

ADMINISTRATIVE PANEL DECISION

Zacks Investment Research, Inc. v. Privacy service provided by Withheld for Privacy ehf / Collins Ishaka, Affiliate Top Earners, LLC
Case No. D2022-2048

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 Privacy service provided by Withheld for Privacy ehf, Iceland / Collins Ishaka, Affiliate Top Earners, LLC, Nigeria.¹

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 7, 2022. On June 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 9, 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 June 10, 2022, 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 June 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”).

¹ It is evident from the case file that Withheld for Privacy ehf, Iceland, is a privacy protection service and that Collins Ishaka, Affiliate Top Earners, LLC, Nigeria, is the underlying registrant of the disputed domain name. Therefore, unless otherwise indicated, the term “Respondent” is used by the Panel in the case at hand to refer to the latter underlying registrant only.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on June 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 6, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on July 12, 2022.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on July 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

Complainant is a company organized under the laws of the United States that is active in the financial industry by offering independent research and investment related content (such as financial data and analysis) to professional investors.

Complainant has provided evidence that it is the registered owner of numerous trademarks relating to its company name and brand ZACKS, *inter alia*, but not limited, to the following:

- Word mark ZACKS, United States Patent and Trademark Office ("USPTO"), registration number: 5,652,428, registration date: January 15, 2019, status: active.

Moreover, Complainant has documented to own numerous domain names relating to its ZACKS trademark, *inter alia*, the domain names <zacks.com> (registered since 1994) and <zackstrade.com> (registered since 2008), which resolve to active websites at "www.zacks.com" and "www.zackstrade.com", respectively, where Complainant promotes its various products and related services in the financial industry.

Respondent, according to the disclosed Whois information for the disputed domain name, is domiciled in Nigeria and registered the disputed domain name on May 11, 2022. The latter resolves to a website at "www.zackstradingpro.com" which mirrors Complainant's official website at "www.zackstrade.com", thereby featuring an email address and a telephone number not associated with Complainant as well as a webpage in which Internet users are asked to enter their personal contact information.

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

5. Parties' Contentions

A. Complainant

Complainant submits that the disputed domain name is confusingly similar to Complainant's ZACKS trademark, as the latter is the most dominant feature of the disputed domain name, only added by the non-distinctive term "tradingpro". Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) Respondent is not affiliated with or related to Complainant, and is not licensed or otherwise authorized to use Complainant's ZACKS trademark, and (2) Respondent registered and is using the disputed domain name to create a mirror website to Complainant's official website which contains incorrect contact information, presumably in order to phish unsuspecting Internet users into giving up their sensitive financial information. Finally, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith since it incorporates Complainant's well-known ZACKS trademark, to resolve to a website which is virtually identical to Complainant's official website, thereby (1) dangerously directing potential customers away from Complainant's business, and (2) causing such Internet users to mistakenly believe that the services offered on Respondent's website are offered by Complainant in order to receive the users' personal financial information.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) that Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

Respondent's default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondent's failure to submit a Response as it considers appropriate.

A. Identical or Confusingly Similar

The Panel concludes that the disputed domain name is confusingly similar to the ZACKS trademark in which Complainant has rights.

The disputed domain name incorporates Complainant's ZACKS trademark in its entirety. Numerous UDRP panels have recognized that where a domain name incorporates a trademark in its entirety, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that trademark (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7). Moreover, it has been held in many UDRP decisions and has become a consensus view among panelists (see [WIPO Overview 3.0](#), section 1.8), that the addition of other terms (whether *e.g.* descriptive or otherwise) would not prevent the finding of confusing similarity under the first element of the UDRP. Accordingly, the addition of the terms "trading" and "pro" does not dispel the confusing similarity arising from the incorporation of Complainant's entire ZACKS trademark in the disputed domain name.

Therefore, Complainant has established the first element under the Policy as set forth by paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Panel is further convinced on the basis of Complainant's undisputed contentions that Respondent has not made use of the disputed domain name in connection with a *bona fide* offering of goods or services, nor has Respondent been commonly known by the disputed domain name, nor can it be found that Respondent has made a legitimate noncommercial or fair use thereof without intent for commercial gain.

Respondent has not been authorized to use Complainant's ZACKS trademark, either as a domain name or in any other way. Also, there is no reason to believe that Respondent's name somehow corresponds with the disputed domain name and Respondent does not appear to have any trademark rights associated with the name/term "zacks" on its own. To the contrary, Respondent is running a website under the disputed domain name at "www.zackstradingpro.com", which mirrors Complainant's official website at "www.zackstrade.com", thereby featuring an email address and a telephone number not associated with Complainant as well as a webpage in which Internet users are asked to enter their personal contact information. Such making use of the disputed domain name obviously neither qualifies as *bona fide* nor as legitimate noncommercial or fair within the meaning of the Policy.

Accordingly, Complainant has established a *prima facie* case that Respondent has no rights or legitimate interests in respect of the disputed domain name. Now, the burden of production shifts to Respondent to come forward with appropriate evidence demonstrating to the contrary (see [WIPO Overview 3.0](#), section 2.1). Given that Respondent has defaulted, it has not met that burden.

Therefore, the Panel finds that Complainant has also satisfied paragraph 4(a)(ii) and, thus, the second element of the Policy.

C. Registered and Used in Bad Faith

The Panel finally holds that the disputed domain name was registered and is being used by Respondent in bad faith.

The circumstances to this case leave no doubt that Respondent was fully aware of Complainant's rights in the ZACKS trademark when registering the disputed domain name and that the latter is clearly directed thereto. Moreover, using the disputed domain name, which is confusingly similar to Complainant's ZACKS trademark, to run a website which mirrors Complainant's official website at "www.zackstrade.com", thereby featuring an email address and a telephone number not associated with Complainant as well as a webpage in which Internet users are asked to enter their personal contact information, is a clear indication that Respondent intentionally attempted to attract, for commercial gain, Internet users to its own website by creating a likelihood of confusion with Complainant's ZACKS trademark as to the source, sponsorship, affiliation or endorsement of Respondent's website. Such circumstances are evidence of registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

In this context, it also carries weight in the eyes of the Panel not only that Respondent has defaulted, but that despite of numerous attempts to deliver the Written Notice on the Notification of Complaint dated June 16, 2022, over a period of 15 days to Respondent's business address provided for in the Whois contact information and disclosed by the Registrar for the disputed domain name, Respondent, according to the respective DHL shipment tracking report, did not respond at all to such delivery attempts. This fact at least throws a light on Respondent's behavior which supports the Panel's bad faith finding.

Therefore, the Panel concludes that Complainant has also satisfied the third element under the Policy set forth by paragraph 4(a)(iii).

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, <zackstradingpro.com>, be transferred to Complainant.

/Stephanie G. Hartung/

Stephanie G. Hartung

Sole Panelist

Date: July 27, 2022