

## **ADMINISTRATIVE PANEL DECISION**

Orion Energy Systems, Inc. v. Or, Or  
Case No. D2023-2050

### **1. The Parties**

The Complainant is Orion Energy Systems, Inc., United States of America ("United States"), represented by Reinhart Boerner Van Deuren s.c., United States.

The Respondent is Or, Or, India.

### **2. The Domain Name and Registrar**

The disputed domain name <indiaorionlighting.com> (the "Domain Name") is registered with Alibaba.com Singapore E-Commerce Private Limited (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 8, 2023. On May 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On May 10, 2023, the Registrar transmitted by email to the Center its verification response, disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 12, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on May 17, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 13, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 20, 2023.

The Center appointed Jeremy Speres as the sole panelist in this matter on July 11, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

The Complainant trades in energy-efficient lighting systems and related services. The Complainant has used ORION as its trade mark, and has owned and used for its primary website the domain name <orionlighting.com>, continuously since at least 2000.

The Domain Name was registered on February 9, 2023 and currently does not resolve to any website. The Complainant's evidence establishes that the Domain Name previously resolved to a website headed "ORION", ostensibly offering lighting products for sale. The website included an image of the Complainant's CEO, and a quotation attributed to him, that also feature on the Complainant's website.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant claims that it has common law rights in ORION and ORIONLIGHTING and further contends that the Domain Name is confusingly similar to its ORION and ORION LIGHTING marks, that the Respondent has no rights or legitimate interests in the Domain Name, and the Domain Name was registered and used in bad faith given that it has been used to impersonate the Complainant.

##### **B. Respondent**

The Respondent did not reply to the Complainant's contentions.

#### **6. Discussion and Findings**

##### **A. Identical or Confusingly Similar**

The Complainant's evidence establishes common law rights in the ORION mark. Where a domain name incorporates the entirety of a trade mark, as in this case, the domain name will normally be considered confusingly similar to that mark (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") at section 1.7). While panels usually disregard the content of the website associated with the domain name when assessing confusing similarity under the first element, the content of the Respondent's website clearly indicates that the Respondent registered the Domain Name because it believed it to be confusingly similar to the Complainant's mark. The website displayed the ORION mark, and purported to sell products similar to the Complainant's products (that the Complainant identifies as products of its competitors). Therefore, the use of the Domain Name affirms the confusing similarity between the Domain Name and the Complainant's common law rights in the ORION mark ([WIPO Overview 3.0](#) at section 1.15).

The Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

##### **B. Rights or Legitimate Interests**

The Complainant's mark was used extensively for many years prior to registration of the Domain Name. The Domain Name is confusingly similar to the Complainant's mark and the Complainant has certified that the Domain Name is unauthorised by it.

The general impression created by the Domain Name's erstwhile website, including the purported sale of competing goods and the display of an image and quote of the Complainant's CEO apparently sourced from the Complainant's website, is one of impersonation of the Complainant. UDRP panels have categorically held that the use of a domain name for illegal activity (e.g. impersonation) can never confer rights or legitimate interests on a respondent ([WIPO Overview 3.0](#) at section 2.13.1).

There is no evidence that any of the circumstances set out in paragraph 4(c) of the Policy, nor any others which might confer rights or legitimate interests upon the Respondent, pertain. The Complainant has satisfied paragraph 4(a)(ii) of the Policy by virtue of having made out an un rebutted *prima facie* case ([WIPO Overview 3.0](#) at section 2.1).

### **C. Registered and Used in Bad Faith**

Considering the facts canvassed above, the Domain Name's erstwhile website clearly impersonated the Complainant. In light of this and the composition of the Domain Name featuring the entirety of the Complainant's mark, the Respondent must have had the Complainant in mind when registering and using the Domain Name. It is clear in these circumstances that the Respondent sought to impersonate the Complainant, falling squarely within paragraph 4(b)(iv) of the Policy (*Ebay Inc. v. Wangming*, WIPO Case No. [D2006-1107](#)).

It is self-evident, from the Whois record, that the Respondent provided false contact details, which is an indicator of bad faith ([WIPO Overview 3.0](#) at section 3.2.1). The Panel draws an adverse inference from the Respondent's failure to take part in the present proceeding where an explanation is certainly called for ([WIPO Overview 3.0](#) at section 4.3).

The Complainant has satisfied paragraph 4(a)(iii) of the Policy.

### **7. Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name, <indiaorionlighting.com>, be transferred to the Complainant.

/Jeremy Speres/

**Jeremy Speres**

Sole Panelist

Date: July 25, 2023