

ADMINISTRATIVE PANEL DECISION

OANDA Corporation v. Redacted for Privacy, Privacy Service Provided by Withheld for Privacy ehf / Wilna Charles, Oandaforex
Case No. D2022-1898

1. The Parties

Complainant is OANDA Corporation, United States of America ("US"), represented by Donahue Fitzgerald, United Kingdom ("UK").

Respondent is Redacted for Privacy, Privacy Service Provided by Withheld for Privacy ehf, Iceland / Wilna Charles, Oandaforex, US.

2. The Domain Name and Registrar

The disputed domain name <oandaforex.com> (the "Domain Name") 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 25, 2022. On May 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On May 28, 2022, 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 and contact information in the Complaint. The Center sent an email communication to Complainant on May 29, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on May 29, 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 Respondent of the Complaint, and the proceedings commenced on May 30, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 19, 2022. The Response was filed with the Center on June 16, 2022.

The Center appointed Christopher S. Gibson as the sole panelist in this matter on July 4, 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

Complainant is a US-based corporation with its principal place of business in New York. Complainant's business model seeks to transform how the world interacts with monetary currencies – whether that be trading or utilizing currency data and information – by providing currency exchange and financial information services and products.

Complainant has continuously used its OANDA mark since 1996, as the basis for its name and as a source indicator of its commercial offering of services to the public. The mark is an invented word and has no other meaning aside from referencing Complainant and its services.

In 2004, Complainant was granted US registration no. 2874938 covering its OANDA mark. That registration has achieved incontestable status under US federal law. In addition, Complainant has registered its OANDA mark in other jurisdictions around the world including Australia, Canada, China, the European Union, Hong Kong, Singapore, Switzerland, Taiwan, and the UK.

Complainant also owns common law rights in its OANDA mark. Complainant has used its mark in commerce since 1996. Complainant provides its services all over the world and on nearly every continent, and does so in nearly every instance in connection with the OANDA mark. There have been millions of users of OANDA services. Complainant has spent millions of dollars to advertise and promote both itself and its services, in express connection with the mark. Unsolicited media coverage tying the OANDA mark to Complainant and its services is widespread.

In addition, Complainant was granted the following US trademarks for its “FX” trademarks:

- FXCOMMERCE, reg. no. 2563220 (April 23, 2002)
- FXCHEATSHEET, reg. no. 3038064 (January 3, 2006)
- FXCONVERTER, reg. no. 3062959 (February 28, 2006)
- FXNEWS, reg. no. 3067801 (March 14, 2006)
- FXDAILY, reg. no. 3179330 (December 5, 2006),
- FXDELIVERY, reg. no. 3200454 (January 23, 2007)

Complainant has also registered the FXTRADE mark in China, receiving registration no. 6118158 (March 14, 2010).

Since 1996, Complainant has also owned the <oanda.com> domain name and used it as the location of Complainant's official website.

The Domain Name was registered on November 12, 2021. The website linked to the Domain Name purports to provide financial information and services related to digital currencies and blockchain. The website states, for example, that “Oandaforex.com is a financial markets portal that provides real-time data, financial insights, financial and breaking news completely free of charge with over 10 million monthly visitors.” Further, the site claims that “[t]housands trust Oandaforex.com which has handled over millions in total transactions. We're fast becoming leading provider of crypto-backed loans, having grown to become the most regulated, and completely reserved crypto-based investment institution.” The Panel observes that these statements on the website are inconsistent with Respondent's statements in its Response where, for example, Respondent characterizes itself as a “small beginner[]” and stated “Oandaforex.com is a new brand and still in their early stages of Development” and that “Oandaforex.com has not completed their website and occasionally utilizes it for tutorial reasons.”

5. Parties' Contentions

A. Complainant

(i) Identical or confusingly similar

Complainant states the Complaint concerns Respondent's unauthorized incorporation into the Domain Name of its registered OANDA trademark owned and used around the world by Complainant for decades. Complainant has submitted evidence to show it owns registered rights in its OANDA mark in the US and in other countries around the world. Complainant claims this ownership of a registered mark as to which the Domain Name is confusingly similar satisfies the Policy, paragraph 4(a)(i).

