



Asian Domain Name Dispute Resolution Centre

seoul

(Seoul Office)

ADMINISTRATIVE PANEL DECISION

Case No.: KR-2400261

Complainant: Ottogi Corporation

(Authorized Representative for Complaint: Ho-Hyun Nahm, Mi-Jeong LEE
(BARUN IP&LAW))

Respondent: Elvis Ortiz

Disputed Domain Name: [otoki.com]

1. The Parties and Contested Domain Name

The **Complainant** is Ottogi Corporation, located at 405, Heungan-daero, Dongan-gu, Anyang-si, Gyeonggi-do, Republic of Korea.

The **Respondent** is Elvis Ortiz, whose address is 242 E 80th St., BD, New York, New York 10075, United States.

The **Disputed Domain Name** is 'otoki.com', which is registered with GoDaddy.com, LLC.

2. Procedural History

The Complaint was filed with the Seoul Office of the Asian Domain Name Dispute Resolution Centre (ADNDRC; the "Centre") on July 25, 2024, seeking a transfer of the Disputed Domain Name.

The Centre verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy”), the Rules for the Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the Centre’s Supplemental Rules for the Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

On July 30, 2024, the Centre sent an email to the Registrar asking for detailed data on the registrant. On July 31, 2024, GoDaddy.com sent the Centre its response, noting that the language of the registration agreement is English, verifying the Respondent is listed as the registrant, and providing the contact details.

In accordance with the Rules, the Centre formally notified the Respondent of the Complaint. The proceedings commenced on August 1, 2024, and the deadline for the Response was set for August 20, 2024. The Centre received the response from the Respondent on August 5, 2024.

On August 6, 2024, the Centre appointed Mr. DougJay Lee as Sole Panelist in the administrative proceeding, and after Mr. Lee consented to the appointment and declared his impartiality and independence, the Centre, in accordance with Paragraph 7 of the Rules, organized the Panel for this case in a legitimate way.

3. Factual Background

A. Complainant

The Complainant is a food company in the Republic of Korea that was established in May 1969. The Complainant manufactures and sells various food products such as ramen, ketchup, mayonnaise, and curry. The Complainant was initially founded as Punglim Sangsa, changed its name to Ottogi Food Industries in 1973, then to Ottogi Foods Co., Ltd., in 1980, and finally to its current name, Ottogi Co., Ltd., in 1996. Since then, the Complainant has used two versions of its name with different capitalizations: Ottogi (lowercase) and OTTOGI (uppercase).

B. Respondent

The Respondent is an individual residing in the city and state of New York in the United States of America. The Respondent registered the Disputed Domain Name on March 24, 1999. The Disputed Domain Name has not become an active website.

4. Parties' Contentions

A. Complainant

i) The Complainant holds numerous trademark rights that include "Ottogi" (lowercase) or "OTTOGI" (uppercase) in Korea, and has also secured multiple trademark rights for "OTTOGI" in approximately 60 other countries, including the United States, Denmark, Brazil, Mexico, Japan, Vietnam, and the Philippines. The Complainant has garnered a global reputation as a result of its extensive revenue, promotions, and awards, thereby creating tremendous goodwill and value for the company and its brands. The "OTTOGI" mark has become prominently well-known and is associated exclusively with the Complainant and no one else. The Disputed Domain Name is confusingly similar to the Complainant's marks.

ii) The Respondent has no right to, nor legitimate interest, in the Disputed Domain Name. The Respondent does not use the Disputed Domain Name for any *bona fide* offering of goods or services, nor for legitimate noncommercial or fair use. Instead, the Disputed Domain Name remains inactive. The Respondent has made a general offer to sell the Disputed Domain Name for US\$5,000.

iii) The Respondent has registered and used the Disputed Domain Name in bad faith. At the time of registration, the Respondent knew or should have known about the existence of the Complainant's trademarks. The Disputed Domain Name currently leads to an inactive site, which constitutes bad-faith use. Furthermore, the website associated with the Disputed Domain Name displays a message offering it for sale at the excessive price of US\$5,000, which is far above the registration fee. This is clearly a typosquatted domain name, the use of which inherently indicates a bad-faith registration.

