

ADMINISTRATIVE PANEL DECISION

OANDA Corporation v. Privacy Service Provided by Withheld for Privacy ehf /
RICHARD WILLIAMS
Case No. DCC2022-0006

1. The Parties

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

The Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / RICHARD WILLIAMS, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <oandafinance.cc> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 26, 2022. On May 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 28, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on May 30, 2022 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 amendment to the Complaint on May 31, 2022.

The Center verified that the Complaint together with the amendment to 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 June 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 28, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 1, 2022.

The Center appointed Andrew Brown Q.C. as the sole panelist in this matter on July 6, 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 is Oanda Corporation, a United States-based corporation, which has used the OANDA trademark since 1996 for activities relating to currency trading, providing currency data and information and financial information services. It states that it has provided these services under the OANDA trademark all over the world and on nearly every continent.

The Complainant is the proprietor of a trademark registration for OANDA in the United States as follows:

OANDA	2874939	36	Currency exchange services, financial information services	Registered on August 17, 2004
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This registration has now achieved incontestable status.

The Complainant also has trademark registrations for OANDA in Australia, Canada, China, the European Union, Hong Kong (China), Singapore, Switzerland, Taiwan Province of China, and the United Kingdom.

The Complainant also claims to have goodwill and reputation (common law rights) as a result of having provided its currency trading and financial information services all over the world to millions of users since 1996 under that trademark. The Complainant states it has spent millions of dollars on promotion of its trademark and services.

As to domain names, the Complainant operates under the domain name <oanda.com> which was registered on August 3, 1996.

The disputed domain name was registered on January 1, 2022 and was used for phishing activities designed to trick Internet visitors into believing that the Respondent offers the Complainant's services and into doing business with the Respondent instead of the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant asserts its right in the OANDA trademark. The Complainant contends that the disputed domain name is confusingly similar to its OANDA trademark. It states that its OANDA trademark enjoys a high degree of inherent distinctiveness, reinforced by long-standing international recognition, so as to amount to a famous mark. It further claims that the term "finance", being used as part of the disputed domain name, strengthens the connection in the public's mind between the disputed domain name and the Complainant's OANDA trademark – given the nature of the services for which the Complainant's trademark is well known. It therefore claims that the disputed domain name is confusingly similar to its OANDA trademark.

The Complainant also contends that the Respondent has no rights or legitimate interests in the disputed domain name. In this regard, the Complainant states that it has never authorised the Respondent:

- (i) to incorporate the OANDA trademark into the disputed domain name;
- (ii) to use that trademark in any capacity;
- (iii) to assert that it is OANDA; or

(iv) to claim that it has any relationship with the Complainant.

The Complainant further states that the Respondent is not affiliated with it nor has the Complainant endorsed or sponsored the Respondent or any business associated with the phishing website created by the Respondent at the disputed domain name.

In relation to any possible claim by the Respondent as to a *bona fide* offering of services at the disputed domain name, the Complainant asserts that the Respondent knew or should have known of the Complainant's exclusive rights to its OANDA trademark when it registered the disputed domain name. This is because the phishing website established by the Respondent at the disputed domain name is designed to trick Internet visitors into believing that the Respondent "is OANDA". The Complainant contends that this activity is such that the Respondent cannot make any believable claim to a *bona fide* offering of services.

As an associated part of this assertion, the Complainant states that the Respondent has never used the disputed domain name in connection with a *bona fide* or legitimate offering of goods or services. This is because the use of a disputed domain name for an illegal or nefarious purpose such as trademark infringement, unfair competition, and fraud is not a *bona fide* offering of goods or services.

The Complainant states that the Respondent has never been commonly known by the disputed domain name or any mark incorporating the OANDA trademark. The Complainant further claims that the Respondent's use of the OANDA trademark in the phishing website cannot constitute legitimate noncommercial or fair use of the disputed domain name.

Finally, the Complainant contends that the disputed domain name was registered and has been used in bad faith. It asserts that:

- (i) A finding of bad faith may be made where the Respondent knew or should have known of the Complainant's use and registration of its trademark prior to registration of the disputed domain name;
- (ii) The Respondent has used the disputed domain name in bad faith with the intent to attract for commercial gain users to its phishing website located at the disputed domain name;
- (iii) The Respondent's registration of a domain name so obviously connected with the Complainant proves opportunistic bad faith.

