

## **ADMINISTRATIVE PANEL DECISION**

AStar Technologies, Ltd. v. Thomas Conley  
Case No. D2023-5180

### **1. The Parties**

The Complainant is AStar Technologies, Ltd., Cayman Islands, represented by Hanson Bridgett LLP., United States of America (“United States”).

The Respondent is Thomas Conley, United Kingdom.

### **2. The Domain Name and Registrar**

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 13, 2023. On December 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 13, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 13, 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 amendment to the Complaint on December 13, 2023.

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 December 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 16, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 17, 2024.

The Center appointed Gareth Dickson as the sole panelist in this matter on January 31, 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.

On March 5, 2024, the Panel issued Procedural Order No. 1 concerning aspects of the Complainant's evidence, as described further in Section 6.A below, and invited the Complainant and the Respondent to respond to that Procedural Order. The Complainant did so on March 7, 2024. The Respondent did not.

#### **4. Factual Background**

The Complainant is a corporation formed under the laws of the Cayman Islands and a provider of online platforms, specifically a cloud computing platform on a blockchain network. It asserts common law and registered trade mark rights in OASIS (the "Mark") and other OASIS-formative marks, and says it owns the < oasisprotocol.org > domain name, which directs users to a website which features prominent references to the Mark and to the "OASIS NETWORK" (the "Website").

The disputed domain name was registered on November 11, 2023. It appears to have been used to impersonate the business which the Complainant describes as its own, seemingly offering Internet users services designed to appear as if they have been provided by the Complainant (or a related company).

#### **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 it has rights in the Mark as a result of:

1. United States Trademark application number 88835971 for ROSE OASIS, applied for on March 16, 2020;
2. Common law rights in OASIS NETWORK, OASIS PROTOCOL, OASIS FOUNDATION and what it calls "the Oasis O Design Mark"; and
3. Trade mark registrations for the Mark in the United Kingdom, the European Union and the United States. Including: United States Trademark number 6747021 for OASIS, registered on May 31, 2022; European Union trade mark registration number 018007606 for OASIS, registered on May 24, 2019; and United Kingdom trade mark registration number UK00918007606 for OASIS, registered on May 24, 2019.

The Complainant argues that the disputed domain name is confusingly similar to the Mark because it is a clear case of typosquatting, with the domain name differing from the OASIS NETWORK used on the Website by only one letter, which is likely intentionally misleading.

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name because the Respondent is not known by "OASIS", has no affiliation with the Complainant and has not been licensed or permitted to use the Mark or any domain names incorporating it.

The Complainant contends that the disputed domain name was registered and is being used in bad faith as the Respondent registered the disputed domain name with prior knowledge of the Complainant's marks to divert users to a scam site. It says the Respondent's site impersonates the Complainant's legitimate business, targeting its use of OASIS NETWORK through typosquatting, and is designed to deceive users into believing they are accessing a genuine OASIS service, potentially to gain confidential user information.

## B. Respondent

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

## 6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant bears the burden of proving that:

- a) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- b) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- c) the disputed domain name has been registered and is being used in bad faith.

It is an essential feature of the Policy that these criteria are cumulative. The failure of the Complainant to prove any one of these elements means the Complaint must be denied.

### 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.

Upon receipt of the Complaint, the Panel considered that the evidence submitted by the Complainant did not support its submissions, set out in section 5.A above, that it had rights in the Mark. In particular, Section 1.1.4 of the [WIPO Overview 3.0](#) makes clear in terms that a mere trade mark application cannot assist the Complainant: "A pending trademark application would not by itself establish trademark rights within the meaning of UDRP paragraph 4(a)(i)".

Furthermore, there was no evidence before the Panel to establish: i) that the Mark has acquired any secondary meaning; or ii) that any protectable common law rights in it are owned by the Complainant. In particular, the Complainant provided no evidence of sales, or marketing spend, or consumer recognition or, barring a single article published in 2018, any industry recognition or even acknowledgement of the Mark or of the Complainant.

