

## **ADMINISTRATIVE PANEL DECISION**

OneQode IP Pty Ltd v. Dillon Firrell, Energy Information Technology Pty Ltd  
Case No. DAU2022-0005

### **1. The Parties**

The Complainant is OneQode IP Pty Ltd, Australia, internally represented.

The Respondent is Dillon Firrell, Energy Information Technology Pty Ltd, Australia.

### **2. The Domain Name and Registrar**

The disputed domain name <oneqode.com.au> is registered with Domain Directors Pty Ltd trading as Instra ("the Registrar")

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 1, 2022. On April 4, 2022, the Center transmitted by email to the Registrar a request for verification in connection with the disputed domain name. On April 13, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the .au Dispute Resolution Policy (the "Policy"), the Rules for .au Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for .au Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on April 19, 2022. In accordance with the Rules, paragraph 5(a), the original due date for Response was May 9, 2022. In accordance with the Rules, paragraph 5(d), and at the request of the Respondent, the due date for Response was extended to May 13, 2022. The Response was filed with the Center on May 13, 2022.

The Center appointed Matthew Kennedy as the sole panelist in this matter on May 18, 2022. 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 part of the OneQode group, which provides international cloud and telecommunications services. The Complainant was incorporated on November 5, 2019 and currently has two directors, both of whom were appointed in April 2020. One of the directors, Matthew Shearing, is also the Chief Executive Officer of OneQode. The Complainant manages the OneQode group's intellectual property and holds Australian trademark registration number 2051888 for ONEQODE, registered on June 29, 2020 (applied for on November 19, 2019), specifying goods and services in classes 9, 37, 38, and 42. That trademark registration remains current. Mr. Shearing's contact email address in this proceeding uses the disputed domain name. The Complainant's contact email address is in the <oneqode.com> domain.

The Respondent individual, Dillon Firrell, is sole director and secretary of the Respondent company, Energy Information Technology Pty Ltd, which was incorporated on October 11, 2007. Mr. Firrell was the founder director of the Complainant and he remained a director of that company until February 10, 2021. His employment with the OneQode group was terminated on May 23, 2021.

The disputed domain name was registered on November 4, 2019.

On August 27, 2021, the Complainant sent a letter of demand to Mr. Firrell regarding obligations under a Securityholders' Deed. On February 18, 2022, the Complainant sent another letter of demand to Mr. Firrell seeking, among other things, transfer of the disputed domain name to itself.

The disputed domain name resolves to the Complainant's group website at "www.oneqode.com". The site prominently displays the ONEQODE mark and presents the Complainant's multiplayer gaming infrastructure. The site includes a case study under the title "OneQode in action" regarding the use of OneQode's gaming infrastructure for an eSports tournament. The website's contact details refer to "OneQode" under the heading "Company".

#### **5. Parties' Contentions**

##### **A. Complainant**

The disputed domain name is identical to the Complainant's ONEQODE mark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has no association with the Complainant beyond the fact that its director was previously a director of the Complainant. The Complainant has not given the Respondent permission to use the disputed domain name, nor has the Respondent acquired any licenses, approvals, or other authorizations to use a substantially identical or deceptively similar mark. There is no connection between the disputed domain name and the Respondent's name or with any commercial entity or activity currently associated with the Respondent. The Respondent does not appear to be actively using the disputed domain name. It appears that the Respondent may be holding the disputed domain name to "inflict pain" on the Complainant. There would be an immediate risk of false association with the Complainant if the Respondent began actively using the disputed domain name.

