



NATIONAL ARBITRATION FORUM

DECISION

International Olympic Committee v. Greek Historical Domains Society
Claim Number: FA1104001382972

PARTIES

Complainant is International Olympic Committee (“Complainant”), represented by James L. Bikoff, Washington, D.C. Respondent is Greek Historical Domains Society (“Respondent”), represented by Maria Papadopoulou of Greek Historical Domains Society, Greece.

REGISTRAR AND DISPUTED DOMAIN NAMES

The domain names at issue are <olympicmuseum.org> and <olympicmuseum.net>, registered with Godaddy.com, Inc.

PANEL

The undersigned certifies that he or she has acted independently and impartially and to the best of his or her knowledge has no known conflict in serving as Panelist in this proceeding.

John J. Upchurch as Panelist.

PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum electronically on April 11, 2011; the National Arbitration Forum received payment on April 11, 2011.

On April 13, 2011, Godaddy.com, Inc. confirmed by e-mail to the National Arbitration Forum that the <olympicmuseum.org> and <olympicmuseum.net> domain names are registered with Godaddy.com, Inc. and that Respondent is the current registrant of the names. Godaddy.com, Inc. has verified that Respondent is bound by the Godaddy.com, Inc. registration agreement and has thereby agreed to resolve domain disputes brought by third parties in accordance with ICANN’s Uniform Domain Name Dispute Resolution Policy (the “Policy”).

On April 18, 2011, the Forum served the Complaint and all Annexes, including a Written Notice of the Complaint, setting a deadline of May 9, 2011 by which Respondent could file a Response to the Complaint, via e-mail to all entities and persons listed on

Respondent's registration as technical, administrative, and billing contacts, and to postmaster@olympicmuseum.org and postmaster@olympicmuseum.net. Also on April 18, 2011, the Written Notice of the Complaint, notifying Respondent of the email addresses served and the deadline for a Response, was transmitted to Respondent via post and fax, to all entities and persons listed on Respondent's registration as technical, administrative and billing contacts.

A timely Response was received and determined to be complete on May 10, 2011.

A timely Additional Submission was received on May 16, 2011.

On May 16, 2011, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the National Arbitration Forum appointed John J. Upchurch as Panelist.

RELIEF SOUGHT

Complainant requests that the domain names be transferred from Respondent to Complainant.

PARTIES' CONTENTIONS

A. Complainant makes the following assertions:

1. Respondent's <olympicmuseum.org> and <olympicmuseum.net> domain names are identical or confusingly similar to Complainant's Olympic and The Olympic Museum marks.
2. Respondent does not have any rights or legitimate interests in the <olympicmuseum.org> and <olympicmuseum.net> domain names.
3. Respondent registered and used the <olympicmuseum.org> and <olympicmuseum.net> domain names in bad faith.

B. Respondent makes the following assertions:

1. Respondent makes no contentions with respect to Policy ¶ 4 (a)(i).
2. Every Greek citizen has a right to use the name Olympic; Complainant uses OLYMPIC as a "Loaner" from Greece.
3. Respondent denies it registered and used the <olympicmuseum.org> and <olympicmuseum.net> domain names in bad faith.

C. Additional Submission by Complainant:

1. Respondent's Response has no probative value. Its assertions are unsupported by either law or evidence. It fails to controvert the IOC's well-established claims to the OLYMPIC marks in general and the THE OLYMPIC MUSEUM marks in particular. It fails to raise any credible response to the specific averments in the IOC's Amended Complaint, seeking transfer of <olympicmuseum.org> and

- <olympicmuseum.net>.
2. Respondent denies any bad faith intent to sell the subject domain names. However, the evidence clearly establishes that counsel for the IOC received an offer to sell the <olympicmuseum.net> domain name for \$30,000 USD through a GoDaddy purchasing broker in contact with the domain name registrant.
 3. Respondent's claims regarding any ethnic entitlement to use the word OLYMPIC are devoid of legal merit. Respondent's reliance on its claimed Greek situs—a dubious and unverified claim to begin with—fails to overcome the broad international legal protection afforded the OLYMPIC Trademarks.

