Decision for dispute CAC-UDRP-106098

Case number	CAC-UDRP-106098
Time of filing	2024-01-03 10:32:31
Domain names	osprey-nz.com, ospreyoutletaustralia.com, ospreyoutletireland.com, ospreyoutletusa.com, ospreyukoutlet.com, osprey-malaysia.com, osprey-peru.com, osprey-uruguay.com, ospreymexicomx.com, ospreyoutletargentina.com, ospreyoutletcanada.com, ospreyoutletchile.com, ospreyoutletcolombia.com, ospreyoutletespana.com, ospreyoutletphilippines.com, ospreyoutletsingapore.com, osprey-belgium.com, ospreyitaliaoutlet.com, ospreyoutletnederland.com, ospreyoutletosterreich.com, ospreysaledeutschland.com, ospreyschweizoutlet.com, ospreysoldes.com, osprey-greece.com, osprey-hrvatska.com, osprey-japan.com, osprey-magyarorszag.com, osprey-norge.com, osprey-romania.com, osprey-suomi.com, ospreyczechrepublic.com, ospreyoutletdanmark.com, ospreyoutletpolska.com, ospreyoutletportugal.com, ospreyoutletturkiye.com, ospreyslovenia.com, ospreysingaporestore.com, ospreyaustraliasale.com, ospreydublin.com, ospreykobenhavn.com, ospreylojaportugal.com, ospreyoutletuk.com, ospreyrucksackschweiz.com, ospreysalebelgie.com, ospreysalecanada.com, ospreyskleppolska.com, tiendaospreychile.com, ospreybelgique.com, ospreynorge.com, ospreyuk.com, ospreybrasil.com, ospreycz.com, ospreyeesti.com, ospreyhrvatska.com, ospreyhungary.com, ospreyperu.com, ospreyslovenija.com, ospreysrbija.com, ospreysuisse.com, ospreyuruguay.com, ospreybulgaria.com, ospreyisrael.com, ospreykuwait.com, ospreylietuva.com, ospreysomaslatvija.com, ospreyuae.com, ospreyargentina.net, ospreyaustralia.net, ospreybelgie.net, ospreydanmark.net, ospreyireland.net, ospreynederland.net, ospreyportugal.net, ospreyschweiz.net, ospreysuomi.net, ospreychile.net, ospreycolombia.net, ospreygreece.net, ospreyjapan.net, ospreyromania.net

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Osprey Packs, Inc.

Complainant representative

Organization	Coöperatie SNB-REACT U.A.

Respondents

Organization	Web Commerce Communications Limited
Name	Dylan Graham
Name	Lauren Wells
Name	Libby Gould

Name	**Lewis Johnston**
Name	**Demi Miles**

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 provided evidence of ownership of a large number of OSPREY trademarks, inter alia :

- International trademark OSPREY registered on 11/08/2010 under No. 1049358;
- European trademark OSPREY (device) registered on 28/06/2007 under No. 004312534;
- US trademark OSPREY (device) registered on 21/05/2002 under No. 2571330.

FACTUAL BACKGROUND

The Complainant, Osprey Packs, Inc., was founded in 1974 and manufactures and distributes technical outdoor backpacks. In 2022, the Complainants' market capitalization is of USD 414 million.

The Complainant owns trademarks rights on the term OSPREY, and owns and operates the domain name <osprey.com> and the corresponding website.

All disputed domain names were registered between 19 June 2023 and 27 July 2023.

PARTIES CONTENTIONS

COMPLAINANT

Procedural element : Request for Consolidation

The Complainant asserts that all the disputed domain names are owned or under the effective control of a single person or entity, or a group of individuals acting in concert, as they share similarities : close registration date, sole registrar, same addresses, etc.

Legal elements

The Complainant submits that the disputed domain names are identical or similar to the point of confusion with to its OSPREY trademarks. The Complainant asserts that the addition of generic or geographic terms is not sufficient to escape the finding that the disputed domain names are confusingly similar to the trademark OSPREY.

Per the Complaint, the Respondent is not known by the Complainant. The Complainant contends that Respondent is not affiliated with nor authorized by the Complainant in any way and that Respondent has no rights or legitimate interests in respect of the disputed domain names. The Complainant does not carry out any activity for, nor has any business with the Respondent. Furthermore, parr of the disputed domain names resolve to websites resembling the official website of the Complainant at <osprey.com>, which is neither a bona fide offering of goods or services, nor a legitimate non-commercial or fair use under Policy. The websites reproduce the Complainant's name and logo.

