

ADMINISTRATIVE PANEL DECISION

SITA Switzerland Sarl v. Skenzo Brokerage Team
Case No. D2024-0937

1. The Parties

The Complainant is SITA Switzerland Sarl, Switzerland, represented internally.

The Respondent is Skenzo Brokerage Team, United Arab Emirates.

2. The Domain Name and Registrar

The disputed domain name <onairwifi.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 March 4, 2024. On March 4, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 5, 2024, the Registrar transmitted by email to the Center its verification response:

- (a) confirming the disputed domain name is registered with it;
- (b) confirming the language of the registration agreement is English; and
- (c) disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (GoDaddy.com, LLC) and contact information in the Complaint.

The Center sent an email communication to the Complainant on March 6, 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 amendment to the Complaint on March 8, 2024.

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 March 11, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 31, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 2, 2024.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on April 4, 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.

As filed, the Complaint included what was said to be an example of the Complainant's portfolio of registered trademarks. The documentation included as an Annex to the Complaint, however, appeared to indicate that the registration had expired. When the Panel reviewed the TM View database to confirm the trademark's status, it appeared that the Complainant may in fact hold currently registered trademarks. The Complaint also claimed that its service was in use under the trademark in 400 aircraft around the world.

As it was possible that the Respondent had chosen not to file a Response on the basis of the apparently expired registration included in the Complaint (contrary to what appeared to be the case on the TM View database), the Panel issued a Procedural Order pursuant to paragraph 12 of the Rules inviting the Complainant to file a supplemental filing addressing specified issues and providing the Respondent with an opportunity to file a supplemental filing in response if the Complainant availed itself of the invitation.

On April 26, 2024, the Complainant submitted a supplemental filing, copied to the Respondent. The Respondent did not file an answering response within the time specified in the Procedural Order or at all. Accordingly, the Panel has proceeded to render its decision.

4. Factual Background

The Complainant is a Swiss company which, according to the Complaint, "has been delivering Wi-Fi services to aircraft since 2005". The Complainant was originally established under the name ONAIR Switzerland Sàrl. It was then changed to SITAONAIR Switzerland Sàrl before adopting its current name.

The Complaint states the Complainant owns a number of registered trademarks for a figurative trademark featuring the words "on air" and a device. In its supplemental filing, the Complainant relies on European Union Trademark No. 004319133 in the following form:



EUTM No. 004319133 is currently registered in respect of a range of goods and services in International Classes 9, 37, 38, and 42. EUTM No. 004319133 was filed on February 25, 2005. and was entered on the Register on July 30, 2008.

WiFi services are provided under the trademark, or at least "On Air W-Fi", on at least Emirates Airways. For example, page 19 of an Emirates inflight magazine is headed "Onboard Wi-Fi & Mobile Phone". It states, for example, "Stay connected to the world below with OnAir Wi-Fi or mobile data roaming." and then provides information about the service and instructions how to activate it. Emirates is one of the world's largest airlines, according to its Wikipedia entry operating more than 3,600 flights per week from the Dubai International Airport to some 150 cities in 80 countries.

The Complainant claims it initially registered the disputed domain name on August 27, 2018. In circumstances which are described in the Complaint as "inadvertent" but not otherwise explained, that registration lapsed.

The Complainant claims the Respondent became the registrant of the disputed domain name on October 7, 2023. NameBio.com reports that the disputed domain name was sold at auction on October 1, 2023, for USD 602 .

Currently, the disputed domain name resolves to a pay-per-click (“PPC”) parking page provided by “Sedo Domain Parking” which includes the message “Buy this domain. This domain may be for sale. Click here for more information”.

The first link of these is “Wifi Connection”. When the Panel clicked on this link, it transferred to a page with two advertisements: one for the purchase of goods from the website at “www temu.com”; the second for the purchase of broadband services connections through the (Australian) National Broadband Network. There appeared to be a carousel of such links as subsequent views displayed advertisements for a Monitoring and Alarm Systems supplier and for a product described as a lightweight Ethernet switch.

Although one of the other “related searches” appeared to be more closely related to WiFi: the links being to “best guest wifi software” and “wifi software on Ebay”, clicking on those links transferred to an eBay page offering for sale products such as a WiFi Microscope Digital Camera, an Endoscope Camera, home security wi-fi cameras and the like.