FINDINGS

1. On June 23, 1894, Baron Pierre de Coubertin founded the International Olympic Committee ("IOC"), an international, non-governmental, non-profit organization, as the umbrella organization of the Olympic Movement. In 1896, under the IOC's direction, Athens, Greece, hosted the first Olympic Games of the modern era. Since 1896, the IOC has supervised the organization of the Olympic Games. The IOC has conducted 21 Olympic Winter Games and 26 Olympic Summer Games, most recently the 2010 Winter Olympic Games in Vancouver, Canada.
2. The IOC has taken appropriate steps to protect its rights in the OLYMPIC Marks. It owns Swiss Trademark Registration No. P-406021 for the OLYMPIC trademark, for use on and in connection with a wide variety of goods and services. See Exhibit B. The registration includes international trademark classes 9 (electrical and scientific apparatus), 14 (jewelry and precious metals), 16 (paper goods and printed matter), 36 (insurance and financial services), 38 (telecommunications) and 41 (education and entertainment services). The registration, which is in full force and effect, recognizes that the IOC's first use of the OLYMPIC trademark dates back to 1894, when Pierre de Coubertin founded the organization. The IOC's Swiss registration predates Respondent's registration of the domains <olympicmuseum.org> and <olympicmuseum.net>; the IOC's common law rights predate these domain name registrations by over one hundred years.

The IOC also owns Swiss Registration No. 567488 and International Registration No. 977839 for the trademark THE OLYMPIC MUSEUM, for use on and in connection with a wide variety of goods and services. These registrations collectively include international trademark classes 3, 8, 9, 14, 16, 18, 20, 21, 25, 28, 29, 30, 32, 33, 35, 36, 38 and 41. The IOC holds registrations for THE OLYMPIC MUSEUM trademark in many other countries through the international register, including Austria, Belgium, Benelux, Brazil, Bulgaria, China, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Qatar, Romania, the Slovak Republic, Slovenia, Spain, Sweden and the United Kingdom.

3. In recognition of the unique not-for-profit nature of the Olympic Movement, as well

as the importance of the IOC's exclusive rights, over thirty (30) nations around the World have enacted enhanced statutory protection for the OLYMPIC Trademarks.

For example, the marks and emblems of the Olympic Games have been protected by U.S. statute, now codified at 36 U.S.C. §220506, since 1950. The statute, known as the Olympic and Amateur Sports Act ("OASA"), grants the United States Olympic Committee ("USOC") the exclusive right to use the Olympic symbol and the word "Olympic" or any combination thereof in commerce in the United States.

In 1987, the U.S. Supreme Court upheld the OASA and the unique protection it affords to the OLYMPIC trademarks. *San Francisco Arts & Athletics, Inc. v. U.S. Olympic Comm. and Int'l Olympic Comm.*, 483 U.S. 522 (1987). In that case, the IOC and the USOC as joint plaintiffs filed suit to stop the unauthorized use of the OLYMPIC trademarks by San Francisco Arts and Athletics, organizers of the "Gay Olympic Games." The Supreme Court of the United States ruled in favor of the IOC and the USOC, holding that the defendant's use of the word Olympic violated their rights under the OASA statute. "Congress clearly intended to grant the USOC exclusive use of the word OLYMPIC without regard to whether use of the word tends to cause confusion, and [without regard to] defenses available under the Lanham Act." *Id.* at 530.

"In the special circumstance of the USOC, Congress has a broader public interest in promoting, through the activities of the USOC, the participation of amateur athletes from the United States in 'the great four-yearly sport festival, the Olympic Games.'" *Id.* at 538. The OASA "directly advances these governmental interests by supplying the USOC with the means to raise money to support the Olympics and encourages the USOC's activities by ensuring that it will receive the benefits of its efforts." *Id.* at 539.