Complainant states that it has also demonstrated ownership of common law rights in its OANDA mark substantially preceding Respondent's registration of the Domain Name by decades. Complainant asserts such rights arise when a complainant's use of a mark results in secondary meaning, *i.e.*, the mark having become a distinctive identifier associated with Complainant or its goods or services. Secondary meaning can be established by a variety of factors, including advertising expenditures, consumer linking of the mark to the source, unsolicited media coverage of the product, sales success, and length and exclusivity of mark usage. Complainant maintains that the record in this case demonstrates it has cultivated sufficient secondary meaning in its OANDA mark as a unique source identifier of its products and services and of Complainant itself, so that Complainant has proven common law rights.

Complainant states that the relevant inquiry under the Policy, paragraph 4(a)(i), concerns whether the Domain Name is confusingly similar to the OANDA mark. Complainant contends that incorporating a complainant's registered trademark into a disputed domain name is sufficient without anything more to establish that such Domain Name is confusingly similar to that trademark. On this basis, Complainant submits that the Domain Name is confusingly similar to the OANDA mark for purposes of the Policy, paragraph 4(a)(i).

Furthermore, Complainant observes that the Domain Name includes the generic suffix "forex" appended to Complainant's world-famous OANDA mark. The confusingly similar inquiry thus depends on the relative distinctiveness of the mark and the non-mark elements in the Domain Name, and whether the non-mark element (*i.e.*, "forex") detracts from or contradicts the mark's function as an origin indicator. Complainant submits that where the incorporated trademark enjoys a high degree of inherent distinctiveness reinforced by longstanding international recognition so as to amount to a famous mark (which Complainant states is the case for its OANDA mark), and where the non-mark element in the Domain Name is generic and does nothing to dispel the connection in the public's mind between the trademark and Complainant, the Policy, paragraph 4(a)(i) is satisfied.

Further, Complainant states that in addition to the trademark registrations for its OANDA mark, it also has, as noted above, registrations covering the following trademarks: FXDELIVERY, FXCOMMERCE, FXCONVERTER, FXCHEATSHEET, FXNEWS and FXDAILY. Complainant has also registered the mark FXTRADE in China. Complainant explains that "fx" is the shortened phrase representing "forex," which in turn is commonly known to be an abbreviation for the word "foreign exchange". Complainant is widely known to offer international foreign exchange services, and the above registrations for the "FX" marks, both nationally and internationally, serve as proof of this. Complainant claims the word "forex" in the Domain Name reinforces the connection in the public's mind between Complainant, its OANDA marks, and its FX marks. All of the foregoing explains why the descriptive term "forex" was included in the Domain Name. The Domain Name is therefore confusingly similar to Complainant's OANDA mark, and Complainant has satisfied the Policy, paragraph 4(a)(i).

(ii) Rights or legitimate interests

Complainant states that it has never authorized Respondent to use the OANDA mark in the Domain Name or otherwise. Complainant is the exclusive owner of all rights in the mark in jurisdictions around the world.

Complainant has not given Respondent permission to advertise or distribute any of its OANDA-based services, whether in connection with the mark or otherwise. Complainant has not authorized Respondent to assert that Respondent is Complainant or that Complainant has any relationship with Respondent. Complainant is not affiliated with, and has never endorsed or sponsored, Respondent or any business associated with Respondent's website. Instead, Complainant asserts that Respondent has attempted to usurp the goodwill in Complainant's OANDA mark and deceptively impersonate Complainant via the website linked to the Domain Name in a blatant attempt to confuse and deceive Internet users into doing business with Respondent instead of Complainant. Accordingly, Respondent has no basis to argue it has any right or legitimate interest in the Domain Name.

