

ADMINISTRATIVE PANEL DECISION

Dish Network LLC v. MuhammadFaheem Faheem
Case No. D2024-3169

1. The Parties

The Complainant is Dish Network LLC, United States of America (“United States”), represented by Quarles & Brady LLP, United States.

The Respondent is MuhammadFaheem Faheem, Pakistan.

2. The Domain Name and Registrar

The disputed domain name <onstream.fit> 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 August 1, 2024. On August 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 3, 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 August 5, 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 August 9, 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 August 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 4, 2024. The Respondent sent an email communication to the Center on September 3, 2024,

The Center appointed Steven A. Maier as the sole panelist in this matter on September 12, 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 limited liability company organized under the laws of Colorado, United States. It submits that it is a United States-based connectivity company, and the fourth-largest pay-TV provider in the United States.

The Complainant is the owner of United States trademark registration number 7039345 for the word mark ONSTREAM, registered on May 2, 2023, in International Class 41.

The Complainant states that it has used the mark ONSTREAM in commerce, in the United States, for entertainment streaming services since at least May 2019. The Complainant exhibits evidence of its uses of that trademark, including the ability of users to watch live TV via the ONSTREAM service, information concerning "Streaming Blade" hardware and its setup, details of available customization of the ONSTREAM app or browser interface, and information concerning accessing streaming services and casting to TV.

The Complainant's services under the ONSTREAM mark appear principally to comprise bulk streaming services for the hotel industry.

The disputed domain name was registered on November 30, 2023.

The Complainant exhibits evidence that the disputed domain name has resolved to webpages promoting an app named "OnStream" and offering "Onstream APK (Official) v1.1.2 Download for Android". The webpages state that the app allows users to stream latest movies, we series and TV shows for free. The Complainant draws attention to movie titles including "Oppenheimer" promoted in connection with the app.

At the date of this decision, the disputed domain name resolved to webpages headed "Onstream", offering information about, and apparent links to, lawyers providing personal injury, real estate, and constitutional law services.

5. Parties' Contentions

A. Complainant

The Complainant submits that it has built substantial goodwill in the ONSTREAM trademark through extensive sales, advertising and promotional activities, that its trademark is long-established in the United States, and that the trademark "has no generally-accepted meaning in the industry or otherwise".

The Complainant does not provide any financial information concerning, for example, its sales by reference to the trademark or its promotional spend.

The Complainant submits that the disputed domain name incorporates the entirety of, and is identical to, its ONSTREAM trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It states that it has no relationship with the Respondent and has never authorized it to use its ONSTREAM trademark, that the Respondent has not commonly been known by the disputed domain name and that the Respondent is making neither bona fide commercial use nor legitimate noncommercial or fair use of the disputed domain name.

The Complainant contends that, rather than making any legitimate use of the domain name, the Respondent is using the disputed domain name to trade off the Complainant's goodwill, by misleading Internet users looking for the Complainant's ONSTREAM trademark. The Complainant contends that the Respondent diverts such Internet users to its website, where it offers "a free app for entertainment streaming services, which are services highly related to those of the Complainant".

The Complainant adds that "there is at least some evidence that Respondent's services are illegitimate and/or illegal. In particular, Respondent appears to use the [disputed domain name] to offer free pirated entertainment content to users". The Complainant provides no further information or evidence in support of these submissions, save for identifying certain movies included on the Respondent's website referred to above.

The Complainant states that the Respondent's app is not available on official app stores such as GooglePlay or the Apple App Store and that this casts further doubt upon its credibility. It also submits that the Respondent's website contains spelling mistakes and grammatical errors (details are not provided) which add further to that impression. It identifies other domain names containing the mark ONSTREAM which it states have been registered by the Respondent and resolve to similar websites.

The Complainant contends that the disputed domain name has been registered and is being used in bad faith.