As stated in section 1.3 of the [WIPO Overview 3.0](#): "conclusory allegations of unregistered or common law rights, even if undisputed in the particular UDRP case, would not normally suffice to show secondary meaning. In cases involving unregistered or common law marks that are comprised solely of descriptive terms which are not inherently distinctive, there is a greater onus on the complainant to present evidence of acquired distinctiveness/secondary meaning".

The evidence concerning the popularity of the <oasisprotocol.org> domain name was similarly unhelpful for the Complainant, since it only provided information for the period between June 2020 and September 2022 and in that period shows an average of only around 1,000 visitors per month, worldwide, which is insufficient to establish that the Mark has become distinctive of the Complainant. Furthermore, the Complainant's evidence failed to show that it was the owner of the <oasisprotocol.org> domain name or any associated goodwill in the Mark arising from its use. For example, the Complainant's print-out from the Whois database for this domain name lists "Redacted for Privacy" as the domain name registrant, and there was no reference to the Complainant anywhere on the Website (in fact, the Terms of Use state that the website "belongs" to a third party).

Of course, the mere targeting of a mark can, in some circumstances, itself be evidence that the targeted mark has achieved some significance as a source identifier (see the penultimate paragraph of section 1.3 of the [WIPO Overview 3.0](#)). However, even if that argument could apply here (and the Panel makes no finding in this regard), it does not absolve the Complainant from the equally important requirement that it demonstrate that it is the party who owns the rights in the mark.

The Complainant's evidence, however, had not shown that it, as opposed to a third party, owned relevant rights in the Mark for the purposes of the Policy. For example, no evidence was provided for the trade mark registrations which the Complainant says it owns in the United Kingdom or the European Union, and the Complainant's print-out for the United States registration was not in the name of the Complainant at all, but a different company incorporated in Delaware.

The requirements of the Policy are clear and well-established and the Complainant, being the party who decided when to initiate the Complaint and how to plead it, bears the burden of meeting those requirements. Furthermore, rigorous application of the Policy is required to avoid domain names being transferred to the wrong party, and such rigour should not be set aside simply because a complainant has failed to plead its case as well as it should have done.

Notwithstanding the above, it was not clear to the Panel from a review of the totality of the evidence whether the deficiencies identified above were merely procedural defects which could be remedied following the issue of a Procedural Order, on which remedial action the Respondent would have an opportunity to reflect and comment; or whether they were more substantively relevant to the disposal of the Complaint. In order to make that determination fairly to both parties, and consistent with the proper administration of the Policy more generally, Procedural Order No. 1 was issued.

Following issue of that Procedural Order, the Complainant was able to provide sufficient evidence to establish, inter alia, its rights in trade mark registrations for the Mark in the United States and the United Kingdom. The Respondent did not respond to the Procedural Order and did not contest the additional evidence, which the Panel finds persuasive.

Accordingly, the Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. Furthermore, the entirety of the Mark is reproduced within the disputed domain name and is confusingly similar to the Mark for the purposes of the Policy. Although the addition of other terms, here "network", 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.

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.

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 used the disputed domain name to host a website featuring prominent references to “OASIS WALLET” and the Complainant's logo, which includes links to pages of the Complainant's OASIS WALLET website as well as links inviting users to “access existing wallet” or “create new wallet”. The Respondent's website is strikingly similar to the Complainant's OASIS WALLET website, and the Respondent also uses on its website other of the Complainant's trade marks, seemingly to emphasize the representation that it is, or is linked to, the Complainant, contrary to the fact. Together, these appear to be designed to mimic the appearance of the Complainant's OASIS WALLET website and the functionality offered there by the Complainant, in order to entice consumers to part with confidential information without their knowledge.

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

Accordingly, the Panel finds the second element of the Policy has been established.

### **C. Registered and Used in Bad Faith**

Panels have held that the use of a domain name for illegal activity, here a phishing scheme, 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, as described above, 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 <oasisnetwork.com> be transferred to the Complainant.

*/Gareth Dickson/*

Gareth Dickson

Sole Panelist

Date: March 27, 2024