Complainant contends that Respondent knew or should have known of Complainant's exclusive OANDA trademark rights when Respondent registered the Domain Name. This dispute concerns Complainant's world-famous mark, used by Complainant around the world for decades prior to Respondent's registration of the Domain Name, and supported by worldwide trademark registrations owned by Complainant. The mark has no meaning except as Complainant's name and as a source indicator of Complainant's services. Against these facts, the website accessible through the Domain Name is devoted to tricking Internet visitors into believing falsely that Respondent is supposedly Complainant, or affiliated with Complainant, and that Complainant has sponsored or endorsed Respondent's site. On this record, any story Respondent may spin to describe an alleged unawareness of Complainant's OANDA mark rights when Respondent registered the Domain Name would not be believable.

Further, Complainant asserts that Respondent cannot establish any right or legitimate interest in the Domain Name under the Policy, paragraphs 4(c)(i) or (iii), because Respondent has never used the Domain Name in connection with a *bona fide* offering of goods or services. Instead, Respondent registered and has been using the Domain Name: (a) to capture the attention of Internet users looking for information about Complainant and/or its services and who otherwise would likely be directed to Complainant's official website at its similar <oanda.com> domain name; and (b) to fool users into believing incorrectly that Complainant is responsible for or supports Respondent's site. Complainant contends the use of a disputed domain name for an illegal or nefarious purpose – such as the trademark counterfeiting/infringement, unfair competition, and fraud occasioned by Respondent's publication of its website – is not a *bona fide* offering of goods or services under Policy, paragraph 4(c)(i). Moreover, such use does not constitute a legitimate noncommercial or fair use and cannot under the circumstances confer on Respondent any rights or legitimate interests in the Domain Name.

Here, Respondent registered and was using the Domain Name for the singular bad faith purpose of trying to attract Internet users to Respondent's site by creating a likelihood of confusion between the Domain Name and the OANDA mark, for commercial gain. This constitutes bad faith under the Policy and means Respondent cannot establish any right or legitimate interest in the Domain Name by trying to prove that its use of the Domain Name for the website has been *bona fide*.

Finally, Respondent has never been commonly known by the Domain Name. No evidence suggests Respondent has ever been called by any name incorporating the OANDA mark or been commonly known by the mark or the Domain Name. This is demonstrated by the fact that Respondent's registration information for the Domain Name does not mention the mark.

(iii) Registered and used in bad faith

Complainant contends that Respondent registered and is using the Domain Name in bad faith. Complainant claims that here, the facts demonstrate it is not possible to conceive of any plausible actual or contemplated active use of the Domain Name by Respondent that would be legitimate.

Complainant contends a finding of bad faith may be made where a respondent knew or should have known of the registration and use of a trademark prior to registering the domain name. In other words, registration of a well-known trademark as a domain name is a clear indication of bad faith in itself, even without considering other elements. Complainant states this is the case with Respondent's registration of the

Domain Name decades after Complainant began obtaining its registered and common law rights in its world-famous OANDA mark and started using its <oanda.com> domain name as the portal to its official website. Complainant submits that the conclusion is inescapable given: (a) Complainant's longstanding registered rights in its OANDA mark; (b) the Domain Name implies an obvious affiliation with Complainant since the OANDA mark has no meaning other than as Complainant's name and as a source indicator to Complainant and its services, and the mark is the dominant component in the Domain Name; and (c) Respondent's website is entirely about Complainant and its services. Put simply, there is no basis upon which Respondent can prove that Respondent registered the Domain Name in good faith and without knowledge of Complainant's exclusive mark rights.

Complainant further submits that Respondent has used the Domain Name in bad faith with the intention to attract, for commercial gain, users to Respondent's website. Complainant contends a registrant's use of a domain name in which the registrant has no right or legitimate interest to pursue an illegal activity constitutes bad faith registration and use under the Policy. Respondent's bad faith under Policy, paragraph 4(b)(iv), is established because Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's site by: (a) creating a likelihood of confusion with Complainant's OANDA mark as to the source, sponsorship, affiliation, or endorsement of either Respondent or its website; and (b) constructing Respondent's website to fool visitors into believing that Respondent is purportedly Complainant and that Respondent supposedly offers Complainant's services, so as to trick those users into doing business with Respondent instead of Complainant. Complainant claims that where Respondent at the time of registering the Domain Name had knowledge of Complainant's rights in the OANDA mark, this opens the door for the Panel to find that the Domain Name was registered with an intention to take unfair advantage of confusion between that mark and the Domain Name in order to draw Internet users to Respondent's website – which in turn constitutes bad faith registration and use of the Domain Name under the Policy.

