

ADMINISTRATIVE PANEL DECISION

Old Dominion Freight Line, Inc. v. Sandeu Boris
Case No. D2024-0058

1. The Parties

The Complainant is Old Dominion Freight Line, Inc., United States of America, represented by Nelson Mullins Riley & Scarborough, L.L.P., United States of America.

The Respondent is Sandeu Boris, Cameroon.

2. The Domain Name and Registrar

The disputed domain name <dominionfreightline.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 8, 2024. On January 9, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 9, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 10, 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 January 10, 2024.

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 January 23, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 12, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 13, 2024.

The Center appointed Manuel Moreno-Torres as the sole panelist in this matter on February 22, 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

The Complainant is a United States of America leading transportation company set up in 1934 and is the owner of OLD DOMINION FREIGHT LINE trademark in different jurisdictions. As such:

- United States of America Trademark and Patent Office with registration number 4316040, registered on April 9, 2013.
- Canadian Intellectual Property Office with registration number TMA874302, registered on March 27, 2014.
- China National Intellectual Property Administration with registration number 11754406, registered on April 28, 2014.

The Respondent registered the disputed domain name on November 29, 2023, and resolved it to a website that copied the Complainant's own website.

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 contains OLD DOMINION FREIGHT LINE but with the omission of the word "old". Besides, the Complainant alleges that none of the circumstances depicted in paragraph 4(c) of the Policy applies in this case.

Further, the Complainant contends that OLD DOMINION FREIGHT LINE is well known and the website to which the disputed domain name resolved mirrored the Complainant's official site suggesting affiliation between the parties.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainant must satisfy the Panel that:

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

There are no exceptional circumstances within paragraph 5(f) of the Rules to prevent the Panel from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a

Response. Under paragraph 14(a) of the Rules in the event of such a “default” the Panel is still required “to proceed with a decision on the complaint”, whilst under paragraph 14(b) it “shall draw such inferences there from as it considers appropriate”. This dispute resolution procedure is accepted by the domain name registrant as a condition of registration.

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.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable within the disputed domain name. The mere omission of the word “old” does not prevent the Panel to find confusingly similarity. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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.

Panels have held that the use of a domain name for illegal activity here, claimed as applicable to this case: impersonation/passing off, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Furthermore, the nature of the disputed domain name, comprising the dominant portion of the Complainant’s trademark and the obvious reproduction of the Complainant’s official website indicates the Respondent’s awareness of the Complainant and its trademark and an apparent intent to take unfair advantage of such, which does not support a finding of any rights or legitimate interests.

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.

The Panel finds that with the registration and subsequent use of the disputed domain name, the Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the complainant's mark as set out in paragraph 4 (b) iv of the Policy.

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.

The Panel finds that the use of the disputed domain name to display a website that is highly similar in look and feel to the Complainant's official website denotes prior knowledge of the Complainant, its business, and trademarks. Under these circumstances, the Panel finds that the Respondent knew or should have known about the Complainant when registering the disputed domain name and therefore, it was registered in bad faith.

Panels have held that the use of a domain name for illegal activity, here claimed as impersonation/passing off, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Additionally, the reproduction of the Complainant's trademarks and copyright images in the corresponding website for the disputed domain name supports a finding of bad faith registration and use.

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 <dominionfreightline.com> be transferred to the Complainant.

/Manuel Moreno-Torres/

Manuel Moreno-Torres

Sole Panelist

Date: March 7, 2024