

ADMINISTRATIVE PANEL DECISION

Fiserv, Inc. v. Daniel Lee, Hyun Enterprises, Inc.
Case No. D2022-4572

1. The Parties

Complainant is Fiserv, Inc., United States of America (“United States”), represented by Polsinelli PC Law firm, United States.

Respondent is Daniel Lee, Hyun Enterprises, Inc., United States.

2. The Domain Name and Registrar

The disputed domain name <ondotsys.com> (the “Domain Name”) is registered with Register.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 30, 2022. On December 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. Also on December 1, 2022, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 Respondent of the Complaint, and the proceedings commenced on December 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 26, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on December 28, 2022.

The Center appointed Robert A. Badgley as the sole panelist in this matter on January 6, 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.

On January 13, 2023, the Panel issued Procedural Order No. 1, which stated as follows:

“The Panel orders Complainant to provide the following evidence on or before January 20, 2023:

1. Provide support for the proposition that, prior to January 7, 2022 (the date the disputed Domain Name was registered), Complainant actually used ONDOT as a trademark, given the fact that Complainant does not appear to hold a registered trademark for ONDOT.
2. Provide support for the repeated allegation that, prior to January 7, 2022, Complainant’s alleged trademark ONDOT was “well known.”
3. Provide support for the allegation that Respondent actually created a website accessible via the disputed Domain Name that “impersonated” Complainant and “mirrored” Complainant’s website.
4. Provide support that the lawsuit (Annex 4 to the Complaint) actually arose from the plaintiff (De Lage Landen Financial Services, Inc.) visiting Respondent’s website rather than visiting Complainant’s actual website.

Respondent may reply to Complainant’s submission by January 27, 2023.”

On January 19, 2023, Complainant filed a response to Procedural Order No. 1, along with several annexes.

Respondent did not reply to Complainant’s submission within the given deadline.

4. Factual Background

According to the Complaint:

“[Complainant] Fiserv was initially founded in 1984. Through its existence, Fiserv and its subsidiaries or affiliates offer a vast array of financial and business products and services in the United States. In December 2020, Fiserv acquired Ondot Systems, Inc., a leading digital experience platform for financial institutions that has operated under that name since at least as early as 2011. For over ten years, Ondot Systems has used, and Fiserv continues to use the trademark ONDOT (the “ONDOT Trademark”) prominently in connection with their financial and business products and services in the United States”.

Annexed to Complainant’s response to Procedural Order No. 1 are various media articles confirming that Complainant (and its predecessor Ondot Systems, Inc.) have used ONDOT as a source identifier for various services. For instance, an article in *Business Wire* dated August 18, 2017 states:

“Ondot Systems’ mobile card services platform is designed to work with many leading mobile banking solution providers, including Alkami Technology, NCR’s Digital Insight, Malauzai Software, FISTM Mobile Connect, Access Softek, Inc. and Q2. Ondot’s mobile platform provides unified application that can control all card settings, including card on/off switches, location-based controls, spending limits, fraud alerts, and transaction or merchant controls. Banks can also choose to offer a standalone card control app that can be customized and white labeled with their own branding for customers who prefer card services without being a mobile banking customer.”

An August 24, 2020 article in *Global Newswire* repeatedly refers to Ondot Systems, Inc. as “Ondot” and states that Ondot provides “a digital card services platform” to more than 4,500 banks and credit unions.

Complainant also submitted screenshots of its commercial website at the domain name <ondotsystems.com> from November 26, 2020 and November 21, 2021.

The Domain Name was registered on January 7, 2022. The Domain Name currently resolves to a parking page with various hyperlinks like “Ondo, Nigeria” and “Ondo State Government”.

Complainant alleges that the Domain Name had previously resolved to a website “purporting to offer financial services under the ONDOT / ONDOT SYS / ONDOT SYSTEMS marks, and further utilized other marks associated with Complainant (e.g., FISERV and CARDHUB), all intended to scam Internet users into believing that Respondent purportedly provided Complainant’s services”. Complainant provided no evidence of this prior alleged use of the Domain Name, but Respondent has not denied this allegation.