Complainant contends the only plausible analysis of the evidence in this case establishes that Respondent was aware of Complainant's OANDA mark rights when Respondent registered the Domain Name. Complainant had owned its mark rights for decades prior to the date on which Respondent registered the Domain Name. The mark is an invented word with no meaning other than as Complainant's name and a source indicator for its services. The dominant component of the Domain Name is Complainant's OANDA mark. Complainant states the content of Respondent's website is devoted exclusively to Complainant and its services. Respondent has impermissibly traded off the OANDA mark's fame by using it, without Complainant's authorization, to confuse Internet users into visiting Respondent's commercial website where Respondent has tried to fool those same users, based on Respondent's attempt to steal Complainant's identity, into believing that Complainant has endorsed or sponsored Respondent's actions in relation to the Domain Name and Respondent's site. This is quintessential bad faith registration and use under the Policy.

Finally, Complainant contends that a finding of bad faith registration and use is necessary where a disputed domain name is so obviously connected with a well-known product such that its very use by someone with no connection to the product suggests opportunistic bad faith. Complainant submits that this circumstance exists here and requires a finding that Respondent registered and is using the Domain Name in bad faith.

B. Respondent

(i) Identical of confusingly similar

Respondent contends that the Domain Name does not correspond to Complainant's OANDA trademark registration or Complainant's <oanda.com> domain name. Respondent asserts that while Complainant's trademark is OANDA, it is not the Domain Name or "oandaforex".

Respondent further claims that Complainant's argument – that Complainant has the only right to use the OANDA mark in the US and other countries – is a moot point in this case. According to Respondent, while Complainant provides brokerage services and clearly states on its website that OANDA, FXTRADE, and FX are trademarks held by Complainant, the Domain Name is not included in this statement and is not being used, and has never been used or confirmed to be used by Complainant as a source identifier for its goods

and services. Respondent points out that Complainant acquired the trademark registration for OANDA and FX, not the Domain Name. Respondent contends that Complainant has demonstrated no use of the Domain Name that will lead to confusion or dilution.

(ii) Rights or legitimate interests

Respondent contends that prior to obtaining notice of the dispute, Respondent used the Domain Name for a valid offering of goods or services, such as financial news reports, and had made all reasonable preparations to use the Domain Name in conjunction with a lawful offering of goods or services. Respondent asserts there is no commercial advantage associated with the information provided by Respondent, nor has there been any attempt to deceive consumers or harm Complainant's trademark.

Respondent states that Complainant must have been closely studying the Domain Name and waited until Respondent took a complete break and began working behind-the-curtain on re-strategizing, in the hopes of releasing a better version of the website linked to the Domain Name that can withstand hackers and provide a news portal standard. Respondent states it is nearly finished with the new version of its website, which will be released soon and is not willing to give up development for reasons that have no supporting evidence.

Respondent contends the claim that Complainant is the sole owner of all rights in the OANDA mark in jurisdictions around the world is without merit because there is no connection between the OANDA mark and the Domain Name. Complainant has failed to show through evidence that the Domain Name is Complainant's trademark, instead twisting words and claiming ownership of the Domain Name without providing evidence. As a result, Respondent argues Complainant has no right over the Domain Name. Complainant has not offered any proof to back up its false charges, and Respondent has never marketed or distributed any of Complainant's services. Furthermore, Respondent has never claimed that the Domain Name is affiliated with, endorsed, supported or promoted by Complainant. Respondent states that its disclaimer page on the website linked to the Domain Name makes clear that Respondent is an autonomous entity with no ties to other organizations.