As regards the bad faith of the Respondent, by registering many domain names reproducing the Complainant's well-known trademark and linking part of them with websites resembling the Complainant's official website, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark. The Complainant equally asserts that the Respondent has entered a pattern of conduct where it has registered domain names in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name.

RESPONDENT

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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 name have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

CONSOLIDATION - Multiple underlying Registrants

It is well established that where the particular circumstances of a given case indicate that common control is being exercised over the disputed domain names, consolidation may be granted, provided that it would be fair and equitable to all parties.

The Complainant asserts that, on the balance of probabilities, all of the disputed domain names are owned or under the effective control of a single person or entity, or a group of individuals acting in concert.

The Complaint identifies a number of common factors:

- All of the disputed domain names use Cloudflare nameservers;
- All of the disputed domain names use a similar naming pattern, namely the entirety of Complainant's trademark, accompanied by a geographical term and/or a generic term;
- Some of the disputed domain names use the same 'privacy protection service;
- Some of the domain names resolve to very similar websites that impersonate the Complainant and which serve the same function, namely the sale of alleged OSPREY products;
- Some of the disputed domain names contain the Complainant's visual mark in the header of the page, and substantially the same fake copyright notice at the bottom.
- All of the disputed domain names were registered between June and July 2023; some of them in groups on the same date.

The Panel first notes that under par. 3 (c) of the UDRP Rules, the complaint may relate to more than one domain name, provided that the domain names are registered by the same domain-name holder. Consolidation is also addressed in WIPO Overview 3.0, section 4.11, which states that "panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario".

The Panel, in line with decisions of other panels in similar cases (see, for example, CAC case No. 105420), considers that, on the balance of probabilities, all of the disputed domain names are under the control of a single person or entity, or group of individuals acting in concert.

Therefore, the Panel decides to grant the requested consolidation.

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.

IDENTITY OF RESPONDENT - Web Commerce Communications Limited

The Complainant emphasizes that the largest subset in terms of identical registrant data, namely 48 domains, are registered by the same Registrant: "Web Commerce Communications Limited", doing business as "Webnic.cc".

Per the Complainant, since Webnic.cc operates as a reseller and conduit reselling Registrar's services, the Registrar should have provided the details of the underlying registrants. The Complainant claims that the Registrar is potentially in violation of the Temporary Specification for gTLD Registration Data, Appendix E 1.1.

The Panel notes that there may be indeed potential non-compliance by the Registrar with the Temporary Specification for gTLD

Registration Data, Appendix E 1.1 that states, inter alia, the following: “The Registrar MUST provide the UDRP provider with the full Registration Data for each of the specified domain names, upon the UDRP provider notifying the Registrar of the existence of a complaint…”, if the Registrar failed to disclose actual registrant(s) and instead provided details of a proxy/privacy service.

However, in acting as the reseller, it is equally possible that Webnic.cc provided their contact details for the registration of the largest batch of the disputed domains. It is possible that the Registrar, only obtained Webnic.cc's details and was unaware of the underlying registrant data. In such scenario, the Registrar would not be found in non-compliance with the Temporary Specification for gTLD Registration Data, Appendix E 1.1., as it provided the Center with the Registrant data that it holds.

In any case, “Web Commerce Communications Limited” is deemed registrant and Respondent.

LANGUAGE

The registration agreement for all disputed domain names is in English. The Complainant asserts that in case the Respondent requests another language, English still shall be the language of this proceedings based on a number of factors. The Respondent did not respond and did not question the language of this proceeding.

Therefore, English shall be the language of this proceeding.

PRINCIPAL REASONS FOR THE DECISION

Notwithstanding the fact that no Response has been filed, the Panel shall consider the issues present in the case based on the statements and documents submitted by the Complainant.

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following elements:

i. the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
ii. the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
iii. the disputed domain names were registered and are being used in bad faith.

A. Identical or Confusingly Similar

The Complainant must establish that it has a trademark or service mark and that the disputed domain name is identical or confusingly similar to that trademark or service mark to succeed. The Complainant is a French banking and financial services company. The Complainant has provided evidence of ownership of several OSPREY trademarks for more than 20 years.

