

## **ADMINISTRATIVE PANEL DECISION**

Budage Pty Ltd v. Sukari Walid, cfo  
Case No. D2023-1877

### **1. The Parties**

Complainant is Budage Pty Ltd, Australia, represented by Clayton Utz, Australia.

Respondent is Sukari Walid, cfo, United States of America.

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

The disputed domain name is <claytcnutz.com> which is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 26, 2023. On April 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 27, 2023, 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 (Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on May 2, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on May 4, 2023.

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 Respondent of the Complaint, and the proceedings commenced on May 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 29, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on May 30, 2023.

The Center appointed Gerardo Saavedra as the sole panelist in this matter on June 2, 2023. This Panel finds that it was properly constituted. This 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 a special purpose vehicle established by the Australian law firm Clayton Utz ("CU").

Complainant has rights over the CLAYTON UTZ mark for which it holds Australian registration No. 1348381 in classes 9, 35, 36, 41, 42 and 45, registered on March 3, 2010. Complainant also has rights over the CLAYTON UTZ and design mark for which it holds Australian registration No. 826782 in classes 9, 35, 41 and 42, registered on March 8, 2000.

The disputed domain name was registered on March 31, 2023. Before the Complaint was filed the disputed domain name was used as an email address and, according to Complainant, the disputed domain name did not resolve to an active website.

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

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

Complainant's assertions may be summarized as follows.

Complainant is wholly owned in equal share by the Chief Executive Partner and the Deputy Chief Executive Partner of CU, and provides to CU non-legal services, such as marketing, promotional and business development services.

CU uses the CLAYTON UTZ and CLAYTON UTZ and design marks pursuant to a license from Complainant. CU is particularly recognized for legal services and legal related services that are provided to clients in Australia and internationally. CU has substantial common law rights, goodwill and reputation acquired through the widespread use of said marks since at least 1924. CU also maintains a presence and promotes its services from the website linked to <claytonutz.com>; Complainant is the administrative and technical contact for such domain name.

But for the substitution of the letter "o" for the letter "c" in the word Clayton, the disputed domain name incorporates the entirety of Complainant's marks. Respondent has purposefully misspelled the word Clayton using a visually similar letter to create a domain name that is confusingly similar to Complainant's marks, which is a clear example of typosquatting on the part of Respondent.

There is no evidence that Respondent is commonly known by the disputed domain name, and Complainant has not granted any right to Respondent to use Complainant's marks. The disputed domain name does not resolve to a website and there is no evidence of Respondent's use of, or preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services.

Respondent is not making a legitimate noncommercial or fair use of the disputed domain name since it has been used solely to impersonate the email addresses of authorized representatives of CU for the purpose of fraudulent financial gain. Respondent's use of the disputed domain name is intended to misleadingly divert clients and to tarnish Complainant's marks. The use of the disputed domain name for illegal activity, including the impersonation of another and other types of fraud can never confer rights or legitimate interests on Respondent.

The words comprising CLAYTON UTZ are sufficiently unique both individually and collectively to suggest that Respondent must have had Complainant's marks in mind when registering the disputed domain name.

Respondent has used the disputed domain name to impersonate the email addresses of partners of CU, and to send emails to actual clients requesting payment of professional fees.<sup>1</sup> These emails attached forged remittance advices created to mirror the remittance advices of Complainant. The bank account details included in those forged remittance advices were not related to any bank account associated with Complainant and instead were presumably Respondent's.

At no time has Complainant or CU given permission or otherwise authorized Respondent to send emails on behalf of partners of CU or CU. Those emails were sent fraudulently in an attempt to confuse customers into believing that they are corresponding with an authorized representative of Complainant and to elicit some payment from the recipient through the use of deception based on the similarity of the disputed domain name to CU's <claytonutz.com>.

The use of the disputed domain name by Respondent to send deceptive emails, and solicit payment of fraudulent invoices from Complainant's actual customers, is clearly an act of bad faith.

Complainant requests that the disputed domain name be transferred to Complainant.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules instructs the Panel to "decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

The lack of Response from Respondent does not automatically result in a favorable decision for Complainant (see *Berlitz Investment Corp. v. Stefan Tincuлесcu*, WIPO Case No. [D2003-0465](#), and section 4.3 of the [WIPO Overview 3.0](#)). The burden for Complainant, under paragraph 4(a) of the Policy, is to show: (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; (ii) that 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**

It is undisputed that Complainant has rights over the CLAYTON UTZ and the CLAYTON UTZ and design marks.

