

ADMINISTRATIVE PANEL DECISION

Bellwether FOS Holdco, Inc. v. Koshe So
Case No. D2024-2271

1. The Parties

Complainant is Bellwether FOS Holdco, Inc., United States of America (“US”), represented by Davis Graham & Stubbs LLP, US.

Respondent is Koshe So, US.

2. The Domain Name and Registrar

The disputed domain name <fiirstonsite.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 June 3, 2024. On June 4, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on June 5, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on June 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 Respondent of the Complaint, and the proceedings commenced on June 10, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 30, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on July 1, 2024.

The Center appointed Jeffrey D. Steinhardt as sole panelist in this matter on July 5, 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

First Onsite has over 100 offices across North America, and its local entities provide disaster recovery and property restoration services.

Complainant owns multiple trademark registrations for its FIRSTONSITE family of service marks, including United States Registration No. 6,331,900 for FIRSTONSITE, registered in Class 37 on April 27, 2021, with a first use in commerce date of July 2012; United States Registration No. 6,331,904 for FIRSTONSITE RESTORATION (design plus words), registered in Class 37 on April 27, 2021, with a first use in commerce date of July 2012; and United States Registration No. 6,969,576 for FIRST ONSITE PROPERTY RESTORATION (design plus words), registered in Classes 37 and 40 on January 31, 2023, with a first use in commerce date of March 29, 2021.

The disputed domain name was registered on February 23, 2024. As discussed below, it has been used in a fraudulent email scheme.

5. Parties' Contentions

A. Complainant

Complainant avers that in February 2024, a "malicious actor" used the disputed domain name to email Complainant's customer, posing as an actual employee of Complainant and using Complainant's signature and branding imagery without authorization. Intending to defraud the customer, the email included an invoice with false bank account payment instructions. A redacted version of the alleged email exchange is annexed to the Complaint.

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

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.

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. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), sections 1.7 & 1.9.

A domain name that consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. [WIPO Overview 3.0](#), section 1.9. Here, the Panel finds that the addition of a single “i” within the disputed domain name is an intentional misspelling of Complainant’s trademark.

The Panel finds that the first element of paragraph 4(a) of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which 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 that Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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.

Moreover, Complainant has provided credible, unopposed evidence of the use of the disputed domain name for impersonation and fraudulent activity. Panels have held that the use of a domain name for illegal activity, in this case, alleged fraud and impersonation, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel finds that the second element of paragraph 4(a) 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.

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.

As noted above, Complainant has provided evidence of impersonation and fraudulent activity employing the disputed domain name.

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 that Respondent’s registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel finds that Complainant has established the third element of paragraph 4(a) 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 <fiirstonsite.com> be transferred to Complainant.

/Jeffrey D. Steinhardt/

Jeffrey D. Steinhardt

Sole Panelist

Date: July 19, 2024