The question of identity or confusing similarity for the purpose of the Policy requires a comparison of the disputed domain names with the trademarks in which the Complainant holds rights. According to section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”), “this test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name”. Also, according to section 1.7 of the WIPO Overview 3.0, “in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing”.

All disputed domain names wholly incorporate the Complainant’s trademark OSPREY, followed by generic terms such as "outlet", "sale", or "tienda", or geographic terms such as "australia", "ireland", "espana", "kuwait", "danmark", or country codes such as "nz" (referring to New Zealand), "mx" (referring to Mexico), or "cz" (referring to the Czech Republic).

The addition of these generic or geographic terms to the OSPREY trademark of the Complainant in the disputed domain names, does not prevent a finding of confusing similarity with the Complainant’s trademarks. The fact that a domain name wholly incorporates the Complainant’s trademark is sufficient for this Panel to establish identity or confusing similarity for the purpose of the Policy, despite the addition of other words to such marks.

Quite to the contrary indeed, the addition of these terms only reinforces the likelihood of confusion in the mind of the general public.

It is well accepted by UDRP panels that a generic Top-Level Domain (“gTLD”), such as “.com”, is typically ignored when assessing whether a domain name is identical or confusingly similar to a trademark.

The disputed domain names are confusingly similar to the Complainant’s trademark, therefore the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(c) of the Policy, any of the following circumstances, if found by the Panel, may demonstrate the Respondent’s rights or legitimate interests in the disputed domain name:

i. before any notice to it of the dispute, the Respondent’s use of, or demonstrable preparations to use, the disputed

domain names or a name corresponding to the disputed domain names in connection with a bona fide offering of goods or services; or

ii. the Respondent has been commonly known by the disputed domain names, even if it has acquired no trademark or service mark rights; or

iii. the Respondent is making a legitimate non-commercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The consensus view of UDRP panels on the burden of proof under paragraph 4(a)(ii) of the Policy is summarized in section 2.1 of the WIPO Overview 3.0, which states: "[…] 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element."

In the absence of rebuttal from the Respondent, the Panel finds that the Respondent is not commonly known by any of the disputed domain names. The Complainant has not at any time authorised or licensed the Respondent to use "OSPREY" as a domain name, business or trading name, trade mark or in any other way.

In addition, nothing in the record shows any bona fide offering of goods or services from the disputed domain names on the part on the Respondent before the submission of the Complaint. On the contrary, the current use of the disputed domain names, some of which direct to active websites impersonating the Complainant cannot be deemed in bona fide.

The Respondent has no right or legitimate interests in the disputed domain names, therefore the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

C. Registration and Use in Bad faith

For the purpose of Paragraph 4(a) (iii) of the Policy, 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 the disputed domain names in bad faith:

i. circumstances indicating that the holder has registered or has acquired the disputed domain names primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registrations 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 holders documented out-of-pocket costs directly related to the disputed domain names; or

ii. the holder has registered the disputed domain names in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain names, provided that the holder has engaged in a pattern of such conduct; or

iii. the holder has registered the disputed domain names primarily for the purpose of disrupting the business of a competitor; or

iv. by using the domain names, the holder has intentionally attempted to attract, for commercial gain, Internet users to the holder'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 your website or location or of a product or service on the holder's website or location.

Based on the evidence on the record, the Panel is satisfied that at least the situations in (ii) and (iv) above are present in this case.

Indeed, the Respondent registered several dozen domain names, all reproducing the OSPREY trademark of the Complainant identically, and associating it with generic terms related to retail (e.g. "outlet", "shop") or country names (e.g. "australia", "danmark", "cz"). The pattern of conduct of the Registrant is, in the present matter, clearly established by the number of domains that are subject to the dispute, and the Panel sides with the Complainant in that the Respondent has willingly registered several dozen domain names to prevent the Complainant to reflect their mark in the disputed domain names.

The Complainant additionally provided evidence that some of the disputed domain names are used in connection with websites displaying the Complainant's name and logo, and offering pretend OSPREY-branded products for sale. Therefore, the Respondent is using the disputed domain names in such way as to intentionally attempt to attract customers for commercial gains, by creating and maintaining a likelihood of confusion with the Complainant and its marks. By doing so, and in light of the large number of disputed domain names, the Respondent is inevitably disrupting the business of the Complainant.

The Panel finds that, at the time of registration, the Respondent unequivocally had full knowledge of the Complainant's earlier trademarks, which have been enjoying worldwide reputation and fame for decades.