Respondent claims Complainant's allegations are lies and fabrications that Respondent is operating a phishing site and attempting to usurp Complainant's goodwill in its OANDA mark by deceptively impersonating Complainant in an attempt to confuse and defraud Internet users into doing business with Respondent rather than Complainant. Respondent argues that because Complainant is a large corporation, it should be able to establish evidence that Respondent's site is a phishing website or provide reports of persons who have been victims of Respondent's alleged nefarious conduct. Instead, Complainant has no provided no basis for these charges and is attempting to sabotage Respondent's efforts.

Respondent asserts that another argument that should not be taken seriously is that Respondent cannot prove any right or interest in the Domain Name because Respondent has received notice of this dispute. Respondent states that the supposed notice Complainant claims to have sent to Respondent via mail had nothing to do with any ICANN-approved provider. Respondent states Complainant contacted Respondent directly without any legitimate means of proving the authenticity of its mail, threatening and harassing Respondent to surrender the Domain Name immediately. This alleged notice was received electronically on December 20, 2021 by Respondent. Respondent states the email ended up in Respondent's spam folder. There was no reason for Respondent to assume that Complainant would write Respondent and pose threats. Respondent states the email created security concerns as it was suspected of containing spamming or dangerous information. Respondent asserts the email was a harassment for Respondent to relinquish the Domain Name immediately, and was in violation of the Policy and Rules for commencing a case under the UDRP.

Respondent claims Complainant's arguments are unjustifiable that Respondent was aware of or should have been aware of Complainant's OANDA mark when registering the Domain Name. Respondent acknowledges that OANDA is used by Complainant and is a famous mark in some parts of the world; however, Complainant does not own any right over the Domain Name. Respondent contends Complainant's argument that the OANDA mark is a source indicator for Complainant's services is absurd because the

Domain Name has never been used as an identity for Complainant or its services. When Complainant without providing evidence accuses Respondent of being dedicated to phishing and duping Internet visitors into believing that Respondent is allegedly Complainant, or linked with Complainant, Respondent urges this is a demonstration of desperation by Complainant. Complainant is seeking to eliminate small beginners in fear of future competitors.

Respondent states that its site is a new brand and still in early stages of development. Respondent claims it is a legitimate business with a mission to provide foreign exchange news and market data to customers, with plans to expand in the future to provide more services that may be of interest to investors. Respondent states it has not completed its website and occasionally uses it for tutorial reasons, as mentioned on the disclaimer page. Because it is still new and vulnerable to attacks, Respondent states it was hacked twice and the site was taken down by hackers. Prior to this, Respondent was able to successfully develop a complete financial news website. Despite that Respondent cannot give proof of this since it was not documented, Complainant cannot prove that the website was used in bad faith.

Respondent claims the Domain Name has never been used for malicious purposes. The website linked to the Domain Name has its own distinct logo and there has never been trademark infringement against Complainant, nor does the site compete with Complainant. Complainant's OANDA trademark and logo have never been displayed on the website linked to the Domain Name. Respondent claims that it made commercial use of the Domain Name before it was recently hacked, providing users with real-time financial news. The website operation yielded no economic benefits and was used fairly. Respondent states it has no intention of deceiving Complainant's customers or tarnishing the OANDA trademark.

(iii) Registered and used in bad faith

Respondent contends the Domain Name has never been lawfully used by anyone until Respondent registered the Domain Name and began using it on November 12, 2021. The website linked to the Domain Name is not a phishing site and has never been about Complainant, its services, or any other company other than Respondent. Respondent claims Complainant has no foundation to claim that Respondent registered the Domain Name in bad faith and instead is creating lies to have the Domain Name removed from the Internet.

Respondent contends it has never deliberately attempted to attract improperly Internet users for commercial gain. In terms of logo, name, website design, color, there is no chance of mistake between Complainant's and Respondent's sites. Respondent's website is not designed to mislead or deceive visitors into believing that Respondent is ostensibly Complainant or that Respondent provides Complainant's services, in order to dupe users into doing business with Respondent rather than Complainant.

