English. The Respondent was given a fair opportunity to comment, and it chose not to act.

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

This is a proceeding pursuant to Paragraph 4 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 CAC Supplemental Rules.

Paragraph 15 of the Rules provides that the Panel shall decide the complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

As the Respondent has not filed any administratively compliant Response, pursuant to paragraph 14(b) of the Rules, the Panel may draw such inferences therefrom as it considers appropriate.

According to Paragraph 4(a) of the Policy, a complainant must prove each of the following: (A) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; (B) the respondent has no rights or legitimate interests in respect of the domain name; (C) the domain name has been registered and is being used in bad faith.

(A) Identical or confusingly similar domain name

The Complainant demonstrated that it owns the asserted trademark registrations for the mark "OUTOKUMPU" which were registered long before the registration of the disputed domain names by the Respondent. It is well established that a nationally or regionally registered trademark confers on its owner sufficient rights to satisfy the requirement of having trademark rights for the purposes of standing to file a UDRP case. Therefore, the Panel finds that the Complainant has established such rights.

It is also well established that the generic top-level suffix .com may be disregarded when considering whether a disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights, as it is a necessary technical requirement of a domain name.

The disputed domain names consist of the abbreviation "otkp" and either a generic word ("metal", "steel") or an abbreviation "ss", separated by a hyphen. The terms "-metal" and "-steel" are obviously descriptive. The same applies to "-ss" which, as the Complainant submits, is an abbreviation for "stainless steel", being the main product in the Complainant's business.

Regarding the abbreviation "otkp" it is clearly formed by initial letters of each syllable in the Complainant's trademark (Ou-ToKumPu). As such, the relevant mark is recognizable in the disputed domain names and the use of the abbreviation "otkp" is not sufficient to escape the finding that the disputed domain names are confusingly similar to the Complainant's "OUTOKUMPU" trademark and company name and does not change the overall impression of the designation as being connected to the trademark and company name of the Complainant.

Furthermore, the Panel has taken note of the content of the websites associated with the disputed domain names which clearly infringe various Complainant's intellectual property rights and trade off the Complainant's reputation. As held by previous panels, the overall facts and circumstances of a case (including relevant website content) may support a finding of confusing similarity.

The Panel therefore finds that the disputed domain names are confusingly similar to the Complainant's trademark.

(B) Lack of rights or legitimate interests

The Respondent has not filed a Response and has neither provided any other information that would oppose the Complainant's allegations. Therefore, the Panel holds that the Complainant successfully presented its prima facie case that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

In particular, the Respondent is not in any way connected with the Complainant nor is it authorized to use the Complainant's trademark for its commercial activities. In addition, the Respondent is not commonly known by the disputed domain names pursuant to Paragraph 4(c)(ii) of the Policy. Furthermore, it was demonstrated by evidence submitted by the Complainant that the content displayed on the disputed domain names looks as if the relevant websites were owned and run by the Complainant. At the very least, the Respondent takes advantage of the Complainant's renown in the field of steel manufacturing. The Panel is convinced that the Respondent is intentionally trying to gain commercial monetary profit from the use and registration of the disputed domain names and is trying to benefit from and cause detriment and damage to the Complainant's well-known trademark and company name.

The Panel therefore finds that the Respondent has no rights or legitimate interest in the disputed domain names.

(C) Registration and use of the disputed domain name in bad faith

Given the distinctiveness and well-known character of the Complainant's rights and reputation, the Panel finds that the Respondent has registered and used the disputed domain names with full knowledge of the Complainant and its trademarks.

Based on the evidence presented by the Complainant, the Panel finds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users and the Complainant’s potential customers by creating a likelihood of confusion with the Complainant’s registered and well-known trademark and company name as to the source, sponsorship, affiliation or endorsement of Respondent’s website. The Respondent’s bad faith is evident from the use of the Complainant’s trademarks and company name throughout all of the websites available on the disputed domain names. In addition, the content on the relevant websites (especially text and pictures) has been copied directly from the Complainant’s website and used on the Respondent's websites.

In light of the earlier case no. CAC-UDRP-105118 between the same parties as the case at hand, the Panel agrees with the Complainant that the Respondent has clearly been involved in continued abusive conduct.

Consequently, the Panel finds that the disputed domain names have been registered and have been used by the Respondent in bad faith.

In conclusion, the Panel finds that all three elements required by Paragraph 4(a) of the Policy were met and makes the following decision.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **otkp-metal.com**: Transferred
2. **otkp-steel.com**: Transferred
3. **otkp-ss.com**: Transferred

PANELLISTS

Name	**Vojtěch Chloupek**
Name	**Barbora Donathová**
Name	**Dominik Eickemeier**

DATE OF PANEL DECISION 2023-08-24

Publish the Decision