



NATIONAL
ARBITRATION
FORUM

DECISION

Osho International Foundation v. Osho Dhyhan Mandir and Atul Anand
Claim Number: FA0006000094990

PARTIES

Complainant is Osho International Foundation, New York, NY, USA ("Complainant").¹
Respondents are Osho Dhyhan Mandir and Atul Anand, New Delhi, India ("Respondents").

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is "OSHOWORLD.COM", registered with Register.com.

PANELIST

M. Kelly Tillery, Esquire

PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum ("The Forum") electronically on 06/07/2000; The Forum received a hard copy of the Complaint on 06/07/2000.

On 06/09/2000, Register.com confirmed by e-mail to The Forum that the domain name "OSHOWORLD.COM" is registered with Register.com and that Respondent Atul Anand of Respondent Osho Dhyhan Mandir is the current registrant of the name.

On 06/12/2000, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of 07/05/2000 by which Respondents could file a Response to the Complaint, was transmitted to Respondents via email, post and fax, and to all entities and persons listed on Respondents' registration as technical, administrative and billing contacts by email.

On 7/10/00, pursuant to Complainant's request to have the dispute decided by a Single Member Panel, The Forum appointed M. Kelly Tillery, Esquire as Panelist.

¹ See discussion at p. 4, infra.

RELIEF SOUGHT

Complainant requests that the domain name be transferred from Respondents to Complainant.

PARTIES' CONTENTIONS

A. Complainant

Complainant contends that Respondents' registered domain name "oshoworld.com" is confusingly similar to Complainant's registered marks for "OSHO" including but not limited to USPTO Registration No. 2,174,607 for "OSHO", Registration No. 2,180,173 for "OSHO", Registration No. 1,815,840 for "OSHO" and Pending Application Serial No. 75683097 for "OSHO" and Pending Application Serial No. 75834601 for "OSHO ACTIVE MEDITATIONS." Complainant also claims that it maintains three (3) registered domain names "osho.com", "osho.org" and "osho.net" all of which resolve into an active Web Site presumably operated by Complainant.

Complainant acknowledges that the Osho name/mark originates with the internationally known spiritual leader Bhagwan Shree Rajneesh, also known as Osho. Complainant claims to operate a worldwide publishing operation in the areas of meditation, body-mind-spirit philosophy and spirituality with respect to the teachings of the mystic Osho. Complainant also claims to operate the Osho Commune International in Poona, India.

Complainant claims that Respondent registered "oshoworld.com" in bad faith, that Respondent does not hold rights or legitimate interests in respect of its domain name and that Respondent has intentionally attempted to attract, for commercial gain, Internet users to its Web Site by creating a likelihood of confusion with Complainant's trademarks and service marks as to the source, sponsorship, affiliation or endorsement of Respondent's Web Site.

B. Respondent

Respondents, a non-profit, charitable Indian Corporation and its Administrator, claim to have registered the domain name "oshoworld.com" for the good faith purpose of discussing the teachings of Osho and promoting the Osho World Galleria in New Delhi, India.

Respondent contends that "this is a case of a commercial entity trying to exercise monopoly of the name Osho, a well-known Indian spiritual mystic with hundreds of thousands of followers." Complainant further contends that there are hundreds of independent meditation centers which study and spread Osho's teachings around the world and that the term Osho not only refers to the individual, Osho, but also to the entire spiritual movement that believes and follows his teachings.

Respondent contends that Osho was born in India in 1932 as Rajneesh Chandra Mohan. While serving as a Professor of Philosophy, he traveled all over India giving lectures and conducting meditation camps and adopted the name Bhagwan Shree Rajaneesh. In 1989, he adopted "Osho" as his "name" explaining that the term derived from William James' word "Oceania" which means

"dissolving into the ocean."

Respondent contends that until Bhagwan Shree Rajaneesh adopted the name Osho in 1989, Osho was never used by any of the parties to this dispute. Respondent further contends that from the time of his adoption of this name Osho in 1989, many institutions were established in India devoted to spreading his teachings and ones that existed incorporated Osho's new name. Respondent further contends that Osho "left his body" (died) in 1990. Respondent further contends that it is a non-profit, charitable organization registered under the Societies Act in India which has continuously operated Osho Meditation Camps to spread the teachings of Osho and has conducted meditations in Delhi since its creation in 1996.

Respondent Atul Anad is Administrator of Respondent Osho Dhyam Mandir and also a Trustee of the Osho World Foundation, an international, charitable organization dedicated to promoting the teachings of Osho, which operates Osho World, a galleria in New Delhi, India. The Galleria is a bookstore, meditation center, performance studio and study area for all things related to Osho. It opened in New Delhi on April 1, 2000.

Respondents contend that Osho is not a valid trademark for materials by or regarding Osho, that Complainant has committed fraud on the U.S. Patent and Trademark Office and has unclean hands, that the domain name is not confusingly similar to any mark in which Complainant has an interest, that Respondents have legitimate rights and interests in the domain name and that the Respondents registered and are using "oshoworld.com" in good faith.

