Decision for dispute CAC-UDRP-106677

Case number	CAC-UDRP-106677
Time of filing	2024-10-08 09:16:42
Domain names	orangewave.com

Case administrator

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

Complainant

Name	Răzvan Radu

Respondent

Name	Yunsung Lee

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 name.

IDENTIFICATION OF RIGHTS

The Complainant owns the ORANGE WAVE and ORANGE WAVE logo trademarks, including:

- United Kingdom Reg. No. UK00003848886 (registered November 14, 2022)
- Japanese Patent Office (registered July 23, 2024, based on Int'l Reg. No. 1737096, May 3, 2023)
- Korean Intellectual Property Office (registered October 1, 2024, based on Int'l Reg. No. 1737096)
- Intellectual Property Office of Singapore (registered April 24, 2024, based on Int'l Reg. No. 1737096)
- Intellectual Property Department, Hong Kong Reg. No. 306103601 (registered November 10, 2022)
- Swiss Federal Institute of Intellectual Property (registered April 5, 2024, based on Int'l Reg. No. 1737096)
- Principality of Monaco (registered August 30, 2023, based on Int'l Reg. No. 1737096)
- Russian Federal Service for Intellectual Property (registered September 14, 2023, based on Int'l Reg. No. 1737096)

FACTUAL BACKGROUND

The disputed domain name, registered on April 17, 2002, is currently for sale. The Respondent did not respond to the Complainant's cease and desist email of July 11, 2024.

PARTIES CONTENTIONS

COMPLAINANT:

(i) The Complainant holds rights in the ORANGE WAVE and ORANGE WAVE logo marks as outlined in "Identification of Rights." The disputed domain name is identical to the Complainant's marks.

(ii) The Respondent has no rights or legitimate interests in the disputed domain name, as it is parked.

(iii) The Respondent registered and is using the disputed domain name in bad faith. The domain has been listed for sale for over 20 years and remains for sale. The Respondent did not reply to the Complainant's cease and desist email dated July 11, 2024.

RESPONDENT:

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is 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 Panel refrains from making a determination on this issue because the Complainant has not provided sufficient evidence to demonstrate that the disputed domain name was registered and is being used in bad faith, as defined in paragraph 4(a)(iii) of the Policy.

BAD FAITH

The Complainant has not demonstrated that the disputed domain name was registered and is being used in bad faith, as required under paragraph 4(a)(iii) of the Policy.

PROCEDURAL FACTORS

Preliminary Issue: Language of the Proceedings

The Panel notes that the Registration Agreement is in Korean, making Korean the default language of the proceedings. However, the Complainant has requested that the proceeding be conducted in English. Under UDRP Rule 11(a), the Panel has discretion to determine the appropriate language of proceedings, considering the specific circumstances. See Section 4.5, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition; see also Lovehoney Group Limited v yan zhang, CAC 103917 (CAC August 17, 2021) (where proceedings were conducted in English despite the registration agreement specifying Japanese as the required language). The Panel notes that (i) English is a neutral language; and (ii) the disputed domain name and all content on its resolving website are in English, suggesting that the Respondent has sufficient knowledge of English for these proceedings. Under UDRP Rule 11(a), the Panel finds the Complainant's argument persuasive. After reviewing the case circumstances, and in the absence of a Response or any objection to the Complainant's request, the Panel decides that English will be the language of the proceeding.

The Panel is satisfied that all other 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

Rights

The Complainant asserts ownership of the ORANGE WAVE and ORANGE WAVE logo trademarks, as identified in the "Identification of Rights" section above. The Panel notes that registration with an international trademark organization or national trademark authority is sufficient to establish rights in a mark. Accordingly, the Panel finds that the Complainant has established its rights in the ORANGE WAVE and ORANGE WAVE logo marks.

The Complainant further contends that the disputed domain name is identical to its ORANGE WAVE mark. The Panel notes that the disputed domain name **<orangewave.com>** incorporates the Complainant's mark in full, adding only the ".com" gTLD. The Panel finds that the disputed domain name is confusingly similar to the Complainant's mark under Policy paragraph 4(a)(i).

No rights or legitimate interests

The Panel refrains from making a determination on this issue because the Complainant has not demonstrated that the disputed domain name was registered and is being used in bad faith, as required under paragraph 4(a)(iii) of the Policy.

Bad faith

The Complainant contends that the Respondent registered and is using the disputed domain name in bad faith, noting that the domain name has been listed for sale for over 20 years and remains available for purchase. The Respondent did not reply to the Complainant's cease and desist email sent on July 11, 2024.

The Panel observes that the Respondent's registration of the disputed domain name (on April 17, 2002) predates by more than 20 years the Complainant's earliest claimed rights in the ORANGE WAVE mark (Hong Kong trademark registration number 306103601, registered on November 10, 2022). The Panel also notes that when a respondent's registration of a domain name predates a complainant's first claimed rights in its mark, the Complainant generally cannot establish bad faith registration under Policy paragraph 4(a)(iii), as both bad faith registration and use are required. See Platterz v. Andrew Melcher, FA 1729887 (Forum Jun. 19, 2017) ("Whatever the merits of Complainant's arguments that Respondent is using the Domain Name in bad faith, those arguments are irrelevant, as a complainant must prove both bad faith registration and bad faith use in order to prevail."); see also Faster Faster, Inc. DBA Alta Motors v. Jeongho Yoon c/o AltaMart, FA 1708272 (Forum Feb. 6, 2017) (finding that a respondent could not have registered a domain in bad faith if the complainant's rights in the mark did not exist at the time of registration). Therefore, the Panel finds that the Complainant has not satisfied Policy paragraph 4(a)(iii).

As the Complainant has not met the requirements of Policy paragraph 4(a)(iii), the Panel declines to analyze the remaining elements. See Creative Curb v. Edgetec Int'l Pty. Ltd., FA 116765 (Forum Sept. 20, 2002) (holding that the failure to prove one Policy element makes further inquiry unnecessary); see also Hugo Daniel Barbaca Bejinha v. Whois Guard Protected, FA 836538 (Forum Dec. 28, 2006) (deciding not to examine additional elements when Policy paragraph 4(a)(i) was not satisfied).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **orangewave.com**: Remaining with the Respondent

PANELLISTS

Name	**Mr. Ho-Hyun Nahm Esq.**

DATE OF PANEL DECISION 2024-11-01

Publish the Decision