The Complainant submits that the disputed domain name was registered in order to capitalize on consumer recognition of the Complainant's ONSTREAM trademark. The Complainant contends that the disputed domain name was registered years after the Complainant's use of the ONSTREAM mark, and has been used to offer services highly related to those of the Complainant. It submits that it is not credible in the circumstances to believe the registration was made in good faith, and that the disputed domain name was registered to intentionally attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's ONSTREAM trademark.

The Complainant submits that the Respondent likely registered the disputed domain name using false contact details, which is a further indication of bad faith. It asserts that the Respondent's registered address in fact includes two separate cities in Pakistan, which are three hours apart.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

The Respondent did not file a formal Response in the proceeding. However, in its email to the Center dated September 3, 2024, it stated:

"Greetings,

Hope you find this email well, I am writing this email to notify you that our site '<https://onstream.fit/>' is made just for informational purposes. It does not spread any violation, The content written on this website is just to provide information to users. I think you have some misunderstanding regarding my site >>>><https://onstream.fit/>.

Kindly review my site one more time to get a better understanding of my website purpose. Our aim is to provide legit information about technology. I hope you will act on my email and cancel your report.

Plz review it and let me know as soon as possible.

Thanks

Regards:

Muhammad Faheem"

6. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are 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 has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has established that it is the owner of registered trademark rights for the mark ONSTREAM. The disputed domain name incorporates the entirety of that trademark, without adornment, and the Panel therefore finds that the disputed domain name is identical to a trademark in which the Complainant has rights.

The Panel therefore finds that the first element of the Policy has been established.

B. Rights or Legitimate Interests

In the view of the Panel, the Complainant's submissions set out above give rise to a prima facie case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. However, the Respondent has failed to file a formal Response in this proceeding. In its informal email, the Respondent states that the disputed domain name is "for informational purposes" and "to provide legit information about technology". However, the Respondent does not explain its choice of the disputed domain name for these purposes. Nor does its explanation accord with the evidence of the Respondent's website content, either as exhibited by the Complainant or as the website currently appears. On the first such occasion the website was being used to promote a free movie and TV streaming app for Android – which it is noted may have been based on a descriptive meaning or on the Complainant's trademark; but this use is overtaken, since it was later used to promote, and apparently to link to, the services of various lawyers. The Respondent provides no explanation of these matters, and in the circumstances the Panel does not find its account to be credible, or that the Respondent has demonstrated any rights or legitimate interests in respect of the disputed domain name, whether in the circumstances contemplated by paragraph 4(c) of the Policy or otherwise.

The Panel finds in the circumstances that the second element is met.

C. Registered and Used in Bad Faith

The Complainant has established that it has used the ONSTREAM trademark in connection with TV streaming services. The disputed domain name appears at the date of the Complaint to have been used to promote an app offering somewhat related, if not entirely comparable, streaming services. The Panel does not find the Complainant's trademark to be particularly distinctive in nature, and the Panel would not therefore consider these circumstances alone to necessarily establish bad faith on the part of the Respondent. However, the Panel notes that the use of the disputed domain name appears to have been changed, seemingly after the submission of the Complaint, to relate to legal services; whether this amounts to any level of admission on the Respondent's part is not entirely clear, but it is a factor to take into account. Further, in its informal response, the Respondent provides no specific explanation for the selection of the disputed domain name, makes no comment on its use in connection with either the TV streaming app or legal services, and provides a different explanation again for the registration and use of the disputed domain name, namely, that it is being used for "information about technology".

In the light of the two different uses that have been made of the disputed domain name, the lack of any convincing explanation from the Respondent for its registration and use of the disputed domain name, and the Respondent's suggestion, unsupported by any evidence, of yet a third use of the disputed domain name, the Panel infers, on balance, that the Respondent is likely to have registered and the disputed domain name in bad faith, namely, with the intention of taking unfair advantage of the Complainant's goodwill attaching to its trademark.

The Panel finds, in particular, that, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of its website or of a product or service on its website (paragraph 4(b)(iv) of the Policy).

The Panel finds in the circumstances that the disputed domain name has been registered and is being used in bad faith and 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 <onstream.fit> be transferred to the Complainant.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: September 26, 2024