

ADMINISTRATIVE PANEL DECISION

OANDA Corporation v. Da Peng Wang

Case No. D2022-0339

1. The Parties

The Complainant is OANDA Corporation, United States of America (“United States”), represented by Donahue Fitzgerald LLP, United States.

The Respondent is Da Peng Wang, China.

2. The Domain Names and Registrar

The disputed domain names <oandan6.com>, <oandan8.com>, <oandan9.com>, and <ooandan.com> are registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 31, 2022. On February 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On February 2, 2022, the Registrar transmitted by email to the Center its verification response confirming that the 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 the Respondent of the Complaint, and the proceedings commenced on February 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 24, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 25, 2022.

The Center appointed Peter Burgstaller as the sole panelist in this matter on March 2, 2022. 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 has rights in the mark OANDA; on August 17, 2004, a United States trademark (word) was registered, Registration No 2874939; on June 16, 2006, an International Trademark was registered, Registration No 890601, designating several jurisdictions, including China.

The Complainant has registered on August 4, 1996 the domain name <oanda.com> and uses this domain name to address its official website.

The disputed domain names were registered on November 26, 2021.

The disputed domain name <oandan6.com> addresses a website where the Complainant's mark and Logo were displayed together with text boxes wherein users can enter a username and password below the Complainant's mark and its Logo. The disputed domain names <oandan8.com>, <oandan9.com>, and <oandan.com> do not resolve to any active website.

5. Parties' Contentions

A. Complainant

The Complainant is a United States-based corporation with its principal place of business in the State of New York. Its business model seeks to transform all aspects of how the world interacts with currencies, whether that be trading or utilizing currency data and information, by providing currency exchange and financial information services and products.

The Complainant is the owner of the registered trademark OANDA; the mark is used around the world since decades by the Complainant as the basis of its name and as a source indicator of its commercial offering to the public.

The trademark OANDA is an invented and distinctive word; in 2004 the mark OANDA was registered as United States trademark with registration number 2874938. In addition, the Complainant has registered its mark OANDA also in other jurisdictions around the world, including Australia, Canada, China, the European Union etc.

The Complainant also owns common law rights in its mark OANDA since it has continuously used its mark in commerce since 1996. Besides that, the Complainant owns the domain name <oanda.com> since 1996 and used it as the location of its official website; the Complainant also uses a design mark (the "OANDA Logo") as its logo.

The Respondent has registered all four disputed domain names on November 26, 2021 and has affiliated the disputed domain name <oandan6.com> with a commercial website where it prominently displays the Complainant's mark and the OANDA Logo and claims to be the Complainant, or an affiliate of the Complainant and attempts blatantly to trick Internet visitors into so believing. The Respondent's commercial website moreover features text boxes wherein users can enter a username and password below the Complainant's mark and the OANDA Logo.

The disputed domain names incorporate the Complainant's trademark OANDA in its entirety; hence, the disputed domain names are confusingly similar to the Complainant's trademark OANDA; the mere addition of generic letters ("n", "o") together with generic numbers ("6", "8" and "9") and the generic Top-Level Domain ("gTLD") ".com" does nothing to dispel the connection in the public's mind with the Complainant's trademark OANDA.

The Complainant has never authorized the Respondent to use its trademark or logo; the Complainant is not affiliated with, and has never endorsed or sponsored, the Respondent.

The Respondent registered and used the disputed domain names in bad faith. The Respondent knew or should have known of the Complainant's rights in the mark OANDA when registered the disputed domain names because of the fame of the mark OANDA and the fact that the Complainant's mark has no meaning except as the Complainant's name and as a source indicator of the Complainant's services.

Moreover, the Respondent has been using the disputed domain names, since it first creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of either the Respondent or its phishing website, and then constructing the phishing website to fool visitors into believing that the Respondent is purportedly the Complainant and that the Respondent offers supposedly the Complainant's services, so as to trick those users into doing business with the Respondent instead of the Complainant.

B. Respondent

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

6. Discussion and Findings

6.1 Procedural issue – Addition of domain names following complaint notification

On March 15, 2022 the Complainant notified to the Center a request for adding a new domain name <oandan16.com> to the current proceeding alleging that after filing this Complaint the Respondent has registered the new domain name <oandan16.com> which also infringes its valuable trademarks.

On March 17, 2022 the Center transmitted by email to Alibaba.com Singapore E-Commerce Private Limited a request for registrar verification in connection with the domain name <oandan16.com>. Alibaba.com Singapore E-Commerce Private Limited transmitted by email to the Center on March 18, 2022 its verification response indicating that the Respondent is not listed as the registrant of the domain name <oandan16.com>.

Since the request for addition the domain name <oandan16.com> by the Complainant was notified to the Center after this proceeding was formally commenced, panels are generally reluctant to accept such requests because the addition of further domain names would delay the proceedings (section 4.12.2 of the [WIPO Overview 3.0](#)).

In the present case not only the Complaint was already notified to the Respondent and the proceeding was already formally commenced as well as the Respondent failed to file a Response to the Complainant's contentions, but also the registrant of the proposed additional domain name <oandan16.com> is not the Respondent.

Under these circumstances the Panel rejects the addition of the domain name <oandan16.com> to the current proceeding in accordance with paragraph 3(c) of the Rules.