B. Respondent

i) The Disputed Domain Name differs significantly from the Complainant's mark "Ottogi." The removal of one of the duplicate letters, i.e., "t," and the replacement of the "g" with a "k" results in a distinct spelling and pronunciation. The Complainant's trademarks, "Ottogi" and "OTTOGI," do not sound like "otoki" when spoken.

ii) The Respondent's intent in registering the Disputed Domain Name was to create a unique web presence primarily for use in Puerto Rico, where the main language is Spanish. The Respondent has maintained a legitimate interest in the domain since its registration. The fact that it is not currently in use does not negate the Respondent's legitimate interest in the Disputed Domain Name.

iii) The Disputed Domain Name was registered with the intention of developing a unique and original website for use in Puerto Rico. There is no evidence that the Respondent was aware of the Complainant's trademarks when he registered the Disputed Domain Name. The domain has never been used for commercial gain nor to mislead consumers. It has been maintained in good faith with the intention of developing a legitimate web presence unrelated to the Complainant. The Respondent's use of the domain constitutes fair use, as it is not intended to exploit the Complainant's trademark but to develop a unique web presence for a different market and audience.

5. Findings

i) The Disputed Domain Name was registered on March 24, 1999.

ii) The Complainant has established rights to the marks "Ottogi" and "OTTOGI" in Korea and has secured multiple trademark rights for "OTTOGI" in approximately 60 other countries, including the United States, Denmark, Brazil, Mexico, Japan, Vietnam, and the Philippines. The Complainant owns trademark registrations for the marks "Ottogi," "OTTOGI," and "OTTOGI with its Korean phonetic equivalent," through the Korean Intellectual Property Office (KIPO), including, among others, the mark "OTTOGI with its Korean phonetic equivalent" (Reg. No. 40-0135745, registered on

December 26, 1986) and the mark “OTTOGI” (Reg. No. 40-1501862, registered on July 19, 2019).

iii) The Complainant gained a worldwide reputation as a result of its extensive revenue, promotions, and awards, thereby creating tremendous goodwill and value for the company and its brands. The “OTTOGI” mark has become prominently well-known and is associated exclusively with the Complainant and no one else.

iv) The Disputed Domain Name resolves to an inactive website.

v) The Respondent has made a general offer to sell the Disputed Domain Name for US\$5,000.

6. 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 the Complainant prove each of the following three elements to obtain an order that a domain name should be canceled or transferred:

- (1) The domain name registered by Respondent is identical or confusingly similar to a trademark or service mark to which the Complainant has rights; and
- (2) The Respondent has no right to, nor legitimate interest in, the Disputed Domain Name; and
- (3) The Disputed Domain Name has been registered and is being used in bad faith.

A) Identical / Confusingly Similar

The Panel notes that the Complainant holds trademark rights to “OTTOGI” and/or its Korean transliteration, both alone and combined with devices, in various countries

worldwide. In particular, the Complainant registered the trademark “OTTOGI in Korean transliteration with a device” (KIPO Reg. No. 40-0010167) on August 13, 1965, well before the Disputed Domain Name was registered on March 24, 1999. Additionally, on December 26, 1986, the Complainant registered the trademark “OTTOGI with its Korean transliteration” (KIPO Reg. No. 40-0135745). The registration of a mark with a national trademark authority is a valid demonstration of the right to a mark. The Panel notes that it is an established principle that trademark rights do not need to be registered in the Respondent’s country of residence, considering the global nature of domain names (see WIPO’s Jurisprudential Overview 1.1.2). Since the Complainant has provided evidence of its trademark registrations, the Panel finds that the Complainant has established its rights to the relevant marks under Paragraph 4(a)(i) of the Policy.