The disputed domain name was registered and is being used in bad faith. Mr. Firrell was entrusted with registering the disputed domain name on behalf of the Complainant in his capacity as director at the time. The Respondent company was first registered in 2007 and is entirely unrelated to the Complainant. As a former director of the Complainant, Mr. Firrell is fully aware that the ONEQODE trademark is owned by the Complainant. At the time of registration of the disputed domain name, Mr. Firrell asserted that he had registered it as part of his duties as director of the Complainant. To this juncture, the disputed domain name has been used exclusively for the Complainant's assets, from email addresses to the company website. Only upon Mr. Firrell's termination did the Complainant discover the manner in which he had registered the disputed domain name. Mr. Firrell, as part of his obligations to the Complainant, was required to return all

intellectual property on his departure. Given that he has refused to transfer the disputed domain name, it is clear that he volunteered to register it for the Complainant so that he could register it in the name of the Respondent company instead. It appears that this was done in an effort to prevent the Complainant from dealing with the disputed domain name in the event that Mr. Firrell was ever removed from his employment by the Complainant. This manner of registration was also calculated to disrupt the business activities of the Complainant. The Respondent company was never eligible to hold the disputed domain name. Further, the Complainant has specifically revoked any approval that may have been inferred. Mr. Firrell has no legitimate right, title, or interest in the Complainant's intellectual property after his departure. Mr. Firrell is well aware of the increasing brand value of the Complainant's business. It is therefore plausible that he intends to retain possession until such time as he might sell it for a significant sum to the Complainant or a competitor of the Complainant. Given the upcoming launch of the .au direct domains, the Respondent knows that this will deprive the Complainant of priority to acquire the domain name <oneqode.au>. The Respondent also failed to respond to the Complainant's requests to transfer the disputed domain name.

## **B. Respondent**

In or around September 2019, Mr. Firrell discussed with his lawyer, Matthew Shearing, his idea for a start-up telecommunications/technology venture. OneQode grew out of this concept. On October 1, 2019, Mr. Firrell showed Mr. Shearing the legal set up that he wanted. Mr. Shearing became a director of the Complainant on March 23, 2020. Mr. Firrell later resigned as a director of the Complainant's group of companies, except for an entity called OneQode International. At the time of registration of the disputed domain name, the Complainant company and related entities were not formed.

Mr. Firrell was the founder and sole director of the Complainant at its inception. Mr. Firrell was and remains a shareholder in Dynamic Spectrum Holdings Pty Ltd, which owns the Complainant. Therefore, he has a legitimate interest in the Complainant. He has a link with OneQode as its success of concept and his wishes that shareholders are looked after is of great importance. Mr. Firrell's idea of a telecommunications/technology venture was developed long before the registration of the disputed domain name. In the Respondent's view, the two concepts belong together.

The disputed domain name was not registered and is not being used in bad faith. The Complainant's argument does not make sense: either Mr. Shearing knew that Mr. Firrell registered the disputed domain name, as he asserts, or he only discovered this upon termination of the Respondent's employment. Mr. Firrell received no communication regarding the Complainant's domain name issues until February 2022. The Complainant's assertions regarding Mr. Firrell's intentions appear to be a fabrication; the Complainant was not even registered at the time when the disputed domain name was registered. Mr. Shearing and the Complainant's Chief Operating Officer knew about the status of the disputed domain name. The Respondent does not know anything about the Complainant's growing brand value; Mr. Firrell has had no information or reports since February 2021. The Complainant is portraying Mr. Firrell as someone that he is not. If he ever intended to sell the disputed domain name, he would certainly offer it to the Complainant. He believed the disputed domain name was his and his only wish was that OneQode would do well as it was his venture to begin with. Mr. Firrell has never interfered with the operation of the Complainant directly or indirectly; he has never interfered with email services or the website associated with the disputed domain name. He tried to contact the Complainant's junior legal counsel to query the letter of demand that he received. This is another possible act of shareholder oppression.

## **6. Discussion and Findings**

Paragraph 4(a) of the auDRP provides that a complainant must prove each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to a name, 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 or subsequently used in bad faith.

The burden of proof of each element is borne by the Complainant.

#### **A. Identical or Confusingly Similar**

Based on the evidence presented, the Panel finds that the Complainant has rights in the ONEQODE mark.

The disputed domain name wholly incorporates the ONEQODE mark. The disputed domain name also includes the open Secondary-Level Domain ("2LD") extension ".com.au". This element is generally disregarded in an assessment of confusing similarity between a domain name and a trademark for the purposes of the auDRP. See *BT Financial Group Pty Limited v. Basketball Times Pty Ltd*, WIPO Case No. [DAU2004-0001](#).

