

## **ADMINISTRATIVE PANEL DECISION**

Zitro International, S.à.r.l. v. Alex Ortiz, Zitro Services LLC  
Case No. D2023-3508

### **1. The Parties**

The Complainant is Zitro International, S.à.r.l., Luxembourg, represented by Arturo Canela Giménez, Spain.

The Respondent is Alex Ortiz, Zitro Services LLC, United States of America (“United States”).

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

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 18, 2023. On August 18, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 18, 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 (Defendant’s name and address are hidden in WHOIS) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 23, 2023 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 amended Complaint on August 28, 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 the Respondent of the Complaint, and the proceedings commenced on September 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 25, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 26, 2023.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on September 28, 2023. 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 appears to be a société à responsabilité limitée with a place of business in Luxembourg and claims to be a world leader in the gaming industry and “a benchmark for technology, innovation, and profitability worldwide”. No supporting evidence of this claim is provided with the Complaint.

The Complainant is the proprietor of a variety of figurative and word marks comprising of or including the mark ZITRO. The earliest of these marks dates from 2008, namely European Union Trademark Number 5660634 for the word mark ZITRO GLOBAL, registered on January 31, 2008 in Classes 9, 28, 35, 38, 41, and 42. The Complainant is also the owner, for example, of European Union Trademark Number 18038096 for the word mark ZITRO registered on March 18, 2023 in Classes 9, 28, 35, 38, 41, and 42.

In terms of trademarks in the territory where the Respondent is based, the Complainant is the owner of International Trademark Number 1171619A for a figurative mark consisting of the capitalized word ZITRO in white letters, each letter in a solid black circle apart from the letter “T” which is in a solid red circle, registered on April 23, 2013 in Classes 9, 28, 35, 38, 41 and 42, and designating the United States. The Complainant is also the owner of International Trademark 1615519A in respect of a figurative mark consisting of the word ZITRO above the word DIGITAL, where the individual letters ZITRO are each in a white typeface within circles outlined in white, apart from the letter “O” which is in blue and uses the familiar power switch ‘on/off’ symbol, while the word DIGITAL appears below in blue, all on a black background. Said mark was registered on June 21, 2021 (and its United States designation was accepted for registration on December 13, 2022) in Classes 9, 28, 38, and 41.

The disputed domain name was registered on July 1, 2022. According to the Complainant, there is no website associated with the disputed domain name. The Respondent has not participated in the administrative proceeding. However, the Respondent appears to be a limited liability company named Zitro Services LLC, based in Silver Spring, Maryland, United States. According to the Registrar verification, the Respondent maintains a contact email address under the domain name <zitroservicesllc.com>. This particular domain name resolves to a website for Zitro Services LLC, a consulting company specializing in assisting business entrepreneurs and independent contractors to meet their legal, business, accounting, and advertising needs.<sup>1</sup> According to the Internet Archive, the Respondent started to operate this website since at least 2016. Said website also links to the “partner company” website for a real estate agency named Zitro Pro Realty LLC. Both businesses use a logo in which the “Z” of “Zitro” is a large red letter where the bottom bar underlines the remaining letters, which are smaller and in a dark blue color. In the case of Zitro Services LLC, the bottom bar of the “Z” also contains the capitalized words “SERVICES LLC” in white letters.

Both of the Respondent’s businesses state their address as the same address provided by the Registrar for the holder of the disputed domain name. It should be noted that Written Notice was unsuccessful at that address, with the courier stating “bad address” on the delivery report. According to the websites, the Respondent’s Mr. Ortiz appears to be the CEO of both of the businesses concerned. Despite the Respondent’s apparent principal domain name <zitroservicesllc.com> being listed in the Registrar verification, the Complainant has not addressed the significance of the Respondent’s identity or apparent trading activities in the Complaint.

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<sup>1</sup> The Panel considered it appropriate to visit the website at the domain name used for the Respondent’s email address as this appeared to be in use as an official domain name of the Respondent’s company. It is important to note that this particular domain name was already in the record before the Panel, and had been brought to the Complainant’s attention before it filed the amended Complaint. On the topic of a panel conducting such independent research of publicly available sources, see section 4.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

## 5. Parties' Contentions

### A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the common element of the disputed domain name is its ZITRO trademark, to which the suffix "technologies" has been added. The Complainant asserts that this will lead consumers to think that the website associated with the disputed domain name is a website of the Complainant. The Complainant also contends that the Respondent has no intent to use the disputed domain name because this was registered over a year ago and has hosted no web content to date, and that there is no fair or commercial use of the disputed domain name. With regard to the question of registration and use in bad faith, the Complainant's sole contention is that the disputed domain name "has been registered for the sole purpose of selling it to the highest bidder, since the Respondent has not used it".