The Complainant further contends that the Disputed Domain Name **otoki.com** is confusingly similar to the Complainant's marks because “Otoki” differs from “Ottogi” via the removal of one of the duplicate letters, i.e., “t,” and the replacement of the letter “g” with the letter “k.” This results in a similar appearance, and the Disputed Domain Name is nearly identical to the Complainant's trademark in pronunciation. The Respondent argues that the Disputed Domain Name differs significantly from the Complainant’s mark “Ottogi.” The removal of one of the duplicate letters, i.e., “t,” and the replacement of the letter “g” with the letter “k” results in a distinct spelling and pronunciation. The Complainant's trademarks, “Ottogi” and “OTTOGI,” do not sound like “Otoki” when spoken.

The Panel notes that “Otoki” differs from “Ottogi” via the removal of one of the duplicate letters, i.e., “t,” and the replacement of the letter “g” with the letter “k,” resulting in a similar appearance. Additionally, considering the characteristics of English pronunciation, the difference between “tt” and “t” is minimal, and both “g” and “k” can be pronounced as a Korean consonant corresponding to the letters “g” or “k.” Therefore, the Disputed Domain Name is nearly identical to the Complainant's trademark in pronunciation. Furthermore, when the Complainant's registered trademark is transliterated into English in accordance with general transliteration rules, it could be written similarly to the Disputed Domain Name. Therefore, the Panel finds that the

Disputed Domain Name is confusingly similar to the Complainant's marks under Paragraph 4(a)(i) of the Policy.

B) Rights and Legitimate Interests

The Complainant must first make a *prima facie* case that the Respondent has no right to, nor legitimate interest in, the Disputed Domain Name under Paragraph 4(a)(ii) of the Policy, and then the burden shifts to Respondent to show it does have rights or legitimate interests. See Section 2.1, WIPO Jurisprudential Overview 3.0 ("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.").

WHOIS information may be used to determine whether a respondent is commonly known by the Disputed Domain Name under Paragraph 4(c)(ii) of the Policy. The unmasked WHOIS information for the Disputed Domain Name lists the registrant as "Elvis Ortiz." There is nothing in the records to suggest that the Respondent is commonly known by the Disputed Domain Name under Paragraph 4(c)(ii) of the Policy.

Next, the Complainant asserts that the Respondent does not appear to have operated any *bona fide* or legitimate business under the Disputed Domain Name and is not making fair use of it. The Panel notes that there is no indication that the Respondent has used the Disputed Domain Name in connection with an active website. When a respondent passively holds a domain name without actively using it for legitimate purposes, such as offering goods or services or non-commercial use, it is well-established under UDRP precedent that this does not constitute a legitimate interest. See *Morgan Stanley v. Francis Mccarthy / Baltec Marine Llc*, FA 1785347 (Forum June 8, 2018) ("both Domain Names resolve to a web site that shows the words, 'Not Found, The requested URL / was not found on this server.' Inactive holding of a domain name does not qualify as a *bona fide* offering of goods or services within the meaning of Paragraph 4(c)(i) of the Policy,

or a legitimate non-commercial or fair use within the meaning of Paragraph 4(c)(iii) of the Policy." See also *George Weston Bakeries Inc. v. McBroom*, FA 933276 (Forum April 25, 2007) (finding that the respondent had no right to, nor legitimate interest in, a domain name under either Paragraph 4(c)(i) of the Policy or Paragraph 4(c)(iii) of the Policy where it failed to make any active use of the domain name).

The Panel finds that the Disputed Domain Name was not registered for legitimate purposes, such as providing goods or services or for non-commercial use. This is evident from the fact that the Respondent has not used the Disputed Domain Name for over 25 years since its registration and is only displaying a message offering it for sale. Thus, the Panel finds that the Respondent is not making *bona fide* or non-commercial fair use of the Disputed Domain Name.

Given the considerations above, the Panel finds that the Complainant has made a *prima facie* case. As the burden now shifts to the Respondent, the Panel must determine if the Respondent has rebutted the *prima facie* case and demonstrated a right to, or legitimate interest in, the Disputed Domain Name. The Respondent argues that he has rights and legitimate interests in the domain name because i) the Respondent's intent in registering the Disputed Domain Name was to create a unique web presence primarily for use in Puerto Rico, where the main language is Spanish; ii) the Respondent has maintained a legitimate interest in the Disputed Domain Name since its registration; and iii) the fact that it is not currently in use does not negate his legitimate interest in the Disputed Domain Name.

