

ADMINISTRATIVE PANEL DECISION

Oney Bank v. jalta ofi
Case No. D2023-4325

1. The Parties

The Complainant is Oney Bank, France, represented by SafeBrands, France.

The Respondent is Jalta Ofi, France.

2. The Domain Name and Registrar

The disputed domain name <oney-solution.com> 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 October 18, 2023. On October 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 19, 2023, 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 October 25, 2023, 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 October 30, 2023. On October 26, the Respondent sent an email communication in which he stated that he did not understand why this domain name was problematic.

On October 25, 2023, the Center informed the Parties in French and English, that the language of the registration agreement for the disputed domain name is French. On October 27, 2023, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainant's submission.

The Center verified that the Complaint together with the 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 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 November 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 30, 2023. The Respondent sent an email communication to the Center on November 13, 2023. On December 4, the Center notified the Parties of the commencement of Panel Appointment process.

The Center appointed Benjamin Fontaine as the sole panelist in this matter on December 8, 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.

4. Factual Background

The Complainant is Oney Bank, a French company established in 1983 and specialized in consumer credit, electronic payments and payment card management.

The Complainant is the owner of various trade marks throughout the world composed of the sign “Oney” alone or combined with another element, including the International Registration no. 1043336 for ONEY, registered on April 9, 2010 granted for goods and services in classes 9, 35, 36, 36, 39, 41, 42 and designating in particular the European Union.

The Complainant also holds numerous domain names containing the sign “Oney”, such as <oney.com> registered since October 12, 2003.

The disputed domain name <oney-solution.com> was registered on August 1, 2023 and redirects to an inactive website. According to Annex 7 to the Complaint, the Respondent has active MX records attached to the disputed domain name and used an email address configured on the disputed domain name to send at least one message impersonating an employee of the Complainant. The email was drafted in French and proposed investments to a potential client. The signature reproduced the trade mark of the Complainant, its address, and included a reference to its domain name <oney.com>.

On September 25, 2023, the Complainant, through its counsel, sent an abuse report to the disputed domain name registrar, reporting a phishing attack. This request was forwarded to Google, which the registrar indicates as “managing” the disputed domain name but Complainant received no further response.

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 its trade mark ONEY. The disputed domain name reproduces the Complainant’s trade mark ONEY as a dominant and distinctive element. It also contends that the addition, after a hyphen, of the generic term “solution”, which could refer to the Complainant’s activities, has no impact on this assessment. Likewise, the addition of the generic Top-Level Domain “.com” has no impact either and should be disregarded for the comparison.

Second, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It did not obtain any authorization to use the registered trade mark ONEY as a domain name. Searches conducted after the Respondent’s identity was disclosed show that it does not appear to be known under the sign ONEY. Moreover, the disputed domain name was used to carry out phishing activities. This cannot confer any rights or legitimate interests in the disputed domain name.

Third, the Complainant's indicates that the disputed domain name was registered and used in bad faith. The trade mark ONEY is a fanciful term, and a simple Internet search on the sign ONEY brings up the Complainant's trade mark. Moreover, the Respondent's use of the disputed domain name in furtherance of a phishing scheme to impersonate the Complainant and collect data, reveals an actual knowledge of the Complainant and its prior rights and does not constitute a *bona fide* offering of goods and services.

B. Respondent

The Respondent did not reply formally to the Complainant's contentions. It did send, however a couple of short emails to the Center in the course of the proceeding: the first one in French, the second one in English. In these emails the Respondent basically claims not to understand why the disputed domain name is problematic and noted that "there is a misunderstanding".

6. Discussion and Findings

Preliminary Matter – Language of the Proceedings

The Complaint was filed in English. However, according to information transmitted to the Center by the concerned registrar, the language of the Registration Agreement for the disputed domain name is French. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complainant requested that the language of the proceeding be English for several reasons, including the fact that:

- the registrar in this proceeding is the company Squarespace Domains II LLC, located in United States of America.
- The proxy used by the Registrant is located in United States of America too;
- Translating the complaint into French will create more prejudice for the Complainant, as it will increase the costs and cause more financial damage to the Complainant.

The Respondent did not make any specific submissions with respect to the language of the proceeding English, even if it appears to be domiciled in France. The Respondent used English in an email to the Center, in response to the Notification of Complaint, thus demonstrating its understanding of this language.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

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 trade mark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here “solution” may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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.

Panels have held that the use of a domain name for illegal activity, here, phishing and impersonation, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Based on the available record, 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 registered a domain name composed of the Complainant’s distinctive trade mark ONEY associated with a term that may be related to the Complainant’s activities. The disputed domain name will be perceived by the public as being affiliated with or authorized by the Complainant and obviously creates a risk of implied affiliation.

This registration has been made for the specific purpose of using the disputed domain name to perpetrate phishing activities by creating at least one e-mail address impersonating an employee of the Complainant to send messages for the purpose of misleading the addressee and harvesting data.

Panels have held that the use of a domain name for illegal activity constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent’s registration and use of the disputed domain name constitutes bad faith under the Policy.

Based on the available record, 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 <oney-solution.com> be transferred to the Complainant.

/Benjamin Fontaine/

Benjamin Fontaine

Sole Panelist

Date: December 22, 2023