The Respondent registered and has been using the disputed domain names in bad faith, therefore the requirement of paragraph 4(a)(iii) of the Policy is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **osprey-nz.com**: Transferred
2. **ospreyoutletaustralia.com**: Transferred
3. **ospreyoutletireland.com**: Transferred
4. **ospreyoutletusa.com**: Transferred
5. **ospreyukoutlet.com**: Transferred
6. **osprey-malaysia.com**: Transferred
7. **osprey-peru.com**: Transferred
8. **osprey-uruguay.com**: Transferred
9. **ospreymexicomx.com**: Transferred
10. **ospreyoutletargentina.com**: Transferred
11. **ospreyoutletcanada.com**: Transferred
12. **ospreyoutletchile.com**: Transferred
13. **ospreyoutletcolombia.com**: Transferred
14. **ospreyoutletespana.com**: Transferred
15. **ospreyoutletphilippines.com**: Transferred
16. **ospreyoutletsingapore.com**: Transferred
17. **osprey-belgium.com**: Transferred
18. **ospreyitaliaoutlet.com**: Transferred
19. **ospreyoutletnederland.com**: Transferred
20. **ospreyoutletosterreich.com**: Transferred
21. **ospreysaledeutschland.com**: Transferred
22. **ospreyschweizoutlet.com**: Transferred
23. **ospreysoldes.com**: Transferred
24. **osprey-greece.com**: Transferred
25. **osprey-hrvatska.com**: Transferred
26. **osprey-japan.com**: Transferred
27. **osprey-magyarorszag.com**: Transferred
28. **osprey-norge.com**: Transferred
29. **osprey-romania.com**: Transferred
30. **osprey-suomi.com**: Transferred
31. **ospreyczechrepublic.com**: Transferred
32. **ospreyoutletdanmark.com**: Transferred
33. **ospreyoutletpolska.com**: Transferred
34. **ospreyoutletportugal.com**: Transferred
35. **ospreyoutletturkiye.com**: Transferred
36. **ospreyslovenia.com**: Transferred
37. **ospreysingaporestore.com**: Transferred
38. **ospreyaustraliasale.com**: Transferred
39. **ospreydublin.com**: Transferred
40. **ospreykobenhavn.com**: Transferred
41. **ospreylojaportugal.com**: Transferred
42. **ospreyoutletuk.com**: Transferred
43. **ospreyrucksackschweiz.com**: Transferred
44. **ospreysalebelgie.com**: Transferred
45. **ospreysalecanada.com**: Transferred
46. **ospreyskleppolska.com**: Transferred
47. **tiendaospreychile.com**: Transferred
48. **ospreybelgique.com**: Transferred
49. **ospreynorge.com**: Transferred

50. **ospreyuk.com**: Transferred
51. **ospreybrasil.com**: Transferred
52. **ospreycz.com**: Transferred
53. **ospreyeesti.com**: Transferred
54. **ospreyhrvatska.com**: Transferred
55. **ospreyhungary.com**: Transferred
56. **ospreyperu.com**: Transferred
57. **ospreyslovenija.com**: Transferred
58. **ospreysrbija.com**: Transferred
59. **ospreysuisse.com**: Transferred
60. **ospreyuruguay.com**: Transferred
61. **ospreybulgaria.com**: Transferred
62. **ospreyisrael.com**: Transferred
63. **ospreykuwait.com**: Transferred
64. **ospreylietuva.com**: Transferred
65. **ospreysomaslatvija.com**: Transferred
66. **ospreyuae.com**: Transferred
67. **ospreyargentina.net**: Transferred
68. **ospreyaustralia.net**: Transferred
69. **ospreybelgie.net**: Transferred
70. **ospreydanmark.net**: Transferred
71. **ospreyireland.net**: Transferred
72. **ospreynederland.net**: Transferred
73. **ospreyportugal.net**: Transferred
74. **ospreyschweiz.net**: Transferred
75. **ospreysuomi.net**: Transferred
76. **ospreychile.net**: Transferred
77. **ospreycolombia.net**: Transferred
78. **ospreygreece.net**: Transferred
79. **ospreyjapan.net**: Transferred
80. **ospreyromania.net**: Transferred

PANELLISTS

Name	**Arthur Fouré**

DATE OF PANEL DECISION 2024-02-07

Publish the Decision