B. Respondent

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

6. Discussion and Findings

Pursuant to paragraph 4(a) of the policy, the Complainant must prove each of the following elements with respect to the disputed domain name in order to succeed in this proceeding:

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

A. Identical or Confusingly Similar

The Complainant has provided evidence of its registration of OANDA as a trademark in the United States and registration of the same mark in Australia, Canada, China, the European Union, Hong Kong (China), Singapore, Switzerland, Taiwan Province of China, and the United Kingdom. The Complainant has also provided evidence of its use of the OANDA trademarks since 1996 throughout the world. A supporting

declaration from its General Counsel confirms that the Complainant “has spent millions of dollars to advertise and promote, in express connection with the OANDA trademark, both OANDA itself and the OANDA Services around the world”.

It is the Panel’s view that the Complainant has clearly and sufficiently demonstrated its rights in the OANDA trademark.

The Panel finds that the disputed domain name contains, as a dominant recognizable element, the OANDA trademark followed by the term “finance”. The use of the term “finance” does not prevent a finding of confusing similarity (see sections 1.7 and 1.8 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”)).

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s OANDA trademark.

Therefore, the Panel finds that paragraph 4(a)(i) of the policy is satisfied in favor of the Complainant.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish that it has rights or legitimate interests in the disputed domain name, among other circumstances, by showing any one of the following elements:

- (i) That before notice of the dispute, the Respondent used or made demonstrable preparations to use the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) That the Respondent has been commonly known by the disputed domain name, even if it had acquired no trademark or service rights; or
- (iii) That the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The overall burden of proof for establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name lies with the Complainant.

The Complainant has stated, and the Panel accepts, that it has never authorized the Respondent to incorporate OANDA into the disputed domain name nor to use that trademark in any capacity. The Panel further accepts that the Respondent has never been commonly known by the disputed domain name or the OANDA trademark. This is demonstrated by the fact that the Respondent’s registration information for the disputed domain name does not mention the OANDA trademark.

The Panel further finds that the Respondent’s use of the disputed domain name for a phishing website which prominently displays the OANDA trademark and purports to offer the same currency exchange and financial information services as the Complainant (but is a phishing scheme) cannot amount to a *bona fide* or legitimate offering of services. In this regard the Panel adopts the reasoning of previous panels in *OANDA Corporation v Wenshan Lin, WhoisGuard, Inc./Guobing Li*, and *Tao Liqiang*, WIPO Case No. [D2020-2551](#); *OANDA Corporation v Domain Admin, Privacy Protect, LLC (PrivacyProtect.org)*, WIPO Case No. [D2020-2445](#).

The Panel is also entitled to have regard to the lack of any substantive response on this point from the Respondent and the absence of any claim to rights or legitimate interests in the disputed domain name.

The Panel finds that the Complainant has met the burden of establishing a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, which has not been rebutted by the Respondent, and accordingly finds at paragraph 4(a)(ii) of the policy is satisfied in favor of the

Complainant.

C. Registered and Used in Bad Faith

The Panel is satisfied that the disputed domain name has been registered in bad faith for the following reasons:

(i) The Panel is satisfied that the OANDA trademark is well known amongst the relevant public in relation to currency exchange and financial information services. The Panel is also satisfied that at the time of registration of the disputed domain name, the Respondent was aware of the Complainant's OANDA trademark and its use of its domain name <oanda.com>. The Respondent's registration of the disputed domain name, which not only wholly incorporates the OANDA trademark, but also uses the term "finance" shows a deliberate targeting of the Complainant and its OANDA trademark in bad faith.

(ii) This finding is supported by the Respondent's establishment of a phishing website at the disputed domain name which purports to be the Complainant or part of the Complainant and seeks to divert Internet traffic to it for the purposes of phishing activities: *RapidShare AG v majeed randi*, WIPO Case No. [D2010-1089](#).

(iii) Without any rights or legitimate interests, the Respondent's registration of the disputed domain name incorporating the Complainant's well-known trademark itself clearly shows registration in bad faith in this case.

The Panel is also satisfied that the disputed domain name has been used in bad faith for the following reasons:

(i) The Complainant has provided evidence showing use of the disputed domain name for phishing activities designed to trick internet visitors into believing that the Respondent offers the Complainant's services and into doing business with the Respondent instead of the Complainant.

(ii) The Panel further finds that the Respondent's intention and interest was to benefit from the well-known reputation of the Complainant's OANDA trademark and to seek to generate income from this.

(iii) Further, the Respondent has made no submission in these proceedings and so (on all the facts in this case) the Panel is entitled to infer that the Respondent has intentionally used the disputed domain name with an intent to confuse people into thinking that it is controlled by the Complainant or an entity affiliated with the Complainant.

Accordingly, the Panel finds that paragraph 4(a)(iii) of the policy is satisfied in favor of the Complainant.

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 name <oandafinance.cc> be transferred to the Complainant

/Andrew Brown Q.C./

Andrew Brown Q.C.

Sole Panelist

Date: July 20, 2022