Decision for dispute CAC-UDRP-106902

Case number	CAC-UDRP-106902
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Domain names	ovohome.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	OVO Group Ltd
Organization	OVO Energy Ltd

Complainant representative

Organization	Stobbs IP

Respondent

Name	Thuan Nguyen Huu

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 First Complainant in this administrative proceeding is OVO Group Ltd. The Second Complainant in this administrative proceeding is OVO Energy Ltd. The First Complainant is the parent company to the Second Complainant.

Imagination Industries Ltd (the '**Proprietor**') owns and controls all rights in relation to the **OVO** and **OVO ENERGY** brands worldwide (the '**Brands**').

The First Complainant has been granted an exclusive licence for the Brands under licence numbers RC000162253 and RC000162253, from the Proprietor respectively. The Second Complainant has been granted a non-exclusive sub-licence of the OVO and OVO ENERGY brand under the Licence Numbers from the First Complainant (hereinafter the licences will be referred to collectively as the '**Licences**'). Authenticity of the Licences are evidenced at the United Kingdom Intellectual Property Office, via trade mark registration number UK00003205321 and UK00002552897.

The Complainants are authorised to act on behalf of the Proprietor in relation to the enforcement of the Brands and related rights as granted under the Licences and Section 30 of the Trade Marks Act 1994 in the United Kingdom.

The First Complainant is the exclusive licensee of registered rights for the Brands. A non-exhaustive list of the trade mark rights in the **OVO ENERGY** brand. (the '**Trade Marks**').

The Second Complainant has been the registrant of the domain name **<ovoenergy.com>** since as early as 24 February 2009. The Complainants own several other domain names that incorporate the **OVO ENERGY** trade mark.

FACTUAL BACKGROUND

The Complainants state that they are authorised to act on behalf of the Proprietor in relation to the enforcement of the Brands and related rights as granted under the Licences and Section 30 of the Trade Marks Act 1994 in the United Kingdom.

The '**Complainants**' are a leading energy supplier with technology powered by 100% renewable energy. OVO Energy was launched in 2009 to make energy cheaper, greener and simpler. Since then, the Complainants business has acquired over 1.5 million retail members and planted over 1 million trees.

The Second Complainant has been the registrant of the domain name **<ovoenergy.com>** since 24 February 2009. The Complainants own several other domain names that incorporate the **OVO ENERGY** trade mark.

The Complainant states that Complainants' Brands have a significant reputation and that he has built up a vast amount of goodwill in the signs globally in relation to the energy industry. The Complainants have advertised significantly through London's transport network, featuring advertisements on buses and taxis.

The Complainants continue to amass a large following for the Brands on social media, in addition to promotional activity in the physical world, on city transport and partnering with live events. The Complainants state that the Complainants' brand has been a significant commercial presence for a long period of time and continues to have the same, strong presence today.

The First Complainant holds an exclusive license to the Brands; the Second Complainant is a non-exclusive sub-licensee. Furthermore, the Brands have in the view of Complainant built up substantial recognition in the public domain, supported by their awards and accolades.

Complainant states that the Disputed Domain Name is confusingly similar to the Complainants' Trade Marks as it incorporates the well-known term **OVO** in their entirety.

The Complainants notes the inclusion of the word "home" as a suffix alongside the **OVO T**rade Mark does nothing to alter the impression of the confusing similarity assessment in the eyes of the average Internet user. The word "home" relative to the energy services industry is merely descriptive of the application of the services to a specific customer base. Multiple providers in the energy sector make reference to "home" in relation to promotional products such as smart tariffs and technology to track energy usage. Internet users, when faced with a domain name comprising of the **OVO** trade mark alongside the term "home", will assume the content is associated with the Complainants energy offering for residential property, or a service highly similar to this.

The Complainants further requests that the Panel omits the TLD suffix '.COM' when making an assessment as to the Disputed Domain Name, as this is merely a technical requirement, used for domain name registrations.

The Complainants submit that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name under Policy, Paragraph 4(c).