Complainant was sued on July 14, 2022 in a Pennsylvania state court by a company (known herein as “DLLFS”). The plaintiff DLLFS asserted a breach of contract claim against Complainant. According to affidavits from that lawsuit that were sworn by current or former employees of Complainant, the suit alleged that Complainant had agreed to lease computer equipment from DLLFS at a price exceeding USD 360,000, but had failed to make any payments. According to the DLLFS complaint, DLLFS received emails from a person using the name of one of Complainant’s employees with the email extension “@ondotsys.com” (i.e., the disputed Domain Name), and eventually delivered the computer equipment to an address stated in the contract. According to Complainant, that address is entirely unrelated to Complainant.

Complainant succeeded in persuading DLLFS that Complainant had no knowledge of or involvement in these apparently fraudulent transactions, as DLLFS withdrew the suit on September 26, 2022.

In view of the fact that the email extension involved in the DLLFS lawsuit corresponds to the Domain Name, and in the absence of any input from Respondent (either in response to the Complaint or in response to Procedural Order No. 1), the Panel accepts that Respondent used the Domain Name to create a fake email address and impersonate Complainant, with the ultimate goal of duping potential vendors or business partners of Complainant.

5. Parties’ Contentions

A. Complainant

Complainant contends that it has established all three elements required under the Policy for a transfer of the Domain Name.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel concludes that Complainant has rights in the unregistered trademark ONDOT through evidence of use and consumer recognition provided in response to the Panel's Procedural Order No. 1. The Panel also concludes that the Domain Name is confusingly similar to that mark. The abbreviated word "sys" – whereas Complainant uses the full word "systems" in its own domain name and when referring to some of Complainant's products – does not prevent a finding of confusing similarity between the mark and the Domain Name. The entirety of the ONDOT mark is reproduced in the Domain Name, and ONDOT is clearly recognizable in the Domain Name.

Complainant has established Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services; or
- (ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel concludes that Respondent lacks rights or legitimate interests in connection with the Domain Name. The undisputed record shows that Respondent registered a Domain Name confusingly similar to Complainant's ONDOT mark and Complainant's <ondotsystems.com> domain name, and that the owner of the Domain Name sent fraudulent emails to a business (DLLFS) which imitated a Complainant employee and evidently duped DLLFS into delivering computer equipment worth more than USD 360,000 to a location where, it can be reasonably supposed, Respondent or someone in league with Respondent made away with the goods.

The Panel also notes Complainant's unrebutted allegation that, for a time, Respondent was using the Domain Name to operate a fake commercial website imitating Complainant and purporting to offer Complainant's services. The Panel also considers that, noting the composition of the Domain Name, such alleged use supports Respondent's likely purpose of creating an impression of the Domain Name being associated with the Complainant as a sustenance of Respondent's fraudulent emails.

In short, the undisputed record depicts Respondent's motives and conduct *vis-à-vis* the Domain Name as entirely fraudulent in nature. Obviously, Respondent lacks rights or legitimate interests in the Domain Name.

Complainant has established Policy paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation", are evidence of the registration and use of the Domain Name in "bad faith":

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant,

for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or

- (ii) that Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes that Respondent registered and used the Domain Name in bad faith under the Policy. The Panel incorporates its discussion above in the "Rights or Legitimate Interests" section. Respondent clearly had Complainant's mark in mind when registering the Domain Name, as is clear from the Domain Name itself ("sys" being an abbreviation of "systems", the term Complainant used in its own domain name, and in connection with some of Complainant's products), and the use to which Respondent put the Domain Name (setting up a fake email using the name of an actual Complainant employee to execute a fraudulent transaction).

On this record, the Panel finds that Respondent has registered and used the Domain Name in bad faith within the meaning of the above-quoted Policy paragraph 4(b)(iv).

Complainant has established Policy paragraph 4(a)(iii).

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 <ondotsys.com> be transferred to Complainant.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: February 2, 2023