Before the Procedural Order was issued, clicking on the “This domain may be for sale” link redirected one to a page headed (after the disputed domain name) “This domain name may be Available for sale”. There was some further text and a form to submit an offer to the seller. The footer of the page included the Respondent’s name in a figurative style and what was said to be a disclaimer:

“Disclaimer: The advertisement as displayed on the domain parking page is in no way an expression of the intention of the domain owner to sell the domain name. The domain owner shall be the sole authority for taking any decisions relating to the sale of domain name upon receiving a request for the same. The owner of the domain is also solely responsible for the legality and clear title of the domain name.”

After the Panel Order was issued, the link for “The domain name onairwifi.com may be for sale” no longer redirected to this page but simply redisplayed the landing page again.

When the Panel visited the Sedo.com website in the course of preparing this decision on May 9, 2024, the disputed domain name was listed on “Sedo.com” still but with a “Buy Now” price of USD 300 and the seller was listed as being in the United Arab Emirates. At some point after that date, however, the offer to sell the disputed domain name appears to have been withdrawn and the disputed domain name is no longer listed as being for sale.

According to the Complaint, the Complainant contacted the Registrar in January this year to acquire the disputed domain name “via regular auction proposal”. From the Complainant’s supplemental filing, it appears that the Complainant made an offer of EUR 235 for the disputed domain name. The Respondent made a counteroffer of EUR 6,569.

5. Discussion and Findings

No Response has been filed. The Complaint and Written Notice have been sent, however, to the Respondent at the electronic and physical coordinates confirmed as correct by the Registrar in accordance with paragraph 2(a) of the Rules. Bearing in mind the duty of the holder of a domain name to provide and keep up to date correct Whois details, therefore, the Panel finds that the Respondent has been given a fair opportunity to present his or its case.

When a respondent has defaulted, paragraph 14(a) of the Rules requires the Panel to proceed to a decision on the Complaint in the absence of exceptional circumstances. Accordingly, paragraph 15(a) of the Rules

requires the Panel to decide the dispute on the basis of the statements and documents that have been submitted and any rules and principles of law deemed applicable.

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

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

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

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 proven ownership of the figurative EUTM identified in section 4 above.

In undertaking the comparison between the Complainant's trademark and the disputed domain name, it is permissible in the present circumstances to disregard the generic Top-Level Domain ("gTLD") component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

It is also usual to disregard the design elements of a trademark under the first element as such elements are generally incapable of representation in a domain name. Where the textual elements have been disclaimed in the registration or cannot fairly be described as an essential or important element of the trademark, however, different considerations may arise. See for example, [WIPO Overview 3.0](#), section 1.10. The figurative elements of the Complainant's trademarks are not so dominating that the verbal element cannot be considered an essential or important part of the trademark in this case. Accordingly, it is appropriate to apply the usual rule.

Disregarding the ".com" gTLD, therefore, the disputed domain name consists of the Complainant's registered trademark and the term "wi-fi". As this requirement under the Policy is essentially a standing requirement, the addition of this term does not preclude a finding of confusing similarity. See [WIPO Overview 3.0](#), section 1.8. Apart from anything else, the Complainant's trademark remains visually and aurally recognisable within the disputed domain name.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is confusingly similar to the Complainant's trademark and the requirement under the first limb of the Policy is satisfied.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a bona fide offering of goods or services; or
- (ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or
- (iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

While 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 often impossible 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. 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.

The Respondent registered the disputed domain name after the Complainant began using its trademark and also after the Complainant had registered its trademark.

The Complainant states that it has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it.

The disputed domain name is not derived from the Respondent's name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain name could be derived. From the available record, the Respondent does not appear to hold any trademarks for the disputed domain name.

The use of the disputed domain name to offer it for sale and, pending that sale, to generate revenue through PPC links does not qualify as a legitimate noncommercial or fair use for the purposes of paragraph 4(c)(iii) of the Policy. However, it may qualify as a good faith offering of goods or services where the disputed domain name consists of a dictionary word or commonly used phrase and the PPC links genuinely relate to that meaning or common use. On the other hand, it would not usually do so where the links compete with or capitalise on the reputation and goodwill of the Complainant's trademark. See [WIPO Overview 3.0](#), sections 2.9 and 2.10.

