

## **ADMINISTRATIVE PANEL DECISION**

Zak Zilesnick v. Egor Sherbin  
Case No. D2022-4005

### **1. The Parties**

The Complainant is Zak Zilesnick, United Kingdom, represented by Demys Limited, United Kingdom.

The Respondent is Egor Sherbin, Russian Federation.

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

The disputed domain name <zakabel.com> is registered with DropCatch.com LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 28, 2022. On October 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 31, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 November 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 27, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 29, 2022.

The Center appointed Assen Alexiev as the sole panelist in this matter on December 5, 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 (known by his stage name Zak Abel) is a British singer and songwriter and former table-tennis champion in the United Kingdom, born in 1995. The Complainant began his professional music career at the age of 14 and secured his first record deal in 2014. His music genre can be described as a mixture of pop, R&B, and soul.

The disputed domain name was registered on September 30, 2021. It resolves to a website that purports to be the Complainant's official website and contains an image of the Complainant's face.

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

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

The Complainant contends that he has unregistered rights in his stage name Zak Abel. The Complainant maintains that he has used this stage name for a period of six years before the registration of the disputed domain on September 30, 2021. The Complainant notes that he first rose to prominence in 2014 when he released the song "Unmissable" by Gorgon City which reached number 19 in the United Kingdom's singles chart. The Complainant increased his fame in the United Kingdom through the release of the extended play records "Joker presents Zak Abel" and "One Hand On The Future" in 2015, which gathered over three million streams on Soundcloud, and of the Complainant's single "Unstable" in 2016, which reached over 20 million streams by June 2017. The Complainant released his debut album "Only when we're naked" in 2017, which reached the top 100 chart list of the United Kingdom. In 2017, the Complainant was named as one of the "50 Fittest Boys of 2017" by the Vogue UK. In 2020, the Complainant featured the song "Freedom", which reached number 90 in the German single chart and number 25 in Switzerland. The song has been streamed more than 180 million times on Spotify and its music video has been viewed more than 13.8 million times on YouTube. The Complainant adds that he enjoys a popular following on his social media accounts, with over 95,100 followers on Instagram, 84,700 subscribers on YouTube, 48,000 followers on Facebook and over 22,300 on twitter. The Complainant's videos "You Come First featuring Saweetie", published on January 10, 2019, has received over 5.8 million views, and his video "Love Song", published on April 17, 2018 - over 4.6 million views on YouTube. The Complainant's single "Bad" (2020) has been streamed over 85.5 million times and "Be kind" (2021) was streamed over 23 million times on Spotify. The Complainant's single "Less of a Man" was released on September 9, 2021 – 21 days before the registration of the disputed domain name.

The Complainant submits that the disputed domain name is identical to his unregistered trademark ZAK ABEL.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it is not commonly known as Zak Abel and is not a licensee of the Complainant. The Complainant adds that the Respondent has no trademarks incorporating the name Zak Abel and has never traded legitimately under it. The Complainant argues that the disputed domain name carries a high risk of implied affiliation because it is identical to the ZAK ABEL trademark, and contends that given the fame of his ZAK ABEL trademark, there is no conceivable use to which the disputed domain name could be put that would confer any legitimate interest upon the Respondent.

The Complainant states that the disputed domain name resolves to a website that describes itself as the official website of Zak Abel, uses the Complainant's ZAK ABEL trademark and an image showing the Complainant's face, and incorporates songs by the Complainant published on Spotify. The Complainant maintains that the Respondent targets him to deceive Internet users into believing that the website is owned and operated by the Complainant. The Complainant adds that the website at the disputed domain name promotes gambling services by redirecting visitors to a third-party website that offers casino and gambling services. The Complainant adds that the Respondent did not reply to the communication sent to it by the Complainant's agent.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. According to it, the Respondent had the Complainant in mind when it acquired the disputed domain name and uses it to attract and confuse Internet users that the associated website is the official website of the Complainant.

The Complainant points out that the disputed domain name is configured with mail exchange ("MX") records and is capable of email communication. Given the identity with the ZAK ABEL trademark, anyone receiving an email originating from the disputed domain name would reasonably assume that it was sent by the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

Pursuant to the Policy, paragraph 4(a), the Complainant must prove each of the following to justify the transfer of the disputed domain name:

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

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: "[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name [...]."

The Respondent has however not submitted a Response and has not disputed the Complainant's contentions and evidence in this proceeding.

