

Decision for dispute CAC-UDRP-105443

Case number CAC-UDRP-105443

Time of filing 2023-05-15 09:30:31

Domain names ONEPLUS.NET

Case administrator

Organization Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization ONEPLUS TECHNOLOGY (SHENZHEN) CO., LTD.

Complainant representative

Organization Thomsen Trampedach GmbH

Respondent

Name Sani Alam

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant bases his Complaint on the Indian trademarks "ONEPLUS", no. 4333746, registered on 30 October 2019, for goods and services in classes 09, 35 and 42 and "+1 ONE PLUS", no. 4333748, registered on 30 October 2019, for goods and services in classes 09, 35 and 42.

FACTUAL BACKGROUND

The Complainant is an electronics manufacturer producing ONEPLUS smartphones.

In December 2014, alongside the release of the OnePlus One in India exclusively through Amazon, the Complainant also announced plans to establish a presence in India.

The Complainant owns several ONEPLUS trademarks in various jurisdictions, among which, the Indian trademarks "ONEPLUS", no. 4333746, registered on 30 October 2019, for goods and services in classes 09, 35 and 42 and "+1 ONE PLUS", no. 4333748, registered on 30 October 2019, for goods and services in classes 09, 35 and 42.

The disputed domain name <oneplus.net> was registered on 31 January 2023 and resolved to an active website at the date of filing of the Complaint.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

COMPLAINANT'S CONTENTIONS:

The Complainant states that the disputed domain name <Oneplus.net> is confusingly similar to its trademark ONEPLUS trademark, as the only change as towards its ONEPLUS trademarks is the replacement of the letter "O" in the trademark with the numeral zero (or "0") in the disputed domain name.

The Complainant contends that the disputed domain name incorporates the whole of the ONEPLUS trademarks and that the addition of the generic Top Level Domain ".net" (gTLD) does not alter or diminish in any way the confusing similarity between the Complainant's ONEPLUS trademarks and the disputed domain name.

Further, the Complainant sustains that the Respondent does not have any rights or legitimate interest in the disputed domain name.

In this sense, the Complainant asserts that the Respondent impersonating the Complainant's official webpage means that such was aware of the brand ONEPLUS, the registered trademarks and the business owned by the Complainant.

The Complainant asserts that such has not authorized the Respondent to use the ONEPLUS trademark in anyway online or offline in India or anywhere else.

The Complainant further alleges that such could not find any evidence that the Respondent has owned or registered any trademark of "ONEPLUS" or "ONEPLUS" and that by Google searching, there is no result connecting "ONEPLUS" or "ONEPLUS" to the Respondent.

The Complainant contends that such could not find any fact to prove the Respondent's rights or legitimate interests in the dispute domain name as following:

- before any notice to the Respondent of the dispute, the Respondent 's use of, or demonstrable preparations to use the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services;
- 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
- the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, without the intention of commercial gain by misleadingly or diverting consumers or to tarnish the trademark or service mark at issue.

The Complainant contends that its trademark as well as the business are well-known in India and worldwide. Further, the Complainant alleges that the trademarks ONEPLUS were registered in 2013, long time before the domain name registration in 2023.

The Complainant asserts that such owns and runs the official website <https://www.oneplus.com/> and <https://www.oneplus.in/> for its business since 2013 and that "Oneplus" smartphone is on the top selling list in Europe as well as in India for many years in a row.

In the Complainant's view, it is difficult to believe that the Respondent chose the disputed domain name randomly without any knowledge of the "Oneplus" brand and intentionally designed a website that closely resembles the original Oneplus.in site.

Furthermore, the Complainant contends that such could not find any connection between SANI ALAM (the Respondent) and "ONEPLUS" or "ONEPLUS" through Google search which is the top one used searching engine in India.

Further, the Complainant sustains that the disputed domain name has been registered and is being used in bad faith.

To this end, the Complainant contends that the webpage under the dispute domain name impersonated the original official website of the Complainant, and this use is a typical fraud.