In 1999, the U.S. Congress incorporated the OASA into the Anti-cybersquatting Consumer Protection Act, granting special protection to OLYMPIC trademarks against bad faith registration of domain names. See 15 U.S.C. § 125(d)(1)(A)(ii) (III).

4. On March 28, 2000, the IOC acquired the <olympicmuseum.com> domain name through Network Solutions. On June 29, 2001, the IOC acquired the <olympicmuseum.org> and <olympicmuseum.net> domain names through Register.com.
5. The IOC's <olympicmuseum.org> and <olympicmuseum.net> domain name registrations inadvertently expired on June 29, 2009 and were dropped from the zone file between August 11, 2009 and October 11, 2009, due in part to inconsistent registrar and registry-level expiration dates.

6. Thereafter, Respondent, through Domains by Proxy, Inc., registered both domains on October 11, 2009.
7. Respondent has no legitimate rights to these domain names. Respondent is not affiliated with the IOC or the Olympic Museum. Respondent is not authorized to register or use domain names or marks containing the OLYMPIC or THE OLYMPIC MUSEUM Mark or their equivalents.
8. Respondent has made no demonstrable preparations to use these domain names in connection with a bona fide offering of goods or services.
9. Respondent has registered these domain names primarily for the purpose of selling them for valuable consideration in excess of Respondent's out-of-pocket costs.
10. Respondent has intentionally attempted to attract, for commercial gain, Internet users to a pay-per-click parking website by creating a likelihood of confusion with the Complainant's OLYMPIC and THE OLYMPIC MUSEUM trademarks as to the source, sponsorship, affiliation, or endorsement of that pay-per-click parking website.

DISCUSSION

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (1) the domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (2) Respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered and is being used in bad faith.

Identical and/or Confusingly Similar

Complainant has rights in the THE OLYMPIC MUSEUM mark because of its trademark registration with the Swiss Federal Institute of Intellectual Property (Reg. No. 567,488 issued February 19, 2008). The Panel finds that registering the trademark with the Swiss trademark authority sufficiently establishes Complainant's rights in the THE OLYMPIC MUSEUM mark for the purposes of Policy ¶ 4(a)(i), even though Respondent lives or operates in a country other than where the mark is registered. See *Metro. Life Ins. Co. v. Bonds*, FA 873143 (Nat. Arb. Forum Feb. 16, 2007) (finding that a trademark registration

adequately demonstrates a complainant's rights in a mark under Policy ¶ 4(a)(i); see also *Koninklijke KPN N.V. v. Telepathy Inc.*, D2001-0217 (WIPO May 7, 2001) (finding that the Policy does not require that the mark be registered in the country in which the respondent operates; therefore it is sufficient that the complainant can demonstrate a mark in some jurisdiction).

Respondent's <olympicmuseum.org> and <olympicmuseum.net> domain names are confusingly similar to Complainant's THE OLYMPIC MUSEUM mark because the disputed domain names merely delete the term "the" and the space between the terms and add the generic top-level domains ("gTLDs"). The Panel finds that deleting a term from Complainant's mark does not alter the mark enough to differentiate the disputed domain name. See *Tesco Pers. Fin. Ltd. v. Domain Mgmt. Servs.*, FA 877982 (Nat. Arb. Forum Feb. 13, 2007) (holding that "the Domain Name is confusingly similar to Complainant's 'TESCO PERSONAL FINANCE' mark in that it merely omits the descriptive term 'personal.'"); see also *WestJet Air Ctr., Inc. v. W. Jets LLC*, FA 96882 (Nat. Arb. Forum Apr. 20, 2001) (finding that the <westjets.com> domain name is confusingly similar to the complainant's mark, where the complainant holds the WEST JET AIR CENTER mark). The Panel concludes that deleting the space or adding a gTLD does not remove the disputed domain names from the realm of confusing similarity. See *Reese v. Morgan*, FA 917029 (Nat. Arb. Forum Apr. 5, 2007) (finding that the mere addition of the generic top-level domain ".com" is insufficient to differentiate a disputed domain name from a mark); see also *Bond & Co. Jewelers, Inc. v. Tex. Int'l Prop. Assocs.*, FA 937650 (Nat. Arb. Forum Apr. 30, 2007) (finding that the elimination of spaces between terms and the addition of a gTLD do not establish distinctiveness from the complainant's mark under Policy ¶ 4(a)(i)). The Panel may determine, therefore, that Respondent's <olympicmuseum.org> and <olympicmuseum.net> domain names are confusingly similar to Complainant's THE OLYMPIC MUSEUM mark pursuant to Policy ¶ 4(a)(i).

