

ADMINISTRATIVE PANEL DECISION

Zacks Investment Research, Inc. v. Golden Great, Goldentech Case No. D2022-3654

1. The Parties

The Complainant is Zacks Investment Research, Inc., United States of America, represented by Latimer LeVay Fyock LLC, United States of America.

The Respondent is Golden Great, Goldentech, Nigeria.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 30, 2022. On October 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 3, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 5, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on October 11, 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 the Respondent of the Complaint, and the proceedings commenced on October 13, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 2, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 8, 2022.

The Center appointed Miguel B. O'Farrell as the sole panelist in this matter on November 13, 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 claims to have been offering independent research and investment related content since 1978 under its ZACKS trademark.

The Complainant owns several United States (US) trademark registrations for or incorporating ZACKS, including the following:

US Trademark Registration No. 5652428 ZACKS, registered on January 15, 2019, with first use on January 1, 2000, in class 36;

US Trademark Registration No. 5683595 ZACKS INVESTOR COLLECTION, registered on February 26, 2019, with first use on January 12, 2013, in class 36;

US Trademark Registration No. 5664114 ZACKS RANK, registered on January 29, 2019, with first use on January 1, 2000, in class 36;

US Trademark Registration No. 5683593 ZACKS PREMIUM, registered on February 26, 2019, with first use on July 1, 2006, in class 36.

The Complainant also owns several domain names which include the trademark ZACKS, such as <zacks.com> registered on September 11, 1994 which resolves to its primary webpage in which it provides financial research services.

The disputed domain name <zacktrade.net> was registered on January 19, 2022 and resolves to a webpage that uses the Complainant's ZACKS trademarks and offers trading services similar to those offered by the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant claims that the disputed domain name is confusingly similar to its trademark ZACKS in which the Complainant has rights and that the Respondent has no rights or legitimate interests in the disputed domain name, which was registered and is being used in bad faith.

The Complainant's research services are used by thousand of analysts at hundreds of brokerages in order to provide their clients with reliable investment information.

The owner of the Complainant also operates, through a separate Company, the website <zackstrade.com>, which allows individual investors both US and international to actively trade.

More specifically, the Respondent is not affiliated with the Complainant in any way. Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark ZACKS. The Respondent is not commonly known by the disputed domain name and has not acquired any trademark or service mark rights in the ZACKS name or mark.

The Respondent registered and is using the disputed domain name to create a site, which is confusingly similar to the legitimate <zackstrade.com>, website which contains incorrect contact information. It is the Complainant's belief that the disputed domain name is used by the Registrant to phish unsuspecting Internet users into giving up their sensitive financial information thinking that the website is operated by the Complainant.

Finally, the Complainant has requested the Panel to issue a decision ordering the transfer of the disputed domain name to the Complainant.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove each of the following, namely that:

- (i) the disputed domain name is identical or confusingly similar with 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 was registered and is being used in bad faith.

A. Identical or Confusingly Similar

As set forth in section 1.7 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name to determine whether the disputed domain name is confusingly similar with the trademark. The test involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Panel considers that the disputed domain name is confusingly similar with the Complainant's ZACKS trademark.

The disputed domain name <zacktrade.net> incorporates the Complainant's trademark ZACKS without the letter "s" and the addition of the word "trade", which does not prevent a finding of confusing similarity.

The ".net" generic Top-Level Domain ("gTLD") is viewed as a standard registration requirement and is generally disregarded under the first element confusing similarity test, as set forth in section 1.11.1 of [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the trademark ZACKS in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy are fulfilled.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in a domain name by demonstrating any of the following:

- (i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of

goods or services; or

(ii) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a domain name, it is well established, as it is put in section 2.1 of [WIPO Overview 3.0](#), that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The Complainant has proven that the web page to which the disputed domain name resolves offers services similar to those offered by the Complainant on its own web page. This certainly does not constitute a *bona fide* offering of goods or services by the Respondent and, therefore, cannot establish rights or legitimate interests pursuant to paragraph 4(c)(i) of the Policy.

There is no evidence in the present case that the Respondent has been commonly known by the disputed domain name, enabling it to establish rights or legitimate interests therein. The name of the Respondent does not resemble the disputed domain name in any manner.

Furthermore, there is no evidence in the file to prove any of the circumstances mentioned in paragraph 4(c) of the Policy, nor any other element to prove that the Respondent has legitimate interests or that it has established rights in the disputed domain name.

Likewise, and as further discussed under section 6.C of this decision, the Respondent is using the disputed domain name which is confusingly similar with the Complainant's trademark ZACKS for the purpose of deriving unfair monetary advantage by confusing Internet users and leading them to believe that the site to which the disputed domain name resolves is a site associated with the Complainant.

As established in section 2.5 of [WIPO Overview 3.0](#): "Fundamentally, a respondent's use of a domain name will not be considered 'fair' if it falsely suggests affiliation with the trademark owner; the correlation between a domain name and the complainant's mark is often central to this inquiry".

As indicated in section 6.A above, the disputed domain name is confusingly similar with the Complainant's trademark ZACKS and the Respondent is not using the disputed domain name in any way that may be considered fair use.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not responded and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the disputed domain name (*Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

Therefore, the requirements of paragraph 4(a)(ii) of the Policy have been fulfilled.

C. Registered and Used in Bad Faith

The Panel is satisfied that the Respondent must have been aware of the Complainant's trade name and trademark ZACKS mentioned in section 4 above (Factual Background) and also the Complainant's domain name <zacks.com> when it registered the disputed domain name on January 19, 2022. By that time, the

Complainant had widely and intensely used the trademark ZACKS.

By registering the disputed domain name, the Respondent was targeting the Complainant and its business by incorporating the singular of the Complainant's name and trademark ZACKS (without the "s") and adding the descriptive word "trade", which only contributes to increase confusion with the Complainant's business and trademark ZACKS, with the intention to confuse Internet users and capitalize on the fame of the Complainant's trade name and trademarks for its own benefit.

The fact that there is a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent's choice of the disputed domain name, the nature of the disputed domain name, the use of the disputed domain name to resolve to a website offering the same services as those offered by the Complainant is indicative of bad faith (as stated in section 3.2.1 of the [WIPO Overview 3.0](#)). The Panel finds that the Respondent registered and is using the disputed domain name in bad faith.

For the above reasons, the Panel finds that the requirements of paragraph 4(a)(iii) of the Policy have been fulfilled.

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 <zacktrade.net> be transferred to the Complainant.

/Miguel B. O'Farrell/

Miguel B. O'Farrell

Sole Panelist

Date: November 25, 2022