In the Complainant's view, it is difficult to believe that the Respondent chose the disputed domain name randomly without any knowledge of the "Oneplus" brand and intentionally designed a website that closely resembles the original Oneplus.in site.

The Complainant further asserts that previous use of the disputed domain name by the Respondent to redirect the Internet users to the impersonating website is generally considered by the UDRP Panels as an evidence of the Respondent's bad faith behavior which aimed to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website, as well as diluting and tarnishing the Complainant's trademark.

The Complainant contends that on the website available under the disputed domain name the Respondent also made use of the copyrighted imagery of Complainant's official website at <oneplus.in> and thus breached Complainant's copyright in these images.

The Complainant further asserts that it has found, in the same month of the dispute domain name, that there was another domain name <Onplus.in> (same using number zero instead of letter O) registered and redirected to a similar impersonating webpage. In the Complainant's belief, there is a connection between these two dispute domain names.

The Complainant contends that such has have sent a few notice e-mails through the registrar and the web hosting provider WIX.com to contact the registrant, but there was no response received.

The Complainant asserts that the website corresponding to the disputed domain name is not a none-profit informative website and that it is preventing the Complainant to represent its business online in India as well as misleading the web visitors into believing the website corresponding to the disputed domain name is in a way related to the Complainant violating thus the web user's rights.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

I. Identical or Confusingly Similar

The Panel agrees that the disputed domain name <Oneplus.net> is confusingly similar to the Complainant's earlier trademark ONEPLUS, as the replacement of the letter "O" from the ONEPLUS trademark with the numeral zero (or "0") in the disputed domain name is not sufficient to escape the finding that the domain name is confusingly similar to the trademarks ONEPLUS. In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, as this is the case, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0")).

Moreover, the extension ".net" is not to be taken into consideration when examining the identity/similarity between the Complainant's trademark and the disputed domain name (WIPO Case No. D2005-0016, Accor v. Noldc Inc.). The applicable Top Level Domain ("TLD") in a domain name (e.g., ".com") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0")).

Therefore, the Panel is satisfied that the first condition under the Policy is met.

II. Rights or Legitimate Interests

The Complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of proof shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy.

Based on the available evidence, the Respondent does not appear to be commonly known by the disputed domain name. The Complainant has never authorised the Respondent to make use of his trademark, nor to register the disputed domain name.

The disputed domain name resolved at the time the Complaint was filed to an active website which, based on the evidence filed in this file by the Complainant, seem to impersonate the Complainant's official webpage. Such use does not amount to a bona fide

offering of goods or services, or to a legitimate noncommercial or fair use of the disputed domain name, as other UDRP panels have found.

The Panel notes that the Respondent had an opportunity to comment on the Complainant's allegations by filing a Response, which the Respondent failed to do.

Thus, the Panel is satisfied that the Complainant has at least established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. Accordingly, the Panel takes the view that also the second requirement under the Policy is met.

III. Registered and Used in Bad Faith

The registration of the trademarks ONEPLUS predate the Respondent's registration of the disputed domain name.

Therefore, the Panel concludes that at the time of registration of the disputed domain name, the Respondent was aware of the Complainant's trademark and has intentionally registered the domain name in order to create confusion with the Complainant's trademark.

In the present case, the following factors should be also considered:

(i) the Respondent failed to submit any response and has not provided any evidence of actual or contemplated good faith use of the disputed domain name;

(ii) the Respondent registered the disputed domain name in which the Complainant's earlier trademarks ONEPLUS are recognizable, the only difference being the replacement of the letter "O" from the ONEPLUS trademark with the numeral zero (or "0") in the disputed domain name;

(iii) the Respondent has not been authorised to register and use a domain name confusingly similar to the Complainant's trademark;

(iv) the website corresponding to the disputed domain name at the time of filing of the Complainant appears to impersonate the original official website of the Complainant.

In light of the foregoing, the Panel finds that the disputed domain name has been registered and is being used in bad faith. Thus, also the third and last condition under the Policy is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. ONEPLUS.NET: Transferred

PANELLISTS

Name	Delia-Mihaela Belciu
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DATE OF PANEL DECISION **2023-06-18**

Publish the Decision