Therefore, the Panel finds that the disputed domain name is identical to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the auDRP.

#### **B. Rights or Legitimate Interests**

The Panel notes that the second element of paragraph 4(a) of the auDRP is expressed in the present tense and will assess whether the Respondent has rights to, or legitimate interests in, the disputed domain name at the present time, *i.e.*, in light of the circumstances prevailing at the time when the Complaint was filed.

Paragraph 4(c) of the auDRP sets out circumstances which, without limitation, if found by the Panel to be proven based on its evaluation of all evidence presented, shall demonstrate that the Respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the auDRP:

- (i) before any notice to [the respondent] of the subject matter of the dispute, [the respondent's] *bona fide* use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with an offering of goods or services (not being the offering of domain names that [the respondent has] acquired for the purpose of selling, renting or otherwise transferring); 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.

As regards the first and third circumstances set out above, the disputed domain name redirects to the Complainant's group website, which prominently displays the ONEQODE mark. The disputed domain name is also identical to the ONEQODE trademark, except for a 2LD extension, which creates a high risk of implied affiliation. Yet the Complainant submits that it has not given the Respondent permission to use the disputed domain name and that the Respondent has no licenses, approvals, or other authorizations to use the ONEQODE mark. These circumstances indicate that the Respondent is not making a *bona fide* use of the disputed domain name in connection with an offering of goods or services. See *Barrett Steel Limited v Web Hosting*, WIPO Case No. [D2021-0055](#).<sup>1</sup> These circumstances also indicates that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name.

As regards the second circumstance set out above, the Registrar's Whois database lists the Respondent

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<sup>1</sup> The Panel considers it appropriate to refer to prior decisions regarding the requirement of rights or legitimate interests in paragraph 4(a)(iii) of the Uniform Domain Name Dispute Resolution Policy ("UDRP") because it is identical to the corresponding requirement in paragraph 4(a)(iii) of the auDRP (excluding the footnote).

individual's name as "Dillon Firrell" and the Respondent company as "Energy Information Technology Pty Ltd", not "OneQode". Even though Mr. Firrell was the founder director of the Complainant, there is no evidence on record that he has ever been known as "OneQode". Nothing indicates that the Respondent has been commonly known by the disputed domain name.

Based on the above, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Turning to the Respondent's arguments, it claims an interest in respect of the disputed domain name on the grounds that Mr. Firrell was the creator of the concept that led to OneQode. Assuming that Mr. Firrell did conceive of the Complainant's telecommunications/technology venture, the Panel does not consider that he has explained how this generated a right or legitimate interest in respect of the disputed domain name or the name "OneQode". The Response also refers to Mr. Firrell's registration and directorship of a company set up as a holding company for the Complainant. It suffices to note that the assertion of a shareholding is not substantiated as regards either company, and the alleged holding company is not named "OneQode". The Respondent does not assert any right or legitimate interest on the part of the Respondent company, Energy Information Technology Pty Ltd.

Accordingly, the Panel finds that the Respondent has not rebutted the Complainant's *prima facie* case.

Therefore, the Panel finds that the Complainant has satisfied the second element in paragraph 4(a) of the auDRP.

### **C. Registered or Subsequently Used in Bad Faith**

The Panel recalls that the third element of paragraph 4(a) of the auDRP sets out two requirements disjunctively so that it is sufficient for the Complainant to show either that the disputed domain name was registered in bad faith, or that it has been subsequently used in bad faith, but not necessarily both.

The disputed domain name was registered on November 4, 2019, before the Complainant obtained registration of the ONEQODE trademark on June 29, 2020. Normally, this would prevent a finding that the disputed domain name was registered in bad faith because the trademark rights did not yet exist. However, as an exception to that general rule, bad faith may be found where the Respondent acted in anticipation of the Complainant's rights in a trademark. In the present case, the disputed domain name was registered a mere 15 days before the Complainant filed its application for the ONEQODE trademark. The trademark is a coined word and the disputed domain name is identical to it. Mr. Firrell became founder director of the Complainant the day after registering the disputed domain name and he was presumably privy at that time to the plans to incorporate the Complainant and apply for its ONEQODE trademark. Even though the Complainant was not yet incorporated and the trademark was not yet registered on the day on which the disputed domain name was registered, it is clear that the Respondent acted in anticipation of the Complainant's trademark rights.