In the present case, there is no evidence before the Panel about the nature of the Respondent's activities. The Respondent's name, however, is certainly suggestive of a business directed to buying and selling, or brokering.

The verbal component of the Complainant's trademark does have a descriptive character. For example a flashing sign with the words “On Air” is often used as a visual trope in movies and television shows to indicate a radio or television studio that is broadcasting live to air.

In the Panel's own Internet searches of the expression, “on air wifi” usually referenced the Complainant's service. Other terms that came up referencing similar services included “inflight wifi” or “on board wifi”.

On the other hand, it does not appear that the PPC links relate exclusively or even substantially to services that might be described as “on air wifi” services. Sometimes they do. Often, however, the PPC links are to other goods or services.

In these circumstances, the Panel is not prepared to accept that the disputed domain name is being used to host PPC links genuinely related to the dictionary meaning of the expression. Rather, it appears more likely that the Respondent is using the disputed domain name to take advantage of the trademark significance of the expression “on air” in the context of wifi services.

Accordingly, the Panel finds that the Complainant has established a prima facie case that the Respondent does not have rights or a legitimate interest in the disputed domain name under the Policy and the Respondent has not sought to rebut that prima facie case.

Accordingly, the Panel finds the Complainant has established the second requirement under the Policy also.

C. Registered and Used in Bad Faith

Under the third requirement of the Policy, the Complainant must establish that the disputed domain names have been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see *Group One Holdings Pte Ltd v. Steven Hafto* WIPO Case No. [D2017-0183](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

In this connection, the Complaint is predicated on the unstated contention that the Respondent was well aware of the Complainant's trademark and set out to capitalise on the disputed domain name's resemblance to the Complainant's trademark when the disputed domain name became available inadvertently.

The Respondent is located in the United Arab Emirates. The United Arab Emirates is also the base of the Emirates airline which is the, or one of the, airlines which uses the Complainant's service under the “On Air” trademark. The Respondent is also sufficiently sophisticated to participate in the buying and selling of domain names.

Even if the Respondent was unaware of the Complainant's trademark (which appears unlikely, all the more so as the Respondent has not sought to deny knowledge), it appears likely that the Respondent secured the disputed domain name through the process of drop-catching or similar. In such cases, the question of knowledge or awareness is approached objectively rather than purely subjectively. See , [WIPO Overview 3.0](#), section 3.2.3, and, albeit in a case where a “domainer” was offering the domain name for sale at a vastly inflated price, see *Supermac's (Holdings) Limited v. Domain Administrator, DomainMarket.com*, WIPO Case No. [D2018-0540](#). Given the circumstances, the Respondent is in effect on notice that someone had already been using the disputed domain name and so, objectively, was aware of the potential for a conflict with prior third-party rights and so put on inquiry. This of course depends on a number of factors including the nature of the domain name (and strength of the mark. In the Supermac's case, above, the panel explained:

“Registration of a domain name [through drop-catching] is not the same as ‘ordinary’ registration of a domain name (i.e., registration of a domain name which is not held by another person immediately prior to registration). Where registration occurs through drop-catching, the registrant is objectively aware that another person held the registration immediately prior. This, in effect, puts the registrant on notice that another person (the immediately prior registrant) may have rights in a trademark to which the domain name is identical or confusingly similar. Where, as in this case, the drop-catching registrant fails to take any steps to determine if such rights exist, then the registrant is taking the risk that such rights do exist. Where such rights do exist, where the value of the domain name derives primarily from those rights, and where the registrant's only meaningful use of the domain name is to offer it for sale, then the registrant is liable to be

considered as having registered the domain name primarily for the purpose of selling it to the person who has those rights.”

That is even more so in the present case where it seems likely that the Respondent was aware of the Complainant’s trademark before securing the disputed domain name and based on the evidence presented appears to have registered it opportunistically in the circumstances prescribed by paragraph 4(b)(i) of the Policy: namely, primarily for the purpose of selling it to the Complainant for an amount in excess of out-of-pocket expenses.

Therefore, the Complainant has established all three requirements under the Policy.

6. 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 <onairwifi.com> be transferred to the Complainant.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: May 14, 2024