### B. Respondent

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

## 6. Discussion and Findings

### A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the Complainant's ZITRO mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms, here "technologies" may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

### B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

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

Having reviewed the record, the Panel finds that the Complainant has not established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Complainant merely asserts that the Respondent lacks a legitimate interest because it has not hosted any web content at the disputed domain name since it was registered on July 1, 2022. As noted in the factual background section, other than updating the case caption and party information based on the information provided by the Registrar, but making no corresponding substantive amendment to the Complaint, the Complainant does not engage in any way with the fact that the Respondent appears to be running a business under the “Zitro” brand which does not seem to be in competition with the Complainant or to be taking unfair advantage of the Complainant’s reputation or goodwill. No evidence has been provided supporting the Complainant’s claims of being a worldwide leader in its field from which it might have been inferred that the Respondent may be seeking to capitalize on the Complainant’s reputation and goodwill in its trademarks.

To all intents and purposes, the Respondent appears to be operating at least two legitimate businesses using the “Zitro” prefix which are unrelated to the Complainant’s line of business and which may therefore reflect a coincidental choice of name. One of the services which the Respondent appears to provide to entrepreneurs is website development, which may be the reason for its registration of the disputed domain name containing the suffix “technologies”. In any event, it appears to the Panel more probable than not that the disputed domain name was registered with an intention to use it in connection with a *bona fide* offering of goods and services in the context of one of the Respondent’s businesses and not to target the Complainant’s trademark.

It is possible that the Respondent might have been able to demonstrate that it has been commonly known as “Zitro” due to a period of trading under this name had it participated in the administrative proceeding. However, as matters stand, no such demonstration has been made and the Panel makes no finding in that respect.

Based on the available record, the Panel finds the second element of the Policy has not been established.

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

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the circumstances suggest that the Respondent registered the disputed domain name in connection with the Respondent’s various “Zitro” branded businesses. There is no suggestion on the present record that the Respondent is targeting the Complainant’s brand in any way and the Complainant has not established that the Respondent registered the disputed domain name with the Complainant or its rights in mind. The Complainant asserts that the disputed domain name was registered for the sole purpose of selling it to the highest bidder, since the Respondent has not used it. Such a conclusion does not however necessarily follow, and, without something more, mere non-use of a domain name for a period of just over a year does not automatically mean that a respondent must have registered it with intent to sell it.

Panels have however found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding. On this topic, panelists look at the totality of the circumstances in each case, and 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. [WIPO Overview 3.0](#), section 3.3.

Having reviewed the record, the Panel notes that the Complainant has provided no evidence of the degree of distinctiveness or reputation of its mark. In this connection, the Complainant has merely made conclusory allegations that it is a world leader and is considered a benchmark for certain technologies. The Panel cannot rely on such allegations alone. While the Respondent has failed to submit a response in this case, there is nevertheless evidence of actual or contemplated good faith use available from the fact that the Respondent appears to have built several “Zitro” branded businesses in Maryland, United States. These are identifiable from what is likely to be the Respondent’s principal corporate domain name, <zitroservicesllc.com>, which was supplied by the Registrar during the verification process – and was relayed to the Complainant who included this information in its amended Complaint. There is no evidence that the businesses are a pretext for cybersquatting. There is no evidence that the Respondent has concealed its identity or used false contact details. Indeed, there are clear contact details on the Respondent’s business websites which match the address provided by the Registrar, and the address appears to the Panel to be a genuine location in Maryland, United States. The Panel does not know why the courier marked its attempted delivery as “bad address”. It is possible, however, that the Respondent’s businesses may have moved and not yet updated their contact details. Finally, it is not implausible on the basis of the present record that the disputed domain name may be put to good faith use according to the various lines of business in which the Respondent appears to be engaged, which would not be in conflict with the Complainant’s line of business. It is notable that the Respondent’s “Zitro” logos bear no resemblance to any of the Complainant’s figurative marks containing that word.

The Panel is mindful of the fact that the Complainant is the owner of relevant registered trademarks which have effect in the United States. In that context, the Panel notes that whether the Complainant could make any case of trademark infringement against the Respondent in a competent forum is a separate inquiry outside the scope of this proceeding (see, for example, *Papa Gyros, Inc. v. Registration Private, Domains By Proxy, LLC / GEORGIOS BATSIOS*, WIPO Case No. [D2022-2256](#)). Although there may be some conceptual overlap, trademark infringement and abusive registration of domain names under the Policy are not always the same thing (see *Delta Air Transport NV (trading as SN Brussels Airlines) v. Theodule De Souza*, WIPO Case No. [D2003-0372](#)).

Based on the available record, the Panel finds the third element of the Policy has not been established.

## 7. Decision

For the foregoing reasons, the Complaint is denied.

*/Andrew D. S. Lothian/*

**Andrew D. S. Lothian**

Sole Panelist

Date: October 12, 2023