The Complainants state that bearing in mind the considerable reputation of the Brands associated with the Complainants' operations in the energy industry since 2009, there is no believable or realistic reason for registration or use of the Disputed Domain Name other than to take advantage of the Complainants' rights. The Disputed Domain Name was registered on 21 January 2023. By this point, the Brands already held rights in the signs **OVO** and **OVO ENERGY** dating back fifteen years.

The Complainants submit that the Disputed Domain Name at present resolves to a live site (the '**Website**'). The Website states that it "brings together the best of the word's handmade crafts and decorative items". The Complainants state that the Website contains multiple broken links and does not advertise any products. The only section in working order is the registration and login process. Prior screenshots of the Website show the use of a logo that is identical to the Complainants' logo, registered under UK trade mark number UK00003775385.

The Respondent has made use of a sign at the Website which is identical and/or highly similar to those covered by the Trade Marks. The Website is considered in view of Complainants at the least, cybersquatting. Further evidence leads to the suspicion that the domain is being used for phishing of customer data. Cybersquatting and phishing activities cannot in the view of Complainant be considered bona fide, and as such cannot be regarded as a defence under Policy, Paragraph 4(c).

In light of the established reputation of the Complainants, particularly within the energy industry, it is in view of Complainants inconceivable that the Respondent was unaware of the significance the **OVO** mark at the time of registering to use the Disputed Domain Name. In the view of Complainants identifying the Respondent's use as a bona fide offering of goods and services would be contrary to the Policy and the significant goodwill in **OVO** mark established by the Complainant.

Upon information and belief, the Complainants submit that the Respondent has never been known as OVO at any point in time. The registration of the distinctive mark **OVO** within the Disputed Domain Name, which is an indicator of trade origin of the Complainants, and subsequent use of the Website, leads the Complainants to conclude that the only reason that the Respondent registered the Disputed Domain Name was to take advantage of the Complainants' goodwill and valuable reputation.

The Complainants submit that part of the core services tied to the Brands are to provide energy to their customer's homes. The Brands have expanded by offering "Smart Home" technology, which encourages customers to monitor their carbon footprint and reduce spending on utilities. The term "HOME" is highly related to nature of the Complainants business and their new Smart Home product. When internet users see the term "HOME" used in conjunction with the OVO trade mark, there is a likelihood that they will create a false connection or affiliation between the Disputed Domain Name and the services of the Complainant.

The Complainants submit that nothing from the content of the Disputed Domain Name suggests that the Respondent is making a legitimate non-commercial or fair use. The Disputed Domain Name is in the view of Complainants being used to free ride on the distinctive trade marks, **OVO** and **OVO ENERGY**.

The Complainants submits that the Disputed Domain Name has been registered and used in bad faith. The Complainants have established registered rights in the Trade Marks, of which they have been authorised licensees since 13 February 2019. The Respondent registered the Disputed Domain Name on 21 January 2023, by which time the distinctive character and reputation of the Trade Marks was established.

Bearing in mind the status of the Brands within the energy services industry, the Complainants submit that the Disputed Domain Name was registered in bad faith. The Complainants notes that evidence of bad faith registration and use by the Respondent can influence the assessment of Policy, Paragraph 4(a)(ii).

The Website had previously made use of an infringing sign identical to the Complainant's Trade Marks at its home page, as recently as 22 August 2024. The Website now uses a sign which no longer infringes the figurative elements but continues to infringe the word elements of the Complainants Brands.

The Website contains multiple broken links and does not appear to genuinely offer any goods or services. The Complainants' investigations determined the physical location of the business to be false.

The Complainants do note that the account login and register process is in working order. The Complainants submit that the website is structured to serve the sole purpose of harvesting account information of the Complaints customers, thereby posing a threat to the security of individual financial and identification data. This act is in the view of Complainant classified as "phishing" and has been acknowledged by prior Panels.