In the present case, the fact that the Respondent acted in anticipation of the Complainant's trademark rights does not necessarily indicate bad faith registration, due to Mr. Firrell's role as founder director of the Complainant. Accordingly, the Panel will examine the specific facts and circumstances that might shed light on the intent of the Respondent at the time of registration of the disputed domain name, bearing in mind that its unwillingness to transfer the disputed domain name to the Complainant now that Mr. Firrell is no longer a director does not necessarily reflect its original intentions. See *Great American Hotel Group, Inc. v. Domains By Proxy, LLC / R Greene*, WIPO Case No. [D2019-1638](#).<sup>2</sup>

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<sup>2</sup> The Panel considers it appropriate to refer to prior decisions regarding the requirement of bad faith registration in paragraph 4(a)(iii) of the UDRP because it is identical to the bad faith registration requirement in paragraph 4(a)(iii) of the auDRP.

It is not clear from the evidence whether Mr. Firrell ever discussed the proposed registration of the disputed domain name with anyone else who participated in the setting up of the Complainant. There is some evidence that the disputed domain name was later treated as the Complainant's asset, as it is used in Mr. Shearing's email address, and the Parties seem to agree that it has been used in connection with the Complainant's website. The Response provides a record of an online chat dated September 9, 2020, showing that at least one other person, alleged to be the former Chief Operating Officer of OneQode, knew that Mr. Firrell had paid for some OneQode domain names. However, the identity of the registrant of the disputed domain name may not have been generally known within the OneQode group while Mr. Firrell was a director and employee as there is no evidence that the Complainant sought its transfer until months after he had left.

What is clear is that the registrant organization of the disputed domain name was and remains the Respondent company, Energy Information Technology Pty Ltd, which is not part of the OneQode group. The Complainant submits that the Complainant and the Respondent company have never had any commercial engagement with each other, which the Respondent does not dispute. Mr. Firrell registered the disputed domain name in anticipation of the Complainant's trademark rights in the name of a company that he controlled and whose business had nothing to do with the Complainant. It may be inferred that Mr. Firrell sought to place the disputed domain name under his own control but outside the control of the soon-to-be incorporated Complainant. His intentions were evidently directed to a scenario in which he no longer controlled the Complainant, even though the Complainant would become the owner of the ONEQODE trademark. In the Panel's view, the most likely explanation for this arrangement is that the Respondent registered the disputed domain name to position itself to exert leverage over the Complainant at a future time. The Response did not provide any alternative explanation as to why the disputed domain name was registered in the name of the Respondent company, it only submits that the Respondent company and Mr. Firrell want his concept to become successful. In these circumstances, the Panel finds it more likely than not that the disputed domain name was registered in bad faith.

The Panel finds possible confirmation for this conclusion in the record of an online chat submitted by the Respondent itself. In that conversation the alleged former Chief Operating Officer of OneQode advises the other party, presumably Mr. Firrell, to hold some of the OneQode domain names that he paid for as they would become valuable if the company were bought out. The latter appears to agree and adds that he also owns another domain name. This conversation appears to be a further acknowledgement of the Respondent's intent at the time of registration of the disputed domain name.

Having found that the disputed domain name has been registered in bad faith, it is unnecessary to assess whether it has been subsequently used in bad faith. However, the Panel had made certain factual findings regarding the current (redirection) use of the disputed domain name in Section 4 above.

Accordingly, the Panel finds that the Complainant has satisfied the third element in paragraph 4(a) of the Policy.

## **7. Decision**

For all 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 <oneqode.com.au> be transferred to the Complainant.

*/Matthew Kennedy/*

**Matthew Kennedy**

Sole Panelist

Date: June 1, 2022