

## **ADMINISTRATIVE PANEL DECISION**

DISH Network L.L.C v. Ada Pascal, 1337 Services LLC  
Case No. DSO2024-0002

### **1. The Parties**

The Complainant is DISH Network L.L.C, United States of America ("United States"), represented by Quarles & Brady LLP, United States.

The Respondent is Ada Pascal, 1337 Services LLC, Saint Kitts and Nevis.

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

The disputed domain name <onstream.so> is registered with Key-Systems GmbH (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. The Center verified that 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"). On August 12, 2024, 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 and confirming that the Policy applied to the registration of the disputed domain name.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on August 14, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 3, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 10, 2024.

The Center appointed Steven A. Maier as the sole panelist in this matter on September 10, 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. Outstanding Procedural Matter

On August 29, 2024 the Complainant requested permission to amend its Complaint to refer to the Respondent's organization name and contact details as disclosed by the Registrar, and to make additional submissions of bad faith based on the Respondent's attempts to conceal its true details. While the Center responded on August 30, 2024 inviting the Complainant to submit amendments or an amended Complaint, no further submission appears to have been received by from the Complainant.

The Panel comments that this matter is not material to the Panel's decision in the proceeding.

#### 5. Factual Background

The Complainant is a limited liability company organized under the laws of Colorado, United States. It states 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.

Further, according to the Complainant's website at "[www.info.dishbusiness.com/onstream](http://www.info.dishbusiness.com/onstream)":

"OnStream is a bulk streaming Platform as a Service (PaaS) that powers custom digital experiences for hotel management, staff, and guests. Streaming and casting capabilities provide a modern guest entertainment experience while flexible system integrations help hoteliers personalize offers, increase efficiency and open new revenue streams. With an intuitive, fully customizable user interface, OnStream makes it easy for hoteliers to seamlessly build and deploy their experience across properties."

The website goes on to describe features which include: "Built-in streaming links directly to guests' favorite third-party apps."

The disputed domain name was registered on July 2, 2023.

The disputed domain name has resolved to a website at "[www.onstream.so](http://www.onstream.so)". The Complainant provides evidence that the website has included the following content:

- a page headed "How to download a free movie in OnStream App?", with instructions to download using the movie "John Wick: Chapter 4" (highlighted by the Complainant) as an illustration;
- a page featuring the movie "Dahmer" (highlighted by the Complainant) among others; and
- a page offering the movie "Black Panther: Wakanda Forever" (highlighted by the Complainant) and including the following text:

"OnStream – Free App for movies & TV shows online in HD for any device.

Are you looking for an app to watch movies with friends and family? OnStream is the best app for free movies and TV shows. All for free and all legally."

The page then includes a button labelled “Download Onstream”.

At the date of this decision, the Respondent’s website is headed “OnStream” with a logo and the text: “OnStream – Free App for movies & TV shows online in HD on any device.” The website offers a button to “Download OnStream” together with further information and illustrations of a mobile app. The website further states:

“OnStream is a free app for movies and TV shows, where you can watch for free, unlimited. None of your information is required as you do not need an account to watch thousands of movies and TV shows on our site...

OnStream provides a limitless source of entertainment, including content from major platforms such as Youtube, Twitch, and even Live TV Channels. Should you not find something to your taste, make a request, we are always eager to scour the internet for your satisfaction.”

## **6. 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 disputed 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 the 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 three 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 states that the Respondent's names, "Ada" and "Pascal", are in fact both programming languages and not therefore likely to be the Respondent's real names.

The Complainant repeats its allegations (again without supporting evidence) that the Respondent's purported services are illegitimate and/or illegal and that the Respondent appears to offer free pirated entertainment to its customers.

The Complainant adds that at least one consumer appears to have lost money using the Respondent's website. It exhibits a report from "ScamAdviser" which deems the Respondent's website to be "Suspicious", with a "Trustscore" of 57/100. The review in question claims that the user in question lost USD 75,000 because the Respondent kept demanding money from it.

The Complainant requests the transfer of the disputed domain name.

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions

## **7. 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 is identical to that trademark, and the Panel therefore finds that the disputed domain name is identical to a trademark in which the Complainant has rights.

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

In this case, the disputed domain name resolves to a website which appears to offer a free TV streaming service, including access to movies. The Panel finds that the website appears, on its face, to be legitimate and contains nothing from which it is obvious, without further enquiry, that it constitutes a fraudulent or illegal venture. In these circumstances, the Panel finds that the website is prima facie legitimate, and that the Complainant must establish, on the balance of probabilities, that the website does not in fact constitute a

bona fide venture, but is rather a sham or pretext for the Respondent's unfair exploitation of the Complainant's trademark rights.

On the basis of the evidence and submissions available to it, the Panel does not find the Complainant to have met the burden of establishing these matters.

First, the Complainant contends that its ONSTREAM trademark "has no generally accepted meaning in the industry or otherwise". It is not clear that this is completely accurate. The term "on stream" appears to the Panel to be in relatively common use to indicate the availability of goods or services on demand. A search against the term ONSTREAM within the WIPO Global Brand Database returns a total of 15 live trademarks comprising or including the term ONSTREAM, registered for a variety of goods and services, by 11 different registrants (including the Complainant). It is not therefore clear that the Respondent must have selected the disputed domain with the intention of evoking the Complainant's ONSTREAM trademark, versus a descriptive connotation.

While the Complainant argues that the Respondent provides services that are "highly related" to the Complainant's, based on the evidence available to the Panel, the Complainant appears to use the ONSTREAM trademark principally to offer bulk streaming services for the hotel market (based exclusively or primarily in the United States), while the Respondent offers an app aimed at personal consumers. Any overlap in services is insufficient to persuade the Panel that the Respondent is likely to have registered the disputed domain name in order to take unfair advantage of the Complainant's reputation and goodwill. Proceedings under the UDRP fall to be determined on the terms of the Policy alone, and if the Complainant believes that the Respondent's use of the disputed domain name infringes its trademark rights or copyrights (upon which the Panel expresses no view), then that it a matter which the Complainant is able to pursue in another forum if so advised.

The Complainant further contends that "there is at least some evidence" that the Respondent's content is illegal and includes pirated moves that it offers free to its users. Despite this proposed inference, there is no evidence before the Panel of whether or not the Respondent's content is licensed, and the UDRP is not in any event an appropriate forum for a detailed factual investigation into such matters.

Nor do the Complainant's references to consumer reviews assist it in this case. The Panel's review<sup>1</sup> of the "ScamAdviser" website, referred to by the Complainant, returns a 71/100 "Trustscore" for the website at "www.onstream.so", with the advice "There may be small chance of risk". Furthermore, the specific review cited by the Complainant, where the user claims to have lost USD 75,000, is not only inherently unlikely given that the product appears to be offered for free (the Panel did not investigate e.g., whether there may be paid add-ons) but is not supported by any other negative reviews.

In the circumstances, the Panel finds therefore that the Complainant has failed to meet its burden on the second element.

### **C. Registered and Used in Bad Faith**

While the Panel's findings in respect of the second element are sufficient to dispose of the proceeding, the Panel also comments that it is not clear that there is evidence, or circumstances on which to infer that the Respondent registered the disputed domain name with the Complainant's trademark in mind and with the intention of taking unfair advantage of the goodwill attaching that trademark.

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<sup>1</sup> Noting in particular the general powers of a panel articulated inter alia in paragraphs 10 and 12 of the Rules, it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.8.

## **8. Decision**

For the foregoing reasons, the Complaint is denied.

*/Steven A. Maier/*

**Steven A. Maier**

Sole Panelist

Date: September 24, 2024