FINDINGS

Complainant has not met its burden to prove by a preponderance of the relevant, admissible, evidence that Respondents' domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights.

Complainant has not met its burden to prove by a preponderance of the relevant, admissible, evidence that Respondents have no rights or legitimate interests in respect to the domain name.

Complainant has not met its burden to prove by a preponderance of the relevant, admissible, evidence that Respondents' domain name has been registered and is being used in bad faith.

DISCUSSION

Paragraph 4(a) of the ICANN Uniform Domain Name Dispute Policy ("Policy") directs that Complainant must prove each of the following three elements to support a claim 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;

- (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.

A. Identical and/or Confusingly Similar

Respondent's domain name, "oshoworld.com" is obviously not identical to either "OSHO" or "OSHO ACTIVE MEDITATIONS", the registered and/or applied for trademarks or service marks of Complainant. However, under Rule 4(a)(i), Complainant may prove that a Respondent's domain name is "confusingly similar" to a trademark or service mark in which the Complainant has rights. In order to determine whether the domain name is "confusingly similar" to a trademark or service mark, this Arbitrator must examine and compare the marks in their entirety.

However, Complainant must first prove that it has rights in a trademark or service mark and then that Respondents' domain name is confusingly similar thereto.

This Arbitrator is troubled by Complainant's identification of itself in the Complaint as "Osho International Foundation" (hereinafter "OIF"), the Swiss Corporation which owns three Federally-registered trademarks. Only after Respondent claimed that Complainant was not OIF, did Complainant submit an Affidavit stating that Complainant is in fact not the Swiss Corporation listed as the owner of said marks, but rather a New York corporation, "America Multi Media Corporation d/b/a 'Osho International Foundation'", purportedly "a wholly-owned subsidiary, agent, and agreement manager" for OIF. Complainant appears to be a New York for profit entity. The evidence of Complainant's authority to act on behalf of OIF is insubstantial at best and not sufficient to prove that Complainant has rights in any marks at issue here.

This record is also insufficient to establish that OSO is generic as claimed by Respondent, but it is more than sufficient to establish that OSO does not and cannot serve as a source indicator and/or distinguishing moniker for Complainant and/or Complainant's goods and services. Under these circumstances, there is serious doubt as to whether Complainant "has rights" in such a trademark or service mark because the purported mark does not and cannot serve a trademark purpose.

Complainant has thus not proven that the marks in question are ones "in which the Complainant has rights."²

There is no evidence that Bhagman Shree Rajneesh (Osho) ever commercially exploited the name or mark OSO during his natural life (while still "in his body") or that he or his estate, if one

² The credible evidence of record does not support Complainant's contention that it permitted and/or permits Respondent to operate its OSO MEDITATION CENTER by virtue of some sort of oral license.

was ever established, ever authorized either Party or any one else to utilize his name or mark. The first use at all of "Osho" appears to have been by this spiritual leader himself in 1989 and he died (or "left his body") in 1990. Though he has said, "It is not my name, it is a healing sound", it appears that the parties, several national trademark offices and many others have and continue to use same as a name and a mark. The record also reflects that Osho himself had little regard for or concern with intellectual property rights, including any related to the use of his chosen name.

As this Arbitrator imagines Osho himself might observe, one cannot possess trademark rights in a name/mark of such universal significance which cannot and clearly does not serve as a source indicator or distinguishing moniker for Complainant or Complainant's goods or services.

The overwhelming evidence indicates that it refers to Osho, his teachings and his spiritual movement. Respondent has produced credible evidence, not disputed by Complainant, that almost 500 meditation centers around the world, not affiliated with Complainant, operate utilizing the "Osho" name.³

There is also no credible, admissible evidence of any actual confusion between Complainant's registered marks and/or applied for marks and/or registered domain names and Respondent's domain name registered on 9/29/99 and/or Respondent's use of the name/mark "Osho Meditation Camps" in India since 1996 and/or Respondent's use of "OshoWorld" in connection with its galleria in New Delhi, India.

This Arbitrator does not and cannot invalidate the U.S. and foreign mark registrations of OIF, a Swiss Corporation. This Arbitrator holds only that for all of the above-stated reasons, Complainant has no rights in any marks which are identical or confusingly similar to the domain name in question.

B. Rights or Legitimate Interests

The evidence establishes that Respondents have real and substantial "legitimate interests" in respect of the domain name in question. Respondents have used the name since the date of incorporation on August 6, 1996 and has used OshoWorld at least since April 1, 2000.

Respondent has operated the OSHO MEDITATION CENTER (the English translation of Respondent's registered corporate name) since approximately 1996, long prior to its receipt on 6/12/00 of the Commencement Notification. Such clearly satisfies the requirements of Rule 4(c)(i) and establishes in Respondent's "rights to and legitimate interests in" its domain name.