Respondent reiterates that it has no ties to Complainant or its products, and that Respondent does not wish to be associated with Complainant or its services, or with the company. Respondent states it is using the Domain Name to provide lawful services to Internet users, despite that it is only getting started and thus has no proof to give at this time.

Finally, Respondent states it has no connection to or knowledge of the <oandaifx.com> domain name, which is not in dispute in this case. Respondent asserts that Complainant has chosen to falsely accuse Respondent of being that Domain Name's owner.

6. Discussion and Findings

In order to succeed on its Complaint, Complainant must demonstrate that the three elements set forth in paragraph 4(a) of the Policy have been satisfied. These elements are that:

- (i) the Domain Name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights;

- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) Respondent has registered and is using the Domain Name in bad faith.

A. Identical or Confusingly Similar

The Panel determines Complainant has demonstrated that it has well-established rights in its OANDA trademarks through registration and widespread use around the world. Complainant has also demonstrated rights in its FX marks through registration and use.

The Panel further finds that the Domain Name incorporates the OANDA mark in its entirety, while adding the term, “forex”, which is commonly known to be an abbreviation for the phrase “foreign exchange” and is generally descriptive of Complainant’s line of business. Complainant has further explained that the acronym “fx”, which corresponds to Complainant’s FX marks, is a shortened abbreviation representing “forex”. Be that as it may, the Panel determines that even with the addition of the term “forex”, the OANDA mark, which is placed first in the Domain Name, remains the dominant feature in it. Therefore, the combination of Complainant’s OANDA mark with the term “forex” (referencing foreign exchange) creates confusing similarity under the Policy. See section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), which states that “where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing”; see also [WIPO Overview 3.0](#), section 1.8 (“Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.”).

Accordingly, the Panel finds that the Domain Name is confusingly similar to a trademark in which Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Regarding the second element of the Policy, section 2.1 of the [WIPO Overview 3.0](#) states, “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.”

Here, the Panel determines that Complainant has made out a *prima facie* case. The Panel finds that Complainant has not authorized Respondent to use Complainant’s well-established OANDA trademark; that Respondent is not commonly known by the Domain Name; that Respondent has not used the Domain Name for a legitimate noncommercial or fair use, nor used it in connection with a *bona fide* offering of goods or services. Instead, the Domain Name has been used to connect to a website that purports to offer financial information and services, as least in part related to digital currencies such as cryptocurrency-backed loans and cryptocurrency-based investments. The financial information and services that Respondent purports to offer are similar, if not directly related to, the financial information and currency exchange services offered by Complainant. Moreover, as observed in section 4 above, factual statements made on Respondent’s website contradict Respondent’s statements in its Response, where Respondent has certified that the information contained in the Response is to the best of Respondent’s knowledge complete and accurate. These contradictions raise serious concerns about the authenticity of Respondent’s website and the accuracy of the statements made both on Respondent’s site and in its Response.

Moreover, as noted above, the Domain Name is comprised not only of Complainant’s unique and well-known OANDA trademark (which is an invented word with no meaning other than as Complainant’s name and a source indicator for its services), but also the term “forex”, which is a common reference to “foreign exchange” and generally descriptive of Complainant’s line of business. Despite Respondent’s argument that it “does not wish to be associated with Complainant or its services”, Respondent has not explained why chose a Domain Name that is uniquely associated with Complainant and descriptive of Complainant’s

business, even while Respondent website purports to be focused on cryptocurrency financial services. The Panel concludes that the answer to this question, based on the entire record in this case, is that Respondent, at a minimum, is engaged in unfair competition with Complainant. However, the Panel is also concerned that Respondent might be seeking to use its website, containing false statements, for unlawful purposes. In any event, Respondent's use of the Domain Name in the manner demonstrated by the evidence in this case does not give rise to any right or legitimate interest in the Domain Name.

