

## **ADMINISTRATIVE PANEL DECISION**

Nostrum Oil & Gas Plc v. MERCY 3fold, JOY  
Case No. D2024-1519

### **1. The Parties**

The Complainant is Nostrum Oil & Gas Plc, United Kingdom, represented by Keltie LLP, United Kingdom.

The Respondent is MERCY 3fold, JOY, United States of America (“United States”).

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

The disputed domain name <zhmnlp.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 April 10, 2024. On April 11, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 11, 2024, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 17, 2024, 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 the same date.

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 April 18, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 8, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 13, 2024.

The Center appointed Assen Alexiev as the sole panelist in this matter on May 29, 2024. 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 is a mixed-asset energy company with an export hub in Kazakhstan, namely, the Chinarevskoye field, which has produced more than 100 million BOE (barrel of oil equivalent) since 2004. Zhaikmunai LLP is the Complainant's principal operating subsidiary in Kazakhstan. The stock ticker symbol assigned to the Complainant's affiliate Zhaikmunai Finance B.V. on the Kazakhstan Stock Exchange is ZHMN.

The Complainant is the owner of the Kazakhstan trademark  (ZHAIKMUNAI LLP A MEMBER OF THE NOSTRUM OIL & GAS GROUP with a device) with registration No. 52650, registered on July 1, 2016 for goods and services in International Classes 4, 6, 35, 37, 39, 40 and 42 (the "Complainant's Trademark"). According to the registration certificate provided by the Complainant, the word elements "LLP", "ZHAIKMUNAI" and "A MEMBER OF THE OIL & GAS GROUP" of this trademark are disclaimed as non-protectable.

The disputed domain name was registered on February 25, 2024. It is currently deactivated. At the time of filing of the Complaint, the disputed domain name directed to a website describing the activities of an entity presenting itself as Zhaikmunai LLP in the oil industry.

#### 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.

The Complainant states that the disputed domain name is confusingly similar to the Complainant's trademark, because it contains the trademark and is comprised of the Complainant's stock ticker symbol, ZHMN, plus the non-distinctive acronym LLP (for "Limited Liability Partnership"), which does not preclude a finding of confusing similarity with the Complainant's trademark.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it has no trademark and the Complainant has not allowed the Respondent to use its stock ticker symbol ZHMN or the Complainant's trademark, and the Respondent is not commonly known as "zhmn" or "zhmnlp". The Complainant points out that prior to a suspension request filed by the Complainant, the disputed domain name directed to an active webpage and was being used in connection with a fraudulent commercial offering, presenting itself as ZHAIKMUNAI LLP to take unfair advantage of the Complainant's rights for commercial gain. The Complainant submits that this shows that the Respondent was aware of the Complainant's rights prior to registering the disputed domain name.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. According to the Complainant, the Respondent registered the disputed domain name to impersonate the Complainant to confuse consumers as to an affiliation with or connection to the Complainant. It points out that the disputed domain name was previously used for an identity fraud impersonating the Complainant's subsidiary ZHAIKMUNAI LLP for commercial gain, where the Respondent's website contained two references to "Shymkent" that redirected to the website at the domain name <shymkentoilrefinery.kz> as part of a known scam scheme where petroleum products were offered for sale.

## 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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

The Complainant has shown rights in respect of the Complainant's trademark. However, the verbal elements "LLP", "ZHAIKMUNAI" and "A MEMBER OF THE OIL & GAS GROUP" of this trademark are disclaimed as non-protectable. As discussed in section 1.2.3 of the [WIPO Overview 3.0](#), trademark registrations with disclaimed terms typically would not affect panel assessment of standing or identity/confusing similarity under the UDRP but may be relevant to panel assessment of the second and third elements. However, if the similar elements of the domain name are made up exclusively of disclaimed terms, trademark rights under the Policy may not be found unless the complainant can show sufficient secondary meaning in the disclaimed terms.

Here, the only non-disclaimed term of the Complainant's trademark is "NOSTRUM", and there is no similarity between the disputed domain name and this term.

The Complainant argues that the disputed domain name is contained entirely within the Complainant's trademark, and that the disputed domain name incorporates the Complainant's stock ticker symbol ZHMN for the Kazakhstan Stock Exchange. The Panel will therefore examine whether the Complainant has shown sufficient secondary meaning in the disclaimed terms "ZHAIKMUNAI" and "LLP", which are the elements of the Complainant's trademark that have some similarity to the disputed domain name, and whether the Complainant has unregistered trademark rights in the stock ticker symbol "ZHMN".