³ Although both Complainant's marks and Respondents' domain name include "Osho", Respondent's domain name adds the word "world", which is the name of the Galleria in New Delhi, operated by its affiliate.

A. Registration and Use in Bad Faith

Respondents' domain name has not been registered and is not being used in bad faith. Not one of the provisions of Rule 4(b) are implicated by the evidence of record.

Respondent, ODM, a non-profit, charitable education and spiritual entity, clearly registered and is using its domain name in good faith. The only provision of the Rules that could possibly be implicated here is Rule 4(b)(iv). However, as set forth hereinabove, there is no credible evidence of record to establish that Respondent has intentionally attempted to attract, for commercial gain, Internet users to its Web Site or other on-line location, by creating a likelihood of confusion with Complainant's mark as to source, sponsorship affiliation or endorsement of its Web Site or location of a product or service on its Web Site or location. Rule 4(b)(iv). Respondents' use appears to be not for commercial gain and is not, as explained hereinabove, creating a likelihood of confusion. On the contrary, Respondents' use seems to be primarily, if not solely, an authentic, legitimate exercise of freedom of expression and/or religion protected by the United States Constitution, Amendment 1, the Constitution of India, Article 25, Clause 1 and the United Nations Universal Declaration of Human Rights, Article 18. This Arbitrator can conceive of few uses that would more deserve to be called "in good faith."

To grant Complainant's request for relief would be to permit virtual monopolization on the Internet by Complainant of any domain name which includes the name of a great spiritual teacher and leader. While making no judgment on the relative merits or validity of the world's religions or spiritual movements or any leader thereof, this Arbitrator finds that permitting this would be as improper as doing the same with Christianity, Judaism, Islam, Zoroastrianism, Hinduism, Buddhism, Taoism, Confucianism, Shintoism or any of the several hundred other of the world's religions and/or spiritual movements. Neither The Lanham Act nor the ICANN Policy and Rules contemplate or intend such a result.

UNTIMELY SUBMISSIONS

After the deadline for submissions, the National Arbitration Forum received four (4) additional submissions from the parties, two each from Complainant and Respondent: Reply to Respondent's Answer, including six (6) new Exhibits [received 7/13/00], (2) Petition to Strike Complainant's Untimely Reply [received 7/18/00], (3) Petition to Deny Respondent's Petition to Strike Complainant's Reply [received 7/20/00] and (4) Respondent's Sur-Response to Complainant's Untimely Reply [received 7/21/00].

This proceeding is governed by the ICANN Uniform Domain Name Dispute Resolution Policy ("Policy") the ICANN Rule for Uniform Domain Name Dispute Resolution ("Rules") and The National Arbitration Forum's Supplemental Rules to ICANN's Uniform Domain Name Dispute Rules ("Supplemental Rules").

Rule 2 entitled "Communications" provides in Subsection (c) that "any communication to the Provider or the Panel shall be made by the means and in the manner (including number of copies) stated in the Provider's Supplemental Rules." "Supplemental Rules" are defined in Rule 1 as "the rules adopted by the Provider administering a proceeding to supplement these Rules . . . which" shall not be inconsistent with the policy or these Rules and shall cover topics as fees, word and page limits and guidelines, the means for communicating with the Provider and the Panel, and the form of cover sheets."

Pursuant to the Policy and the Rules, The National Arbitration Forum promulgated Supplemental Rules, Number 7 of which provides as follows:


7. Submission of other Written Statements and Documents; No Amendment to the Complaint. A party may submit additional written statements and documents to The Forum and the opposing party(s) not later than five (5) calendar days after the date the Response is submitted or the last date the Response was due to be submitted to the Forum, whichever occurs first. A fee of \$150 and proof of the service of these submissions upon the opposing party(s) shall accompany each such submission. No such submission shall be considered by the Panel if not timely submitted, or if the required fee is not paid and the proof or service does not accompany the submission. The parties may not amend the Complaint or the Response.

There is no question here that all four (4) of the aforementioned submissions were "not timely submitted" Supplemental Rule 7. However, Rule 10 entitled "General Powers of the Panel" provides in Subsection (c) that, "The Panel shall ensure that the administrative proceeding takes place with due expedition and it may, at the request of a party or on its own motion, extend, in exceptional cases, a period of time fixed by these Rules or by the Panel." Thus, this Arbitrator may, "in exceptional cases" exercise discretion to consider one or more of these untimely submissions.

In order to determine whether this is in fact "an exceptional case" and whether such discretion should be exercised in favor of considering any of such submissions, it is, of course, necessary to review all four untimely submissions. Having done so, this Arbitrator finds that this is "an exceptional case", at least in regard to the circumstances and the substance of all of the untimely submissions. Thus, this Arbitrator will exercise discretion and will consider all untimely submissions. Respondent's Petition to Strike is denied and Complainant's Petition to Deny Respondent's Petition is denied.

DECISION

Complainant's request that the domain name be transferred is denied.


M. KELLY TILLERY, ESQ.
ARBITRATOR