The Panel notes that the Respondent has not provided any evidence to support his arguments. Consequently, the Panel finds the Respondent's claims of having rights or legitimate interests in the Disputed Domain Name to be unfounded and without merit. Since the Respondent has failed to rebut the *prima facie* case against him, the Panel concludes that he has no rights to, nor legitimate interests in, the Disputed Domain Name.

C) Bad Faith

The Complainant asserts that the Respondent has registered and used the Disputed Domain Name in bad faith. It argues this on the grounds that the Disputed Domain Name currently leads to an inactive site and is not in use. Furthermore, the website associated with the Disputed Domain Name displays a message offering it for sale at the exorbitant price of US\$5,000, which is far above the registration fee. The Panel notes that a general offer for sale may be sufficient to establish registration and use in bad faith under Paragraph 4(a)(iii) of the Policy. See *Arris Enterprises LLC v. Milen Radumilo*, FA 2072536 (Forum Dec. 28, 2023) ("Respondent is offering to sell the Disputed Domain Name, and a general offer for sale may be sufficient to establish registration and use in bad faith per Paragraph 4(a)(iii) of the Policy. Further, the offer is for a price far in excess of the out-of-pocket registration fee. An offer to sell a Disputed Domain Name with an inflated price may act as further evidence of bad faith registration and use."). The Panel finds that the Respondent's general offer to sell the Disputed Domain Name, which is confusingly similar to the Complainant's well-known mark "OTTOGI," at the excessive price of US\$5,000 -far exceeding the out-of-pocket registration fee - constitutes bad faith registration and use.

The Panel further notes that passively holding a Disputed Domain Name can also be considered use for illegitimate purposes, depending on the circumstances surrounding the registration. The Panel agrees that the passive holding of a domain name does not necessarily prevent a finding that the domain name is being used in bad faith under Paragraph 4(a)(iii) of the Policy. See *Dermtek Pharmaceuticals Ltd. v. Sang Im / Private Registration*, FA 1522801 (Forum Nov. 19, 2013) (holding that because the respondent's website contained no content related to the domain name and instead generated the error message "Error 400- Bad Request," the respondent had registered and used the Disputed Domain Name in bad faith pursuant to Paragraph 4(a)(iii) of the Policy). See also *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003 (finding that in considering whether the passive holding of a domain name, following a bad faith registration of it, satisfies the requirements of Paragraph 4(a)(iii) of the Policy, the panel must give close attention to all the circumstances of the respondent's behavior, and a remedy can be obtained under the Policy only if those circumstances show that the respondent's passive holding amounts to acting in bad faith).

First, the Panel finds that the Complainant's "OTTOGI" marks and its Korean phonetic equivalent are prominently well-known and famous under the following circumstances:

(i) The Complainant holds numerous trademark rights that include "Ottogi" or "OTTOGI" in Korea and has also secured multiple trademark rights for "OTTOGI" in approximately 60 other countries, including the United States, Denmark, Brazil, Mexico, Japan, Vietnam, and the Philippines;

(ii) The Complainant also has overseas subsidiaries in the United States, China, Vietnam, and New Zealand, and exports to over 70 countries across the Americas, Asia, Oceania, and Africa, indicating its global expansion. Starting with a curry TV commercial in 1969, the Complainant has continued to feature famous celebrities and sports stars as product models in TV and print advertisements. The Complainant has consistently placed corporate PR advertisements in major daily newspapers such as the Chosun Ilbo, JoongAng Ilbo, Dong-A Ilbo, Kyunghyang Shinmun, Kukmin Ilbo, and Naeil Shinmun, as well as on terrestrial broadcasters like KBS2, MBC, SBS, and EBS;