As discussed in section 1.3 of the [WIPO Overview 3.0](#), to establish unregistered or common law 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 a range of factors such as (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys. Specific evidence supporting assertions of acquired distinctiveness should be included in the complaint; conclusory allegations of unregistered or common law rights, even if undisputed in the particular UDRP case, would not normally suffice to show secondary meaning. In cases involving unregistered or common law marks that are comprised solely of descriptive terms which are not inherently distinctive, there is a greater onus on the complainant to present evidence of acquired distinctiveness/secondary meaning.

Here, the Complainant does not specifically state that the disclaimed term "ZHAIKMUNAI" and the stock ticker symbol "ZHMN" have become distinctive identifiers which consumers associate with the Complainant's goods and/or services. There is no evidence about the duration and nature of use of these terms by the Complainant, the amount of its sales under them, the nature and extent of their advertising, the degree of their actual public recognition, or any consumer surveys. The Panel is not aware as to why the term "ZHAIKMUNAI" has been disclaimed as non-protectable in the Complainant's trademark, but understands this to mean that the term cannot serve to distinguish the goods or services offered by the Complainant from the goods and services offered by other entities. A possible explanation may be related to the fact that

Google Translator identifies this term when written in the Cyrillic script (“Жаикмунай”) as being in the Kirgiz language, and translates it in English as “Oil”.<sup>1</sup> (The Cyrillic script is currently the official script in which the Kazakh and Kirgiz languages are written.)<sup>23</sup> As to the stock ticker symbol ZHMN, the Complainant does not state that this is its main name or brand and has not shown that this stock ticker symbol is known to the public, except to investors and traders active on the Kazakhstan Stock Exchange. Securities investors and traders are sophisticated, and their decisions to invest in a company’s securities are typically not based on impulse but rather are made with familiarity with the underlying company, its business and future prospects. In addition, a stock ticker symbol is a unique series of letters assigned to a security for trading purposes<sup>4</sup>, so it does not function as a brand of a company.

Section 1.3 of the [WIPO Overview 3.0](#) mentions that 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. In the present case, the Respondent’s website at the disputed domain name indeed refers to the oil company Zhaikmunai LLP and the stock ticker symbol ZMHN. However, this can only be a secondary supporting argument for a conclusion that the terms “ZHAIKMUNAI” or “ZHMN” have achieved significance as a source identifier in the eyes of the public, and cannot be the sole basis for such a conclusion in the lack of any evidence related to the perception of these terms by the consumers of the Complainant’s products and services.

Taking all the above into account, the Panel cannot conclude that the terms “ZHAIKMUNAI” or “ZHMN” have acquired a secondary meaning that would give rise to unregistered trademark rights of the Complainant in any of them. In view of this, there is no basis to conclude that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

The Panel therefore finds the first element of the Policy has not been established. This necessarily means that the Complaint must fail.

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

Since the Complainant has failed to establish that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights, it is not necessary to examine whether the Respondent has rights or legitimate interests in the disputed domain name.

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

Since the Complainant has failed to establish that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights, it is not necessary to examine whether the disputed domain name was registered and is being used in bad faith.

To the extent that the Complainant feels that it has a grievance based on the content of the website at the disputed domain name, it may seek redress in another appropriate forum.

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<sup>1</sup><https://translate.google.com/?sl=auto&tl=en&text=%D0%B6%D0%B0%D0%B8%D0%BA%D0%BC%D1%83%D0%BD%D0%B0%D0%B9&op=translate>

<sup>2</sup>[https://en.wikipedia.org/wiki/Kyrgyz\\_alphabets#:~:text=The%20Kyrgyz%20Cyrillic%20alphabet%20is,%3A%20%D2%A2%2C%20%D2%AE%2C%20%D3%A8](https://en.wikipedia.org/wiki/Kyrgyz_alphabets#:~:text=The%20Kyrgyz%20Cyrillic%20alphabet%20is,%3A%20%D2%A2%2C%20%D2%AE%2C%20%D3%A8).

<sup>3</sup>[https://en.wikipedia.org/wiki/Kazakh\\_language#:~:text=Nowadays%2C%20Kazakh%20is%20mostly%20written,the%20Latin%20script%20by%202025](https://en.wikipedia.org/wiki/Kazakh_language#:~:text=Nowadays%2C%20Kazakh%20is%20mostly%20written,the%20Latin%20script%20by%202025).

<sup>4</sup> <https://www.investopedia.com/terms/s/stocksymbol.asp>

## 7. Decision

For the foregoing reasons, the Complaint is denied.

*/Assen Alexiev/*

**Assen Alexiev**

Sole Panelist

Date: June 4, 2024