

ADMINISTRATIVE PANEL DECISION

On Deck Capital, Inc. v. Wealthfront Capital
Case No. D2024-1193

1. The Parties

The Complainant is On Deck Capital, Inc., United States of America (“United States”), represented by Squire Patton Boggs (US) LLP, United States.

The Respondent is Wealthfront Capital, United States.

2. The Domain Name and Registrar

The disputed domain name <ondeckcapital.support> (the “Disputed Domain Name”) 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 19, 2024. On March 20, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. Also on March 20, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint.

The Center sent an email communication to the Complainant on April 3, 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 April 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 April 9, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 29, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 1, 2024.

The Center appointed Lynda M. Braun as the sole panelist in this matter on May 6, 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, a Delaware corporation with its principal place of business in New York, United States, is a financial services company that provides small business loans and financing.

The Complainant owns the following trademarks in the United States, registered with the United States Patent and Trademark Office (“USPTO”), including, but not limited to: ONDECK, United States Trademark Registration No. 4,547,253, registered on June 10, 2014, in international class 36; ONDECK SCORE, United States Trademark Registration No. 4,654,152, registered on December 9, 2014, in international class 36; and ONDECK LINE OF CREDIT, United States Trademark Registration No. 4,961,256 registered on May 17, 2016, in international class 36 (hereinafter collectively referred to as the “ONDECK Mark”). The Complainant has invested significant time and resources in the ONDECK Mark and actively protects all of its trademarks.

The Complainant owns the domain name <ondeck.com> that resolves to its official online website at “www.ondeck.com” and on which the Complainant describes and promotes its financial services bearing the ONDECK Mark. The Complainant has owned the domain name and resolving website since 1995.

The Disputed Domain Name was registered on January 26, 2024 and the record shows it has been resolving to an inactive landing page of the Registrar. The Respondent also used the Disputed Domain Name to fraudulently send emails to the Complainant’s customers as part of a scheme in which the Respondent posed as a Complainant’s supervisor, in an attempt to have customers make payments owed to the Complainant, which payments would inure to the benefit of the Respondent. Upon learning of this fraudulent scheme, the Complainant’s counsel sent a cease-and-desist letter using the email “[...]@ondeckcapital.support”, dated March 11, 2024, but the Respondent did not reply.

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 Complainant’s trademark because the Disputed Domain Name contains the ONDECK Mark in its entirety, followed by the additional term “capital”, and then followed by the generic Top-Level Domain (“gTLD”) “.support”, and thus does not prevent a finding of confusing similarity;

- the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because, among other things, the Complainant has not authorized the Respondent to register a domain name containing the ONDECK Mark, the Respondent was not making a bona fide offering of goods or services through the Disputed Domain Name, and the Respondent has never been commonly known by the ONDECK Mark or any similar name; and

- the Disputed Domain Name was registered and is being used in bad faith because, among other things, the Respondent used the Disputed Domain Name to impersonate the Complainant and send fraudulent emails to the Complainant’s customers to settle their outstanding debts.

The Complainant seeks the transfer of the Disputed Domain Name from the Respondent to the Complainant in accordance with paragraph 4(i) of the Policy.

B. Respondent

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

6. Discussion and Findings

In order for the Complainant to prevail and have the Disputed Domain Name transferred to the Complainant, the Complainant must prove the following (Policy, paragraph 4(a)):

- (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 was registered and is being used in bad faith.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a two-fold inquiry: a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to that trademark. The Panel concludes that in the present case, the Disputed Domain Name is confusingly similar to the ONDECK Mark as explained below.

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. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

It is uncontroverted that the Complainant has established rights in the ONDECK Mark based on its years of use as well as its registered trademarks for the ONDECK Mark before the USPTO. The consensus view of panels is that "registration of a mark is prima facie evidence of validity, which creates a rebuttable presumption that the mark is inherently distinctive". See *CWI, Inc. v. Domain Administrator c/o Dynadot*, WIPO Case No. [D2015-1734](#). The Respondent has not rebutted this presumption, and therefore the Panel finds that the Complainant has rights in the ONDECK Mark.

The Disputed Domain Name consists of the ONDECK Mark in its entirety followed by the term "capital", and then followed by the gTLD ".support". It is well established that a domain name that wholly incorporates a trademark may be deemed confusingly similar to that trademark for purposes of the Policy despite the addition of other terms. As stated in section 1.8 of [WIPO Overview 3.0](#), "where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element". Thus, the mere addition of the term "capital" to the Complainant's ONDECK Mark in the Disputed Domain Name does not prevent a finding of confusing similarity. See e.g., *Allianz Global Investors of America, L.P. and Pacific Investment Management Company (PIMCO) v. Bingo-Bongo*, WIPO Case No. [D2011-0795](#); and *Hoffmann-La Roche Inc. v. Wei-Chun Hsia*, WIPO Case No. [D2008-0923](#).

Finally, the addition of a gTLD such as ".support" in a domain name is a technical requirement. As such, it is well established that a gTLD may typically be disregarded when assessing whether a disputed domain name is identical or confusingly similar to a trademark. See *Proactiva Medio Ambiente, S.A. v. Proactiva*, WIPO Case No. [D2012-0182](#) and [WIPO Overview 3.0](#), section 1.11.1. Thus, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's ONDECK Mark.