(iii) In 1979, sales exceeded 10 billion KRW, and in 1989, they surpassed 100 billion KRW. By 2012, sales reached 1.0686 trillion KRW, and in 2016, they were 2.0106 trillion KRW. Last year, in 2023, sales amounted to 3.4546 trillion KRW on a consolidated basis, marking the second consecutive year of exceeding 3 trillion KRW;

(iv) The Complainant holds the largest number of top market share products among domestic food companies, with over 30 products leading in their respective categories, including curry and ketchup. Curry, ketchup, and mayonnaise have maintained their number one market positions for an extended period, with curry holding the top spot for about 50 years;

(v) Based on product excellence and exemplary management philosophy, the Complainant has received numerous awards over the past 55 years;

(vi) The Complainant's product strength, sales, market share, and marketing activities have been extensively covered by various domestic media outlets; and

(vii) The Complainant exports products to over 65 countries worldwide, supplying a variety of products to global franchises such as McDonald's, Burger King, and Costco. Notably, the Complainant supplies its flagship products such as Jin Ramen, Abalone Porridge, and Cup Rice to Costco, a major retail chain in the United States where the Respondent resides, making these products widely available to American consumers.

Secondly, the Respondent has made a general offer to sell the Disputed Domain Name at the excessive price of US\$5,000 - far exceeding the out-of-pocket registration fee - constituting bad faith registration and use.

Thirdly, the Respondent contends that the Disputed Domain Name was registered with the intention of developing a unique and original website for use in Puerto Rico; the Disputed Domain Name has never been used for commercial gain or to mislead consumers; the Disputed Domain Name has been maintained in good faith with the intention of developing a legitimate web presence unrelated to the Complainant; the Respondent's use of the Disputed Domain Name constitutes fair use, as it is not intended to exploit the Complainant's trademark but to develop a unique web presence for a different market and audience. However, the Panel notes that the Respondent failed to provide any evidence supporting its arguments.

Taking all of the above into account, the Panel concludes that the Respondent's passive holding of the Disputed Domain Name constitutes bad faith under Paragraph 4(a)(iii) of the Policy and that the Respondent is using the Disputed Domain Name in bad faith.

The Complainant further argues that the Respondent registered the Disputed Domain Name with actual knowledge of the Complainant's marks. The Respondent counters that there is no evidence he was aware of the Complainant's trademarks when he registered the Disputed Domain Name. Under Paragraph 4(a)(iii) of the Policy, actual knowledge may be proven through the totality of circumstances surrounding the registration of the Disputed Domain Name. See *Google Inc. v. Ahmed Humood*, FA 1591796 (Forum Jan. 7, 2015) ("This Panel makes that inference; Respondent has actual knowledge of Complainant's mark at the time of domain name registration based on the fame of Complainant's GOOGLE mark and Respondent's use of one of the disputed domain names to detail Internet domain name registration and maintenance services related to an in competition with Complainant.").

As previously noted, the Complainant's marks have become prominently well-known and famous. In particular, the Panel notes (i) the widespread fame of the Complainant's mark, which long predates the registration of the Disputed Domain Name, and (ii) the Respondent's use of a typosquatted version of the Complainant's marks. See *McGuireWoods LLP v. Josef Sarshar*, FA2211002019546 (Forum Dec. 8, 2022) ("Respondent copied [complainant's mark] verbatim into the Domain Name except for an intentional misspelling of the mark, which in and of itself evidences familiarity with the mark. Registering a confusingly similar domain name with actual knowledge of a complainant's rights in its mark is evidence of bad faith registration and use for the purposes of Paragraph 4(a)(iii) of the Policy."). The Panel infers that due to the prominent fame of the Complainant's marks, the Respondent had knowledge of the Complainant's rights in the "OTTOGI" mark when registering the Disputed Domain Name, thereby supporting a finding of bad faith registration under Paragraph 4(a)(iii) of the Policy.

7. 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 domain name **otoki.com** be **TRANSFERRED** from the Respondent to the Complainant.



DougJay LEE

Sole Panelist

Dated: August 14, 2024