

ADMINISTRATIVE PANEL DECISION

Bellwether FOS Holdco, Inc. v. Name Redacted
Case No. D2024-2285

1. The Parties

The Complainant is Bellwether FOS Holdco, Inc., United States of America, represented by Davis Graham & Stubbs LLP, United States of America.

The Respondent's identity has been redacted.¹

2. The Domain Name and Registrar

The disputed domain name <flrstonsite.com> ("Disputed Domain Name") is registered with Squarespace Domains II LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 3, 2024. On June 5, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On June 6, 2024, 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 (Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 7, 2024 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 June 10, 2024.

The Center verified that the Complaint [together with the amendment to the Complaint/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

¹The Respondent appears to have used the name of an employee of Complainant when registering the Disputed Domain Name. In light of the potential identity theft, the Panel has redacted the Respondent's name from this Decision. However, the Panel has attached as Annex 1 to this Decision an instruction to the Registrar regarding transfer of the Disputed Domain Name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this Decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

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 17, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 7, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 15, 2024.

The Center appointed Douglas M. Isenberg as the sole panelist in this matter on July 19, 2024. 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 states that it “has over 100 offices and provides disaster recovery and property restoration services to clients across North America.” Complainant states, and provides evidence to support, that it owns the following trademark registrations: U.S. Reg. No. 6,331,900 for FIRSTONSITE (registered April 27, 2021); U.S. Reg. No. 6,331,904 for FIRSTONSITE RESTORATION (registered April 27, 2021); and U.S. Reg. No. 6,969,576 for FIRST ONSITE PROPERTY RESTORATION (registered January 31, 2023). These registrations are referred to herein as the “FIRSTONSITE Trademark.”

The Disputed Domain Name was created on September 5, 2023. According to the Complaint, and as supported by an annex provided by Complainant, the Disputed Domain Name has been used to “email[] First Onsite’s customer posing as an employee of First Onsite.” This email “used the name of one of First Onsite’s actual employees and the email itself included First Onsite’s standard email signature branding and imagery”; and “[t]he malicious actor [falsely] informed First Onsite’s customer that First Onsite was updating its accounting system and sought banking information from First Onsite’s customer.”

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name.

Notably, the Complainant contends that:

- The Disputed Domain Name is confusingly similar to the FIRSTONSITE Trademark because the Disputed Domain Name “contains a lowercase ‘L’ that is intended to resemble a lowercase ‘I,’ which does not significantly affect the appearance of” the FIRSTONSITE Trademark, and “[a] domain name that substitutes of similar-appearing characters of a trademark [...] is confusingly similar for the purposes of the first element.”
- Respondent has no rights or legitimate interests in the Disputed Domain Name because, inter alia, “Respondent has not received authorization or a license to use any of First Onsite’s Marks, or otherwise represent itself as part of First Onsite’s business”; “Respondent is not affiliated with First Onsite and has not in any other way been permitted by First Onsite to offer First Onsite’s services, or to register any domain name incorporating First Onsite’s Marks”; and “Respondent uses the Disputed Domain Name to engage in illegal activity by ‘spoofing’ First Onsite’s domain name in an attempt to deceive First Onsite’s customers into believing that they are interacting with representatives of First Onsite in order to steal money from First Onsite’s customers.”
- The Disputed Domain Name was registered and is being used in bad faith because, inter alia, “Respondent is ‘spoofing’ First Onsite’s email address to falsely represent that it is affiliated with First

Onsite”; “Respondent has attempted to defraud First Onsite’s customers by making these false representations”; “Respondent is not using the Disputed Domain Name to offer any bona fide goods or services in any field”; and “Respondent has impermissibly and misleadingly registered the Disputed Domain Name under the name of one of First Onsite’s employees.”

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant’s trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“WIPO Overview 3.0”](#)), section 1.7.

Based upon the trademark registrations cited by Complainant, it is apparent that Complainant has rights in and to the FIRSTONSITE Trademark.

As to whether the Disputed Domain Name is identical or confusingly similar to the FIRSTONSITE Trademark, the relevant comparison to be made is with the second-level portion of the Disputed Domain Name only (i.e., “firstonsite”) because “[t]he applicable Top-Level Domain (‘TLD’) in a domain name (e.g., ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test”. [WIPO Overview 3.0](#), section 1.11.1.

As set forth in section 1.7 of [WIPO Overview 3.0](#): “in cases where a domain name incorporates the entirety of a trademark, or 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.” Further, as set forth in section 1.9 of [WIPO Overview 3.0](#): “A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. This stems from the fact that the domain name contains sufficiently recognizable aspects of the relevant mark [...] Examples of such typos include [...] substitution of similar-appearing characters.”

Here, the Disputed Domain Name incorporates the entirety of U.S. Reg. No. 6,331,900 for the FIRSTONSITE Trademark, simply substituting the letter “i” with the letter “l”, which is a similar-appearing character.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant

evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name such as those enumerated in the Policy or otherwise.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent has apparently used in the Disputed Domain Name in connection with a phishing attempt, specifically to impersonate Complainant apparently for the intended purpose of fraudulently attempting to collect payment, which is commonly known as a "business email compromise".

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have held that the use of a domain name for illegal activity, such as the business email compromise phishing attempt described above, constitutes bad faith. Specifically, section 3.1.4 of [WIPO Overview 3.0](#) states that "the use of a domain name for per se illegitimate activity such as [...] phishing [...] is manifestly considered evidence of bad faith"; and section 3.4 of [WIPO Overview 3.0](#) states that "use of a domain name for purposes other than to host a website may constitute bad faith," such as "sending email [or] phishing," especially where "the respondent's use of the domain name [is] to send deceptive emails" for purposes such as "to solicit payment of fraudulent invoices by the complainant's actual or prospective customers."

Having reviewed the record, the Panel finds the Respondent's registration and use of the Disputed Domain Name constitutes bad faith under the Policy.

The Panel finds that the Complainant has established 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 disputed domain name <flrstonsite.com> be transferred to the Complainant.

/Douglas M. Isenberg/

Douglas M. Isenberg

Sole Panelist

Date: July 22, 2024