Based on the available record, the Panel finds that 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 that 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.

In this case, given the facts as set out above, the Panel finds that the Complainant has made out a prima facie case. The Respondent has not submitted any arguments or evidence to rebut the Complainant’s prima facie case. Furthermore, the Complainant has not authorized, licensed, or otherwise permitted the Respondent to use its ONDECK Mark. Nor does the Complainant have any type of business relationship with the Respondent. There is also no evidence that the Respondent is commonly known by the Disputed Domain Name or by any similar name, nor any evidence that the Respondent was using or making demonstrable preparations to use the Disputed Domain Name in connection with a bona fide offering of goods or services. See Policy, paragraph 4(c).

The Respondent used emails created from the Disputed Domain Name to pose as a Complainant’s supervisor. Such fraudulent emails were sent to customers of the Complainant purportedly to request the payment of outstanding debts owed to the Complainant. Such use of the Disputed Domain Name to impersonate the Complainant and perpetuate this fraudulent scheme does not confer rights or legitimate interests on the Respondent. See [WIPO Overview 3.0](#), section 2.13.1 (“Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent.”). See also *CMA CGM v. Diana Smith*, WIPO Case No. [D2015-1774](#) (finding that the respondent had no rights or legitimate interests in the disputed domain name, holding that “such phishing scam cannot be considered a bona fide offering of goods or services nor a legitimate noncommercial or fair use of the Domain Name”).

In sum, the Panel concludes that the Complainant has established an un rebutted prima facie case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The Panel finds that the Respondent is using the Disputed Domain Name for commercial gain with the intent to mislead and defraud the Complainant’s customers by incorporating the Disputed Domain Name into emails sent by the Respondent to those customers in the name of a fictional supervisor of the Complainant. Such use cannot conceivably constitute a bona fide offering of a product or service within the meaning of paragraph 4(c)(i) of the Policy.

Based on the available record, the Panel finds that the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel finds that based on the record, the Complainant has demonstrated the existence of the Respondent’s bad faith registration and use of the Disputed Domain Name pursuant to paragraph 4(a)(iii) of the Policy.

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. 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 use of a domain name to intentionally attempt to attract Internet users to a respondent's website or online location by creating a likelihood of confusion with a complainant's mark as to the source, sponsorship, affiliation or endorsement of the registrant's website or online location for commercial gain demonstrates registration and use in bad faith. Here, the Respondent's registration and use of the Disputed Domain Name indicates that such registration and use had been done for the specific purpose of trading upon and targeting the name and reputation of the Complainant. See *Madonna Ciccone, p/k/a Madonna v. Dan Parisi and "Madonna.com"*, WIPO Case No. [D2000-0847](#) (“[t]he only plausible explanation for Respondent's actions appears to be an intentional effort to trade upon the fame of Complainant's name and mark for commercial gain”).

Moreover, the Panel concludes that the Respondent's registration of the Disputed Domain Name was an attempt to disrupt the Complainant's business. See *Banco Bradesco S.A. v. Fernando Camacho Bohm*, WIPO Case No. [D2010-1552](#). The Respondent's use of the Disputed Domain Name was also highly likely to confuse Internet users into incorrectly believing that the Respondent was authorized by or affiliated with the Complainant.

Other panels have held that the use of a domain name for illegal activity, as was present here, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel thus finds that the Respondent's registration and use of the Disputed Domain Name constitutes bad faith registration and use under the Policy due to the Respondent's use of the Disputed Domain Name to impersonate the Complainant and create fraudulent emails purportedly sent by a Complainant's supervisor to customers who owed money to the Complainant in an attempt to have the customers settle those debts, which debts would be paid to the Respondent.

The Panel also finds that the Respondent knew that the Complainant had rights in the ONDECK Mark when registering the Disputed Domain Name, emblematic of bad faith registration and use. It strains credulity to believe that the Respondent did not know of the Complainant or the ONDECK Mark when registering the Disputed Domain Name. See *Myer Stores Limited v. Mr. David John Singh*, WIPO Case No. [D2001-0763](#) (“a finding of bad faith may be made where the respondent 'knew or should have known' of the registration and/or use of the trademark prior to registering the domain name”). The Panel finds that in the present case, the Respondent had the Complainant's ONDECK Mark in mind when registering and using the Disputed Domain Name. This is especially true since the Respondent's Disputed Domain Name and the emails the Respondent created incorporated the ONDECK Mark in its entirety.

In sum, the Panel concludes that the circumstances of this case, including the claim that the Disputed Domain Name had been used to impersonate the Complainant to create fraudulent emails, the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good faith use, and the failure of the Respondent to reply to the Complainant's cease-and-desist letter, support an inference of bad faith.

Based on the available record, the Panel finds that the third element of the Policy has been established.

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 <ondeckcapital.support> be transferred to the Complainant.

/Lynda M. Braun/

Lynda M. Braun

Sole Panelist

Date: May 20, 2024