6.2 Substantive issue

According to paragraph 4(a) of the Policy, the Complainant must prove that:

- (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

- (ii) the Respondent has no rights or legitimate interests with respect to the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

A. Identical or Confusingly Similar

The Complainant submitted evidence, which incontestably and conclusively establishes rights in the registered trademark OANDA.

The disputed domain names are confusingly similar to the mark OANDA in which the Complainant has rights, since they entirely contain this distinctive and fanciful mark and only add the letter “n” to the Complainant’s mark OANDA together with numbers in the case of the disputed domain names <oandan6.com>, <oandan8.com> and <oandan9.com>, and the letter “o” preceding the Complainant’s mark in the case of the disputed domain name <ooandan.com>.

It has long been established under UDRP decisions that where the relevant trademark is recognizable within the disputed domain name (which is the case at present) the mere addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) will not prevent a finding of confusing similarity under the first element of the Policy (see section 1.7 and 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition “[WIPO Overview 3.0](#)”).

Finally, it has also long been held gTLDs are generally disregarded when evaluating the confusing similarity of a disputed domain name.

The Panel therefore finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy

B. Rights or Legitimate Interests

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, 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 (see section 2.1 of the [WIPO Overview 3.0](#)). Here, the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names, which has not been rebutted by the Respondent.

Furthermore, the nature of the disputed domain names, comprising the distinctive and fanciful mark OANDA, in which the Complainant has rights, in its entirety together with the generic letter “n” and a number (“6”, “8”, and “9”) as suffix with regard to the disputed domain names <oandan6.com>, <oandan8.com> and <oandan9.com> or the letter “o” as prefix and “n” as suffix with regard to the disputed domain name <ooandan.com> cannot be considered fair as it falsely suggests an affiliation with the Complainant that does not exist (see section 2.5 of the [WIPO Overview 3.0](#)).

Moreover, the disputed domain name <oandan6.com> was used for illegal activity (phishing and impersonation/passing off) which can never confer rights or legitimate interests on the Respondent (see section 2.13.1 of the [WIPO Overview 3.0](#)).

Noting the above, and in the absence of any Response or allegations from the Respondent, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

As stated in many decisions rendered under the Policy (e.g. *Robert Ellenbogen v. Mike Pearson*, WIPO Case No. [D2000-0001](#)) both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainant must show that:

- the disputed domain names were registered by the Respondent in bad faith, and
- the disputed domain names are being used by the Respondent in bad faith.

(i) The Complainant has rights and is the owner of the distinctive and fanciful registered trademark OANDA, which is registered and used in many countries. Moreover, the domain name <oanda.com> is registered and is being used by the Complainant.

It is inconceivable for this Panel that the Respondent registered the disputed domain names without knowledge of the Complainant's rights in the mark OANDA, which leads to the necessary inference of bad faith. This finding is supported by the fact that the registration of the mark OANDA predates the registration of the disputed domain names, and the disputed domain names incorporate the Complainant's trademark OANDA entirely and the trademark is not descriptive but merely reflects the name of the Complainant and its services. The mere addition of the letter "n" together with a number regarding the disputed domain names <oandan6.com>, <oandan8.com> and <oandan9.com> or the letter "o" as prefix and "n" as suffix with regard to the disputed domain name <ooandan.com> even strengthens the impression that the Respondent must have been aware of the Complaint and its distinctive and fanciful mark OANDA.

Therefore, the Panel is convinced that the disputed domain names were registered in bad faith by the Respondent.

(ii) The Respondent also used the disputed domain names in bad faith:

<oandan6.com>:

The disputed domain name <oandan6.com> addressed a website where the Complainant's mark and Logo were displayed together with text boxes where users can enter a username and password below the Complainant's mark and its Logo – this is evidence of phishing.

The use of a domain name for *per se* illegitimate activity such as phishing can never confer rights or legitimate interests on a respondent - such behavior is manifestly considered evidence of bad faith use (see section 3.1.4 and 3.4 of the [WIPO Overview 3.0](#)).

<oandan8.com>, <oandan9.com> and <ooandan.com>:

Although there is no evidence that the disputed domain names are being actively used, previous UDRP panels have found that bad faith use under paragraph 4(a)(iii) does not necessarily require a positive act on the part of the respondent – inaction is within the concept of paragraph 4(a)(iii) (see especially *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *Ladbroke Group Plc v. Sonoma International LDC*, WIPO Case No. [D2002-0131](#)).

This Panel also concludes that the present passive holding of the disputed domain names, constitutes a bad faith use, putting emphasis on the following:

- the Complainant's trademark is distinctive and fanciful and used/registered globally;
- the Respondent has failed to present any evidence of any good faith use with regard to the disputed domain names;
- the disputed domain names incorporate the Complainant's trademark in its entirety, and is thus suited to

divert or mislead potential web users from the website they are actually trying to visit (the Complainant's site);

- the Respondent has registered all four disputed domain names on the same date; and
- there is no conceivable plausible reason for good faith use with regard to the disputed domain names.

Taking all these facts and evidence into consideration this Panel finds that the disputed domain names have been registered and used in bad faith under 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 disputed domain names, <oandan6.com>, <oandan8.com>, <oandan9.com>, and <oandan.com>, be transferred to the Complainant.

/Peter Burgstaller/

Peter Burgstaller

Sole Panelist

Date: March 18, 2022