Since the addition of the generic Top Level Domain ("gTLD") ".com" in a domain name is technically required, it is well established that such element may be disregarded where assessing whether a domain name is identical or confusingly similar to a mark. Taking into account the aforesaid, it is clear that the disputed domain name almost identically reproduces the CLAYTON UTZ mark. This Panel considers that such mark is recognizable in the disputed domain name and that the replacement of the "o" letter with the "c"

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<sup>1</sup> Attached to the Complaint is a copy of an email sent from S. W. <[...].@claytncnutz.com> with copy to "[...].@claytncnutz.com", and of a remittance advice attached thereto in apparent letterhead of CU. This Panel notices that in CU's website "www.claytonutz.com", W. S. and Z. C. are featured as CU's partners, with email addresses substantially similar to those shown in the email sent from the disputed domain name. See section 4.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)).

letter in the disputed domain name does not avoid a finding of confusing similarity with said mark (see sections 1.7 and 1.9 of the [WIPO Overview 3.0](#)).

Thus, this Panel finds that Complainant has satisfied paragraph 4(a)(i) of the Policy.

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

Complainant has alleged and Respondent has failed to deny that Respondent has no rights or legitimate interests in respect of the disputed domain name.

There is no evidence in the case file of circumstances of the type specified in paragraph 4(c) of the Policy, or of any other circumstances giving rise to a possible right to or legitimate interest in the disputed domain name by Respondent, but rather the opposite may be validly inferred.

Complainant contends that it has not authorized Respondent to use its CLAYTON UTZ mark, that Respondent is not commonly known by the disputed domain name, and that Respondent is not using the disputed domain name in connection with any *bona fide* offer of goods or services. The evidence in the file shows that the disputed domain name was used as an email address for sending at least a phishing email communication, conveying the impression that the sender is associated with CU, that is, the disputed domain name was used to try to obtain a payment by impersonating a partner of CU. Such use demonstrates neither a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name.<sup>2</sup>

Based on the aforesaid, this Panel concludes that paragraph 4(a)(ii) of the Policy is satisfied.

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

Complainant contends that Respondent's registration and use of the disputed domain name is in bad faith, which Respondent chose not to rebut.

The evidence in the case file clearly shows that Respondent's choice of the disputed domain name was deliberate with the intention of impersonating CU, Complainant's licensee, to deceive CU's clients. The fact that the disputed domain name incorporates Complainant's CLAYTON UTZ mark with just a minor typographical variation (a practice commonly known as typosquatting and which has been deemed as a strong indicative of bad faith under a number of UDRP decisions<sup>3</sup>), coupled with the email communication sent to a CU's client from an email account that confusingly resembles the email account of a CU's partner (a practice commonly known as phishing and which has also been deemed as a showing of bad faith under a number of UDRP decisions<sup>4</sup>), lead to the conclusion that Respondent registered and used the disputed domain name in bad faith.

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<sup>2</sup> See *Olivetti S.p.A v. mez inc*, WIPO Case No. [D2015-1934](#): "Respondent's use of the Domain Name in a phishing scheme to divert customer payments from the Complainant to the Respondent did not constitute either a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the Domain Name"; *Syngenta Participations AG v. Guillaume Texier, Gobain Ltd*, WIPO Case No. [D2017-1147](#): "A registrant cannot acquire rights or legitimate interests by the use of a domain name as an email address from which to send phishing emails."

<sup>3</sup> See *Amazon.com, Inc. v. Steven Newman a/k/a Jill Wasserstein a/k/a Pluto Newman*, WIPO Case No. [D2006-0517](#): "the practice of typosquatting, in and of itself, constitutes bad faith registration." See also *Go Daddy Software, Inc. v. Daniel Hadani*, WIPO Case No. [D2002-0568](#): "Typosquatting is virtually *per se* registration and use in bad faith."

<sup>4</sup> See *BinckBank N.V. v. Helo Holdings LTD*, WIPO Case No. [DNL2010-0014](#): "Respondent in the present case apparently targeted Dutch students by pretending to be the Complainant and sending them an offer from an e-mail address associated with the Domain Name [...] Phishing activities pose a severe threat to customers, trademark holders and third parties." See *Yardi Systems, Inc. v. Abm Black*, WIPO Case No. [D2019-0057](#): "Respondent is not using the disputed domain name to resolve to a web site, but rather is using it for spear phishing, employing the disputed domain name in an email address [...] This is classic bad faith registration and use." See also section 3.4 of the [WIPO Overview 3.0](#).

Further, this Panel notices that Respondent's name as registrant, as disclosed by the Registrar, corresponds to the name of said CU's partner. Although that might be a mere coincidence, given the overall evidence in the case file, this Panel is of the view that such name might not correspond to Respondent's real name and that Respondent might have selected it to reinforce Respondent's impersonation of said CU's partner in the email scheme referred to above.

In sum, the overall evidence indicates that Respondent's choice of the disputed domain name was deliberate for its confusing similarity with Complainant's CLAYTON UTZ mark (and CU's name and email addresses), and with the intention to commercially benefit therefrom by deceiving CU's clients, which denotes bad faith.

In light of all the above, this 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, this Panel orders that the disputed domain name <claytcnutz.com> be transferred to Complainant.

*/Gerardo Saavedra/*

**Gerardo Saavedra**

Sole Panelist

Date: June 16, 2023