### **A. Identical or Confusingly Similar**

The Complainant submits that it has unregistered trademark rights in the ZAK ABEL trademark, arising as a result of its use in the period starting from 2014. As summarized in section 1.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), to establish unregistered trademark rights for purposes of the UDRP, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant's goods and/or services. Relevant evidence demonstrating such acquired distinctiveness (also referred to as secondary meaning) includes the duration and nature of use of the mark, the amount of sales under the mark, the nature and extent of advertising using the mark, the degree of actual public recognition, and consumer surveys. Particularly with regard to brands acquiring relatively rapid recognition due to a significant Internet presence, panels have also been considering factors such as the type and scope of market activities and the nature of the complainant's goods and/or services. The fact that a respondent is shown to have been targeting the complainant's mark (e.g., based on the manner in which the related website is used) may support the complainant's assertion that its mark has achieved significance as a source identifier.

The Complainant submits that some of its records and videos have gathered millions of streams on YouTube and Spotify and have reached the top 100 chart list of the United Kingdom, and that his social media accounts have tens of thousands of followers. The Complainant has submitted supporting evidence in this regard. As discussed below, the disputed domain name is identical to the ZAK ABEL trademark and resolves to a website that describes itself as the official website of the Complainant and displays his image.

This supports a finding that the Respondent has targeted the Complainant (and in so doing, its unregistered trademark rights) with the registration of the disputed domain name, and respectively the Complainant's assertion that its trademark has achieved significance as a source identifier. This is sufficient to satisfy the Panel that the ZAK ABEL trademark has become a distinctive identifier that Internet users associate with the Complainant, including prior to the registration of the disputed domain name. Therefore, the Panel finds that the Complainant has established that it has unregistered trademark rights in the ZAK ABEL trademark for the purposes of the Policy.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the generic Top-Level Domain ("gTLD") and country code Top-Level Domain ("ccTLD") section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). See section 1.11.1 of the [WIPO Overview 3.0](#). The Panel sees no reason not to follow the same approach here, so it will disregard the ".com" gTLD of the disputed domain name.

The disputed domain name reproduces the ZAK ABEL trademark without the addition of any other elements.

In view of the above, the Panel finds that the disputed domain name is identical to the ZAK ABEL trademark in which the Complainant has rights.

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

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP 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. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, stating that it is not commonly known under it and has no related trademark rights or authorization from the Complainant to use the ZAK ABEL trademark. The Complainant adds that the Respondent is using the disputed domain name for a website that describes itself as the official website of the Complainant, displays the Complainant's image and redirects users to a third-party gambling website. The Complainant adds that the Respondent has not responded to the Complainant's cease-and-desist letter. Thus, the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent had a fair opportunity to present its case and to address the arguments and evidence of the Complainant and explain why it has chosen and registered the disputed domain name, but refrained from doing so. The Respondent has not denied that it has not responded to the Complainant's cease-and-desist letter.

The disputed domain name is identical to the ZAK ABEL trademark, and the evidence confirms that it resolves to a website that appears as the official website of the Complainant and contains a link redirecting to a third-party gambling website.

In view of the above and in the absence of any contrary evidence, it appears to the Panel that it is more likely than not that the Respondent, being aware of the goodwill of the Complainant and of its ZAK ABEL trademark, has registered and used the disputed domain name in an attempt to confuse Internet users that the disputed domain name belongs to the Complainant and to attract them to the associated website which contains a link redirecting to a third-party gambling website for financial gain. As noted by the Complainant, the fact that the disputed domain name is configured with MX records creates the risk that recipients of email messages originating from the disputed domain name may wrongly assume that they were sent by the

Complainant. To the Panel, such conduct does not appear to be fair or giving rise to rights or legitimate interests of the Respondent in the disputed domain name.

Therefore, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

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

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or  
(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or  
(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or  
(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

The Respondent has reproduced the Complainant’s ZAK ABEL trademark in the disputed domain name and has associated it to a website that claims to be the official website of the Complainant and redirects visitors to a third-party gambling website. This was done years after the Complainant started his musical career and became popular under the name Zak Abel. The Respondent has not provided any explanation as to why it has chosen and registered such a specific domain name that does not appear to refer to anything but the Complainant’s trademark, and why its use of the disputed domain name should be regarded as legitimate. It should also be noted that the disputed domain name is configured for email communication, and recipients of email originating from it may be deceived that they are receiving communications from the Complainant.

In view of the above and in the lack of any evidence to the contrary, the Panel finds that the circumstances of this case indicate that it is more likely than not that the Respondent has registered the disputed domain name with knowledge of the Complainant and in an attempt to unfairly capitalize on the Complainant’s unregistered ZAK ABEL trademark by attracting for commercial gain Internet users to the website at the disputed domain name and to the gambling services to which it redirects visitors, misleading them that the Respondent’s website and the featured services are affiliated to the Complainant.

Therefore, the Panel finds that the disputed domain name was registered and has been used in bad faith.

### **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 <zakabel.com> be transferred to the Complainant.

*/Assen Alexiev/*

**Assen Alexiev**

Sole Panelist

Date: December 19, 2022