

ADMINISTRATIVE PANEL DECISION

Zacks Investment Research, Inc. v. Eruwa Ninioritse Case No. D2022-0122

1. The Parties

Complainant is Zacks Investment Research, Inc., United States of America (“United States”), represented by Latimer LeVay Fyock, LLC, United States.

Respondent is Eruwa Ninioritse, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <zackstrade.pro> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 13, 2022. On January 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 14, 2022, 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 and contact information in the Complaint. The Center sent an email communication to Complainant on February 4, 2022, providing Respondent’s name 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 February 10, 2022.

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 February 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 20, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on March 25, 2022.

The Center appointed Gabriel F. Leonardos as the sole panelist in this matter on March 30, 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

Complainant is Zacks Investment Research, Inc., an American company of independent research and analysis on matters concerning investments, founded in 1978, with the aim to provide customers with strategic financial data and investment information.

The opinions and provisions of over a thousand analysts are merged and interpreted establishing a perspective on the potential gains from dividend payments and capital appreciation.

Complainant oversees client assets through its subsidiary, Zacks Investment Management subsidiary, and allows investors from the United States and overseas to interact and trade through its website. Such financial operations and the development of Complainant services before customers have been occurring since 1978 under the ZACKS trademark. Complainant's principal webpage is at <zacks.com>.

Complainant owns a substantial portfolio of trademark applications and registrations for "ZACKS", and other trademark registrations including the word "ZACKS", as it follows:

Trademark	Registration number	Goods and Services
ZACKS (Registered on January 15, 2019)	5652428	Financial research and information services
ZACKS ULTIMATE (Registered on February 26, 2019)	5683596	Financial information provided by electronic means in the field of investments
ZACKS INVESTOR COLLECTION (Registered on February 26, 2019)	5683595	Financial information provided by electronic means in the field of investments
ZACKS. OUR RESEARCH. YOUR SUCCESS (Registered on June 26, 2018)	5500740	Financial research and information services
ZACKS RANK (Registered on January 29, 2019)	5664114	Compiling and analyzing statistics, data and other sources of info for investment research purpose to assign a rating value to stocks
ZACKS CONFIDENTIAL (Registered on February 26, 2019)	5683592	Online electronic newsletters delivered by email in the field of financial and investment matters

Complainant has built up its online presence with its websites, including the following domain names: <zackstrade.com>; <zacks.com>; <zacksim.com>; <zackspcg.com>.

Complainant's domain name <zacks.com> was first registered in 1994, respectively, and the disputed domain name <zackstrade.pro> was registered on October 7, 2021, and resolved to a website copying Complainant's website and appears to offer the same services related to Complainant's financial activities.

5. Parties' Contentions

A. Complainant

Complainant submits that the disputed domain name is confusingly similar to its registered ZACKS trademarks, since the disputed domain name fully incorporates the central and dominant element of every ZACKS trademark, and that the mere addition of the non-distinctive elements "trade" and the generic Top-Level Domain ("gTLD") ".pro" is not sufficient to avoid confusion and undue association.

Therefore, Complainant claims that the incorporation of the primary element of its trademarks will likely be associated with the company and its services, regardless the existence of the gTLD ".pro", which reveals itself as insufficient to avoid confusion.

In addition, Complainant states that Respondent is not affiliated or related to Complainant nor its activities and is not licensed or authorized to use the ZACKS trademarks, nor is Respondent known by the disputed domain name.

Moreover, Complainant indicates that Respondent uses the disputed domain name to create a mirror of the legitimate website with incorrect contact information, and that the disputed domain was created with the intention to phish vulnerable internet users in order to obtain sensitive financial information in belief that the website is provided or affiliated to Complainant. Therefore, Respondent would not have rights or a legitimate interest in the disputed domain name under ICANN Policy, Paragraph 4(a)(ii).

Finally, Complainant submits that Respondent does not make a legitimate noncommercial or fair use of the disputed domain name, and the use by Respondent could further cause Internet users to mistakenly believe that the services offered on this website are offered by Complainant, or by an entity affiliated to Complainant

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

To succeed in a UDRP complaint, complainants must demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied as follows:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) 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.

The burden of proving these elements is upon Complainant.