Accordingly, the Panel finds that Complainant has made a *prima facie* showing of Respondent's lack of rights or legitimate interests in respect of the Domain Name, which has not been rebutted by Respondent. The Panel therefore finds that Complainants have established the second element of the Policy in accordance with paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

The third element of paragraph 4(a) of the Policy requires that Complainant demonstrate that Respondent registered and is using the Domain Name in bad faith. [WIPO Overview 3.0](#), section 3.1, states that "bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark".

Here, the Panel determines that the Domain Name was registered and has been used in bad faith. With respect to registration, the evidence submitted by Complainant demonstrates that Respondent improperly targeted Complainant and its distinctive and unique OANDA trademark when registering the Domain Name. Complainant has made clear that the OANDA mark is an invented word with no meaning other than as reference to Complainant's name and as source indicator for its services. Respondent used Complainant's trademark in full, while combining it with the term "forex", which refers to Complainant's currency exchange business. The Panel finds that the Domain Name is so obviously connected with Complainant's well-established and distinctive OANDA mark that its use by Respondent suggests opportunistic bad faith. Moreover, in the face of these allegations made by Complainant, Respondent has not denied knowledge of Complainant and its well-known OANDA trademark. Indeed, Respondent has not justified why it chose a Domain Name that is uniquely associated with Complainant and its OANDA mark and descriptive of Complainant's business, while Respondent's website purports to be focused on cryptocurrency financial services.

This point is further confirmed by Respondent's use of the Domain Name. Respondent is using the Domain Name, which falsely conveys an association with Complainant, to lead Internet users to Respondent's website. The inevitable consequence is that there will be confusion, as a substantial proportion of Internet users visiting the site will be doing so in the expectation of reaching a site of, or authorized by, Complainant. Complainant has submitted evidence to indicate that the Domain Name was being used by Respondent for a website that purports to provide financial information and related services for digital currencies and blockchain. However, there are contradictions, for example, between the statements on Respondent's website that it has "over 10 million monthly visitors" and "[t]housands trust Oandaforex.com which has handled over millions in total transactions", while Respondent in its Response has stated it is a "small beginner[]" and "Oandaforex.com is a new brand and still in their early stages of Development" and that "Oandaforex.com has not completed their website and occasionally utilizes it for tutorial reasons". These inconsistencies do not support a view that Respondent is operating a *bona fide* website in relation to the financial information and services it purports to offer. These contradictions, in combination with the choice of the Domain Name, as noted above, point to Respondent engaging in unfair competition at a minimum, and possibly also unlawful use. See [WIPO Overview 3.0](#), section 3.1.4, providing in relevant part that "use of a domain name for per se illegitimate activity such as the sale of counterfeit goods or phishing can never confer rights or legitimate interests on a respondent, such behavior is manifestly considered evidence of bad faith." Thus, the Panel finds that in this case, by using the Domain Name, Respondent has intentionally attempted to attract Internet users to its website by creating a likelihood of confusion with Complainant's well-known OANDA mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website. This amounts to bad faith use within the broad ambit of the Policy.

Further, even if Respondent is not engaged in any unlawful use, the Panel determines that Respondent, through the Domain Name uniquely associated with Complainant, is illegitimately identifying itself as Complainant in a confusing manner. If Respondent wishes to develop a legitimate website providing cryptocurrency-related financial services, Respondent can do so in any number of ways without taking advantage of Complainant's name and OANDA trademarks. See *e.g.*, *Red Bull GmbH v. Maxwell Arnold*, WIPO Case No. [D2014-1589](#) ("manipulation of the complainant's name as a domain name is an abuse within the broad ambit of the Policy, where the intentions of respondent are to cause initial interest confusion with a view to expanding coverage of the respondent's site").

In conclusion, the Panel determines that, for all of the above reasons, the Domain Name was registered and is being used in bad faith. Accordingly, Complainant has satisfied the third element 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, <oandaforex.com>, be transferred to Complainant.

/Christopher S. Gibson/

Christopher S. Gibson

Sole Panelist

Date: July 30, 2022