Rights or Legitimate Interests

Complainant must first make a prima facie case that Respondent lacks rights and legitimate interests in the disputed domain name under Policy ¶ 4(a)(ii), and then the burden shifts to Respondent to show it does have rights or legitimate interests. See *Hanna-Barbera Prods., Inc. v. Entm't Commentaries*, FA 741828 (Nat. Arb. Forum Aug. 18, 2006) (holding that the complainant must first make a prima facie case that the respondent lacks rights and legitimate interests in the disputed domain name under UDRP ¶ 4(a)(ii) before the burden shifts to the respondent to show that it does have rights or legitimate interests in a domain name); see also *AOL LLC v. Gerberg*, FA 780200 (Nat. Arb. Forum Sept. 25, 2006) ("Complainant must first make a prima facie showing that Respondent does not have rights or legitimate interest in the subject domain names, which burden is light. If Complainant satisfies its burden, then the burden shifts to Respondent to show that it does have rights or legitimate interests in the

subject domain names.”).

Complainant contends that Respondent is not affiliated with Complainant or the Olympic Museum and is not authorized to register or use domain names or marks containing Complainant’s THE OLYMPIC MUSEUM mark. Complainant asserts that the WHOIS information for the disputed domain names, which identifies the registrant as “Greek Historical Domains Society,” does not reveal a relationship between Respondent and the disputed domain names and thus shows that Respondent is not commonly known by the disputed domain names. The Panel agrees with Complainant and holds that Respondent is not commonly known by the <olympicmuseum.org> and <olympicmuseum.net> domain names according to Policy ¶ 4(c)(ii). See *Broadcom Corp. v. Intellifone Corp.*, FA 96356 (Nat. Arb. Forum Feb. 5, 2001) (finding no rights or legitimate interests because the respondent is not commonly known by the disputed domain name or using the domain name in connection with a legitimate or fair use); see also *Compagnie de Saint Gobain v. Com-Union Corp.*, D2000-0020 (WIPO Mar. 14, 2000) (finding no rights or legitimate interest where the respondent was not commonly known by the mark and never applied for a license or permission from the complainant to use the trademarked name).

Complainant contends that from the time of registration on October 11, 2009 until March 19, 2010, the <olympicmuseum.org> and <olympicmuseum.net> domain names resolved to pay-per-click parking websites designed to derive revenue for Respondent. The Panel finds that this is not consistent with a bona fide offering of goods or services or a legitimate noncommercial or fair use pursuant to Policy ¶¶ 4(c)(i) and 4(c)(iii). See *Disney Enters., Inc. v. Kamble*, FA 918556 (Nat. Arb. Forum Mar. 27, 2007) (holding that the operation of a pay-per-click website at a confusingly similar domain name was not a bona fide offering of goods or services under Policy ¶ 4(c)(i) or a legitimate noncommercial or fair use under Policy ¶ 4(c)(iii)); see also *Meyerson v. Speedy Web*, FA 960409 (Nat. Arb. Forum May 25, 2007) (finding that where a respondent has failed to offer any goods or services on its website other than links to a variety of third-party websites, it was not using a domain name in connection with a bona fide offering of goods or services under Policy ¶ 4(c)(i) or a legitimate noncommercial or fair use pursuant to Policy ¶ 4(c)(iii)).