Respondent had 20 days to submit a response in accordance with paragraph 5(a) of the Rules and failed to do so. Paragraph 5(f) of the Rules establishes that if a respondent does not respond to the Complaint, the Panel's decision shall be based upon the Complaint.

A. Identical or Confusingly Similar

Complainant has thoroughly proven the first element under paragraph 4(a) of the Policy by showing evidence that it is the owner of a trademark registration for ZACKS, and that Complainant's trademark is contained in its entirety in the disputed domain name <zackstrade.pro>, with the sole addition of the words "trade" and the

gTLD “.pro”.

The Panel finds that the addition of the term “trade” is not sufficient to prevent a finding of confusing similarity between the disputed domain name from Complainant’s registered ZACKS trademarks.

Thus, the Panel finds that the disputed domain name is confusingly similar to Complainant’s trademark and that the requirement of the first element of paragraph 4(a) of the Policy is satisfied.

B. Rights or Legitimate Interests

The consensus view of UDRP panels on the burden of proof under paragraph 4(a)(ii) of the Policy is summarized in section 2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) as follows: “[w]hile 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 often impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.”

In this case, noting the facts and contentions listed above, the Panel finds that Complainant has made a *prima facie* showing that Respondent lacks rights or legitimate interests, so the burden of production shifts to Respondent. As Respondent has not replied to Complainant’s contentions, that burden has not been discharged, and the Panel has considered Complainant’s un rebutted *prima facie* case to be sufficient to demonstrate that Respondent has no rights or legitimate interests in the disputed domain name <zackstrade.pro>.

Further, Respondent has not used the disputed domain name in the context of a *bona fide* that could demonstrate legitimate interests, since the evidence shows that the disputed domain name resolves to a website which mirrors Complainant’s website the <zackstrade.com>, as per Annex 8 and 9 to the Complaint.

Therefore, the Panel finds that Respondent has no rights or legitimate interests in respect of the disputed domain name (Policy, paragraph 4(a)(ii)).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists a number of circumstances that, without limitation, are deemed evidence of registration and use of a domain name in bad faith.

Respondent has registered the disputed domain name that incorporates Complainant’s trademark ZACKS, with the sole addition of the term “trade” and the gTLD “.pro.”

Further, the disputed domain name resolves to a website which is virtually identical to Complainant’s website. Thus, Panel finds that the disputed domain name could cause Internet users to mistakenly believe that the services offered are provided by Complainant, or by an entity affiliated to Complainant, and induces users to present personal financial information to Respondent. See: *Barclays Bank PLC v. PrivacyProtect.org / Sylvia Paras*, WIPO Case No. [D2011-2011](#): “The Panel finds that use of the disputed domain name will divert potential customers from the Complainant’s business to the website under the disputed domain name by attracting Internet users who mistakenly believe that the disputed domain name is affiliated to the Complainant, and which may further mistakenly believe that the services offered on this website are offered by the Complainant, or by an entity affiliated to the Complainant.”

Also, the Panel finds that the practice of making use of a disputed domain name with the specific purpose of resolving to a copycat website (or to a highly similar website) asking for details of the Internet users (as for

example login credentials) may be used for purposes of phishing, since it deceives consumers, leading them to believe that there is some kind of association between Complainant and Respondent to potentially obtain information of the Internet users. Or, even so, suggests that Respondent's webpage belongs to Complainant's. In this matter, see: *Lewis Silkin LLP v. Heinz Siepenkötter / Siepenkötter kg*, WIPO Case No. [D2014-1196](#):

"The use of a domain name for the purpose of defrauding Internet users by operating a "phishing" website is the clearest evidence of a bad faith registration and use of a domain name."

Also, the Panel considers to be highly unlikely that Respondent had no knowledge of Complainant's rights over the ZACKS trademarks at the time of registration of the disputed domain name, considering that (i) Complainant is a global company and; (ii) Complainant's trademarks ZACKS were registered prior to the registration of the disputed domain name.

Accordingly, the Panel concludes that the disputed domain name was registered and is being used in bad faith under paragraph 4(b)(iv) of the Policy. As such, the Panel finds that Complainant has satisfied paragraph 4(a)(iii) 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, <zackstrade.pro>, be transferred to Complainant.

/Gabriel F. Leonardos/

Gabriel F. Leonardos

Sole Panelist

Date: April 13, 2022