

ADMINISTRATIVE PANEL DECISION

Josip Heit v. John Doe
Case No. D2022-0089

1. The Parties

The Complainant is Josip Heit, Germany, represented by Irle Moser Rechtsanwälte, Germany.

The Respondent is John Doe, United States of America.

2. The Domain Name and Registrar

The disputed domain name <josipheit.info> (hereafter referred to as the “Disputed Domain Name”) 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 12, 2022. On January 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On January 12, 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 the Complainant on January 13, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint.¹ The Complainant filed an amended Complaint on January 13, 2022.

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 the Respondent of the Complaint, and the proceedings commenced on January 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 13, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 8, 2022.

¹ At the time of the filing of the Complaint, the Respondent’s identity was masked by a privacy service.

The Center appointed Flip Jan Claude Petillion as the sole panelist in this matter on March 14, 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, Mr. Josip Heit, is an individual who is active in the blockchain services market. The Complainant's products relate to the financial sector and include white-labeled and customizable software solutions, trading modules, platforms, and signal/data streams. The Complainant also offers a cryptocurrency named "G999" and gold trading services.

The Complainant holds a registered trade mark corresponding to his name:

- JOSIP HEIT, European Union ('EU') trade mark registered on September 25, 2021 under No. 018485927 and covering classes 9, 36, 38 and 42.

The Disputed Domain Name was registered on January 1, 2022. It currently appears to be inactive.

5. Parties' Contentions

A. Complainant

The Complainant considers the Disputed Domain Name to be identical to a trademark in which it claims to have rights. The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. According to the Complainant, the Respondent has not used the Disputed Domain Name in connection with a legitimate use. Also, the Complainant claims he did not issue licenses and is not aware of any other persons holding rights to the name "Josip Heit". Finally, the Complainant claims that the Disputed Domain Name was registered and is being used in bad faith. According to the Complainant, the Respondent intentionally attempted to attract Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's mark as to the source, affiliation and endorsement of the Respondent website. The Complainant also claims that the Respondent holds the Disputed Domain Name without using it, which can support a finding of bad faith in the circumstances of this case. According to the Complainant, the Respondent has concealed its identity and has already registered trademark-abusive domain names before.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer the Disputed Domain Name. As the UDRP proceedings are administrative, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

- (i) the Disputed Domain Name is identical or confusingly similar to a 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 and is being used in bad faith.

The Panel will therefore deal with each of these requirements.

A. Identical or Confusingly Similar

To prove this element, the Complainant must first establish that there is a trademark or service mark in which it has rights. The Complainant has clearly established that there is a trademark in which he has rights. The Complainant's JOSIP HEIT trademark has been registered in the EU and used in connection to his various software and banking services.

The Disputed Domain Name is virtually identical to the Complainant's trademark, as it simply leaves out the space between the two terms composing the Complainant's trade mark. It is well established that the generic Top-Level Domain ("gTLD"), here ".info", may be disregarded when considering whether the Disputed Domain Name is confusingly similar to a trademark in which the Complainant has rights.

In light of the above, the Panel considers the Disputed Domain Name to be identical to the Complainant's JOSIP HEIT trademark.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* showing that the Respondent has no rights or legitimate interests in the Disputed Domain Name in order to place the burden of production on the Respondent (see section 2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Panel notes that the Respondent has not apparently been commonly known by the Disputed Domain Name and that the Respondent does not seem to have acquired trademark or service mark rights. According to the Whois records connected to the Disputed Domain Name, the Respondent is "John Doe". In the Panel's view, the use of such placeholder name rather suggests that the Respondent used false contact details. The Respondent's use and registration of the Disputed Domain Name was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent exists or existed.

Where a domain name is identical to a complainant's trademark, UDRP panels have largely held that it carries a high risk of implied affiliation (see section 2.5.1 of the [WIPO Overview 3.0](#)). The Disputed Domain Name incorporates the Complainant's JOSIP HEIT name and trademark in its entirety, simply leaving out the space between the two terms. Therefore, the Panel finds that the Disputed Domain Name cannot constitute *bona fide* or even fair use.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, including the absence of a response, support a fair use or not (see sections 2.5.2 and 2.5.3 of the [WIPO Overview 3.0](#)).

The Complainant claims that the Disputed Domain Name “and the website are being used primarily for cybersquatting, and to place pay-per-click adverts”. However, the Complainant does not provide any evidence of a website linked to the Disputed Domain Name.

However, the Panel is of the opinion that the Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name. The Panel observes that the Disputed Domain Name appears to be inactive, and neither the Respondent nor the facts of the case indicate any demonstrable preparations to a good faith use of the Disputed Domain Name. The passive holding or non-use of domain names is, in appropriate circumstances, evidence of a lack of rights or legitimate interests in the domain names (see *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *Facebook, Inc. v. Mirza Azim*, WIPO Case No. [D2016-0950](#); *American Home Products Corporation v. Ben Malgioglio*, WIPO Case No. [D2000-1602](#); and *Vestel Elektronik Sanayi ve Ticaret AS v. Mehmet Kahveci*, WIPO Case No. [D2000-1244](#)).

The Respondent had the opportunity to demonstrate its rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the *prima facie* case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the Disputed Domain Name. In light of the above, the Complainant succeeds on the second element of the Policy.

C. Registered and Used in Bad Faith

The Complainant must prove on the balance of probabilities both that the Disputed Domain Name was registered in bad faith and that it is being used in bad faith (see section 4.2 of the [WIPO Overview 3.0](#), and, for example, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); and *Control Techniques Limited v. Lektronix Ltd*, WIPO Case No. [D2006-1052](#)).

In the present case, the Panel finds it more likely than not that the Respondent was aware of the Complainant and its trademark rights when it registered the Disputed Domain Name. The Disputed Domain Name corresponds to the Complainant’s full name and registered trademark. Therefore, the Panel finds that the Respondent must have had knowledge of the Complainant’s rights at the time of registering the Disputed Domain Name on January 1, 2022. According to the Panel, the Respondent’s awareness of the Complainant’s trademark rights at the time of registration indicates bad faith (see section 3.2.2 of the [WIPO Overview 3.0](#)).

The Panel observes that the Respondent is not presently using the Disputed Domain Name. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put (see section 3.3 of [WIPO Overview 3.0](#)).

In the present case, the Panel is of the opinion that all above factors apply in this case:

- the Panel finds that the Complainant’s JOSIP HEIT trademark is distinctive;
- the Respondent did not submit any response or provided any evidence of actual or contemplated good-faith use;
- there are indications that the Respondent concealed its identity by using a placeholder name;
- given the identity with the Complainant’s name and registered trade mark, the Panel finds it difficult to conceive any plausible legitimate future use of the Disputed Domain Name by the Respondent.

By failing to respond to the Complaint, the Respondent did not take any initiative to contest the foregoing. Pursuant to paragraph 14 of the Rules, the Panel may draw the conclusions it considers appropriate.

Therefore, the Panel finds that, on the balance of probabilities, it is sufficiently shown that the Disputed Domain Name was registered and is being used in bad faith. In light of the above, the Complainant also succeeds on the third and last element 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 <josipeit.info> be transferred to the Complainant.

/Flip Jan Claude Petillion/

Flip Jan Claude Petillion

Sole Panelist

Date: March 28, 2022