Complainant asserts that since March 19, 2010, Respondent has not been actively using the <olympicmuseum.org> and <olympicmuseum.net> domain names. The Panel finds that the failure to actively use the disputed domain names and associate them with original content indicates a lack of rights and legitimate interests under Policy ¶ 4(a)(ii). See *Thermo Electron Corp. v. Xu*, FA 713851 (Nat. Arb. Forum July 12, 2006) (finding that the respondent’s non-use of the disputed domain names demonstrates that the respondent is not using the disputed domain names for a bona fide offering of goods or services under Policy ¶ 4(c)(i) or a legitimate noncommercial or fair use pursuant to Policy ¶ 4(c)(iii)); see also *TMP Int’l, Inc. v. Baker Enters.*, FA 204112 (Nat. Arb. Forum

Dec. 6, 2003) (“[T]he Panel concludes that Respondent’s [failure to make an active use] of the domain name does not establish rights or legitimate interests pursuant to Policy ¶ 4(a)(ii).”).

Complainant argues that Respondent attempted to sell the <olympicmuseum.net> domain name to Complainant for \$30,000 in response to an offer to purchase the domain name for \$250.00 made by Complainant. The Panel concludes that this offer to sell the disputed domain name for such a price reveals a lack of rights and legitimate interests on the part of Respondent according to Policy ¶ 4(a)(ii). See *Reese v. Morgan*, FA 917029 (Nat. Arb. Forum Apr. 5, 2007) (finding that the respondent’s willingness to sell a contested domain name for more than its out-of-pocket costs provided additional evidence that Respondent had no rights or legitimate interests in the contested domain name); see also *George Weston Bakeries Inc. v. McBroom*, FA 933276 (Nat. Arb. Forum Apr. 25, 2007) (holding that where a respondent makes a “disproportionate” offer to sell its domain name registration to the complainant for more than its out-of-pocket registration costs, there is additional evidence that the respondent lacks rights and legitimate interests in the disputed domain name).

Complainant also previously held the <olympicmuseum.org> and <olympicmuseum.net> domain names, initially registering them on June 29, 2001, but inadvertently let the domain name registrations expire on June 29, 2009, due in part to inconsistent registrar and registry-level expiration dates. Complainant asserts that shortly thereafter, on October 11, 2009, Respondent “snapped up and registered” both disputed domain names using a proxy registration service that anonymizes the registrant’s name. The Panel finds the sequence and circumstances of Respondent’s registration of the disputed domain names therefore indicates a lack of rights and legitimate interests according to Policy ¶ 4(a)(iii). See *Zappos.com, Inc. v. Turvill Consultants*, FA 404546 (Nat. Arb. Forum Feb. 28, 2005) (“[T]he fact that Complainant had previously held the <wwwzappos.com> domain name registration and has mistakenly allowed it to expire is further evidence that Respondent lacks rights and legitimate interests in the domain name under Policy ¶ 4(a)(ii).”); see also *Am. Anti-Vivisection Soc’y v. “Infa dot Net” Web Servs.*, FA 95685 (Nat. Arb. Forum Nov. 6, 2000) (finding that the complainant’s prior registration of the same domain name is a factor in considering the respondent’s rights or legitimate interests in the domain name).