The intention of the Respondent is therefore to attract users for commercial gain, by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the web site, constituting bad faith under Policy, Paragraph 4(a)(iii).

In view of the distinctive nature of the Trade Marks, the colossal scope of the Complainants' business, and high evidence of the Respondent targeting the Complainants' Brands, the Respondent's actual knowledge when registering the Disputed Domain Name is unequivocal. The Complainants state, that actual knowledge of a complainant's rights in a mark prior to registering a confusingly similar domain name evinces bad faith under paragraph 4(a)(iii) of the Policy.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the Disputed Domain Name should be transferred to it.

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).

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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 Name (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 has been registered and is being used in

bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

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

1. Identical or Confusingly Similar

Imagination Industries Ltd owns and controls all rights in relation to the **OVO** and **OVO ENERGY** brands worldwide and has granted the First Complainant, the OVO Group Ltd. and the Second Complainant, the OVO Energy Ltd. licenses. The First Complainant is the parent company to the Second Complainant. The First Complainant has right and power to file a Complainant due to the granted exclusive licence for the Brands under licence numbers RC000162253 and RC000162253, from the Brand owner. The Second Complainant has been granted a non-exclusive sub-licence of the OVO and OVO ENERGY brand under the Licence Numbers from the First Complainant. Therefore the Complainants are authorised to act on behalf of the brand owner in relation to the enforcement of the Brands and related rights as granted under the Licences.

The Disputed Domain Name <ovohome.com> incorporates the whole of the Complainant's OVO trademark, and add generic word "home" as a suffix and the gTLD suffix ".com". Whilst the addition of the term "home"" is enough to preclude the Disputed Domain Name from being identical to the Complainant's registered trademark, it does not help to escape the conclusion that the Disputed Domain Name is confusingly similar to the "OVO" mark, and the Panel accepts the Complainant's submissions in so finding.

The Panel agrees with the Complainant that the addition of the generic term "home" without a hyphen at the end of the Disputed Domain Name, is not sufficient to escape the finding that the Disputed Domain Name is confusingly similar to the Complainant's trademark and does not change the overall impression of the designation as being connected to the trademark OVO, as the OVO trademark at the beginning of the Disputed Domain Name is the distinctive part of the Disputed Domain Name. Therefore, the Panel finds, that the Disputed Domain Name is confusingly similar to the Complainant's trademark OVO.

2. Rights or Legitimate Interests

When a respondent remains completely silent in the face of a prima facie case that it lacks any rights or legitimate interests in respect of a domain name, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy. Here the Complainants have presented an abundance of evidence to show that the Respondent has no plausible right or legitimate interest in respect of the Disputed Domain Name and the Panel so finds.

3. Bad Faith

The Panel believes that the Respondent registered the Disputed Domain Name with knowledge of the Complainant's rights. The Disputed Domain Name was registered decades after the registration of several licensed trademarks of the Complainants and Complainants have used it widely since then. Respondent also used a very similar logo to the trademark OVO of Complainant on an earlier part of the website of the Disputed Domain Name, which is no coincidence. Furthermore, the similar logo was quickly removed and replaced by a not so similar logo.

Moreover, the Panel agree with Complainants that the Disputed Domain Names have also been registered in an effort to take advantage of the goodwill that Complainant had built up in its OVO trademark, and to unduly benefit from creating a diversion of the internet users of the Complainant by pretending to be an online partner of the Complainant, because the Respondent was at least displaying a very similar logo to the trademark. The Website contains multiple broken links and does not appear to genuinely offer any goods or services. The physical location of the business also seems to be false and the account login and register process is in working order. The website is structured to serve the purpose of harvesting account information of the Complainants customers, thereby posing a threat to the security of individual financial and identification data. This act is classified as "phishing" and has been acknowledged by prior panels.

On these grounds, the Panel concludes that the Respondent has registered and is using the Disputed Domain Name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ovohome.com**: Transferred

PANELLISTS

Name	**Jan Schnedler**

DATE OF PANEL DECISION 2024-11-03

Publish the Decision