Registration and Use in Bad Faith

Complainant offered evidence that in November of 2009, Complainant contacted Respondent, through a broker, and offered to buy the <olympicmuseum.net> domain name for \$250.00, a price above its appraised value of \$97.00. Complainant contends that Respondent countered with an asking price of \$30,000, which Complainant argues is a sum well in excess of Respondent’s out-of-pocket costs. The Panel finds that Respondent’s offer to sell the disputed domain name was for a price exceeding out-of-

pocket costs, which indicates bad faith registration and use under Policy ¶ 4(b)(i). See *George Weston Bakeries Inc. v. McBroom*, FA 933276 (Nat. Arb. Forum Apr. 25, 2007) (concluding that the respondent registered and was using the <gwbakeries.mobi> domain name in bad faith according to Policy ¶ 4(b)(i) where it offered it for sale for far more than its estimated out-of-pocket costs it incurred in initially registering the disputed domain name); see also *Neiman Marcus Group, Inc. v. AchievementTec, Inc.*, FA 192316 (Nat. Arb. Forum Oct. 15, 2003) (finding the respondent's offer to sell the domain name for \$2,000 sufficient evidence of bad faith registration and use under Policy ¶ 4(b)(i)).

From October 11, 2009 until March 19, 2010, the disputed domain names resolved to parked pay-per-click websites. Respondent apparently attempted to use the disputed domain names to attract Internet users, create confusion and subsequently profit from the pay-per-click revenue. The Panel finds that using the disputed domain names in connection with a pay-per-click website is evidence that Respondent registered and used the disputed domain names in bad faith according to Policy ¶ 4(b)(iv) by intentionally attempting to attract, for commercial gain, Internet users by creating a likelihood confusion as to the source, sponsorship, affiliation or endorsement of the resolving website. See *MySpace, Inc. v. Myspace Bot*, FA 672161 (Nat. Arb. Forum May 19, 2006) (holding that the respondent registered and used the <myspacebot.com> domain name in bad faith by diverting Internet users seeking the complainant's website to its own website for commercial gain because the respondent likely profited from this diversion scheme); see also *The Ass'n of Junior Leagues Int'l Inc. v. This Domain Name My Be For Sale*, FA 857581 (Nat. Arb. Forum Jan. 4, 2007) (holding that the respondent's use of the disputed domain name to maintain a pay-per-click site displaying links unrelated to the complainant and to generate click-through revenue suggested bad faith registration and use under Policy ¶ 4(b)(iv)).

Complainant also asserts that the <olympicmuseum.net> and <olympicmuseum.org> domain names no longer resolve to an active website. The Panel determines that this inactive use is further evidence of bad faith registration and use according to Policy ¶ 4(a)(iii). See *DCI S.A. v. Link Commercial Corp.*, D2000-1232 (WIPO Dec. 7, 2000) (concluding that the respondent's [failure to make an active use] of the domain name satisfies the requirement of ¶ 4(a)(iii) of the Policy); see also *Clerical Med. Inv. Group Ltd. v. Clericalmedical.com*, D2000-1228 (WIPO Nov. 28, 2000) (finding that merely holding an infringing domain name without active use can constitute use in bad faith).

Further, Respondent registered the disputed domain names very shortly after Complainant inadvertently allowed its prior registrations of the disputed domain names to lapse. Complainant suggests, and the Panel concurs, that such a registration practice demonstrates Respondent's bad faith registration and use for the purposes of Policy ¶ 4(a)(iii). See *InTest Corp. v. Servicepoint*, FA 95291 (Nat. Arb. Forum Aug. 30, 2000) ("Where the domain name has been previously used by the Complainant, subsequent

registration of the domain name by anyone else indicates bad faith, absent evidence to the contrary.”); see also *Aurbach v. Saronski*, FA 155133 (Nat. Arb. Forum May 29, 2003) (“Where the domain name registration was previously held, developed and used by Complainant, opportunistic registration of the domain name by another party indicates bad faith, absent any justification that illustrates legitimate use.”).

DECISION

Having established all three elements required under the ICANN Policy, the Panel concludes that relief shall be GRANTED.

Accordingly, it is Ordered that the <olympicmuseum.org> and <olympicmuseum.net> domain names be TRANSFERRED from Respondent to Complainant.

John J. Upchurch, Panelist

Dated: May 26, 2011

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