

ADMINISTRATIVE PANEL DECISION

Ryan Tetsuo Onishi v. todd elliott, Elliott Financial Group
Case No. D2024-4132

1. The Parties

The Complainant is Ryan Tetsuo Onishi, United States of America (“United States”), represented by Coates IP, United States.

The Respondent is todd elliott, Elliott Financial Group, United States, represented by Dickinson Wright, PLLC, United States.

2. The Domain Names and Registrar

The disputed domain names <kaizenwealthgroup.com> and <kaizenwg.com> are registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 8, 2024. On October 9, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On October 10, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Registration Private) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 11, 2024, 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 October 11, 2024.

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 October 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 5, 2024. The Response was filed with the Center on November 5, 2024.

The Center appointed William F. Hamilton as the sole panelist in this matter on November 11, 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 provides financial planning services. On April 5, 2022, the Complainant filed a United States Patent and Trademark Office (“USPTO”) registration application for the trademark KAIZEN WEALTH MANAGEMENT GROUP (the “Mark”). The Complainant’s first claimed use of the Mark in commerce in its trademark registration is June 26, 2023. See Complainant’s Annex 5. On April 2, 2024, the USPTO registered the Mark. The Complainant uses the Mark in various promotional activities, but the Mark is not used in any domain name owned by the Complainant.

The Respondent provides financial planning services. On March 29, 2022, the Respondent registered the disputed domain name <kaizenwealthgroup.com> and formed Kaizen Wealth Management LLC. On May 13, 2022, the Respondent registered the disputed domain name <kaizenwg.com>. Both disputed domain names resolve to the same website which was launched on October 5, 2022.

5. Parties’ Contentions

A. Complainant

The Complainant alleges that the disputed domain names are confusingly similar to the Mark. The disputed domain name <kaizenwealthgroup.com> merely drops the dictionary term “management” from the Mark and the disputed domain name <kaizenwg.com> is based on the most distinguishing term of the Mark, namely “kaizen,” and merely adds the acronym “wg,” presumably standing for “wealth group.” The Complainant alleges that the Respondent has no legitimate rights or interests in the disputed domain name and that the Respondent’s bad faith is illustrated by the Respondent’s past securities violations and timing of the registration of the disputed domain names.

The Complainant claims common law rights in the KAIZEN WEALTH MANAGEMENT GROUP Mark dating as early as April 5, 2022; the Panel notes that this is earlier than the claimed first use in commerce on the trademark registration, and no evidence to support this claim is provided.

The Complainant also states that “[i]n this case, the Respondent or its predecessors registered the <kaizenwealthgroup.com> domain name on March 29, 2022, just a few days prior to Complainant establishing rights in its Kaizen Mark on April 5, 2022. However, according to archive.org, the domain name was not developed into a live website until October 2022, well after Complainant established rights in the Kaizen Mark.”

B. Respondent

The Respondent asserts that the disputed domain names were registered before the Complainant obtained any trademark rights in the Mark. The Respondent asserts that the Respondent’s legitimate business, Kaizen Wealth Management LLC, was formed the day the disputed domain name <kaizenwealthgroup.com> was registered. The Respondent asserts that the Respondent was unaware of the Complainant when registering the disputed domain names and that the Respondent selected the term “kaizen” to be included in the disputed domain names because of the dictionary meaning of “continuous improvement” and its common use in the financial industry. When registering the disputed domain name <kaizenwealthgroup.com>, the Respondent became aware of several financial service companies utilizing the word “kaizen” in their names. See Respondent’s Annex B. The Respondent registered the disputed domain name <kaizenwg.com> some weeks later to promote its business and redirect Internet users to the earlier registered disputed domain

name without knowledge of the Complainant or the Complainant's Mark application. See Respondent's Annex B. The Respondent asserts legitimate use of the disputed domain names to conduct its active business website since October 2022.

6. Discussion and Findings

Consolidation:

The amended Complaint was filed regarding two disputed domain names. The Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. The Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2.

Having considered the circumstances of this matter and without objection by the Respondent, the Panel finds that the consolidated Complaint against the disputed domain names should be granted. The disputed domain names are under common control, and the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel consolidates the claims against the two disputed domain names in this single proceeding.

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.

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, by virtue of the Mark's registration with the USPTO.

The Panel finds the mark is recognizable within the disputed domain names. The disputed domain names adopt the Mark's initial, principal term, "kaizen," followed by other common dictionary terms or a short two-letter acronym. The Mark's strength, *vel non*, is not a factor in the Panel's decision under the first element of the Policy. Accordingly, the disputed domain names are confusingly similar to the Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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.

The Panel finds that the Respondent has met its burden and adequately, on the evidence presented, responded to the claims that it has no legitimate interests in the disputed domain names. Before notice to the Respondent of the dispute, the Respondent used the disputed domain names in connection with its financial services company. The disputed domain names have resolved to the Respondent's business website since 2022, prior to the application and registration of the Mark. [WIPO Overview 3.0](#), section 2.2.

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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

The Panel is unable to find that the Respondent registered the disputed domain names in bad faith to target the Complainant or its trademark rights because the Complainant had no trademark rights when the Respondent registered the disputed domain names. [WIPO Overview 3.0](#), section 3.8.1 (which the Panel notes the Complainant invokes). There is no evidence that the Respondent knew of the Complainant when registering the disputed domain names. Moreover, the Respondent has provided evidence of its business use of the disputed domain names. While the Panel notes the Complainant's assertions and evidence concerning the Respondent's securities violations (and an apparent desire not to be associated with the Respondent), the evidence submitted does not support a claim under the Policy and to the extent the Complainant has an issue with the Respondent's activities and/or business name, it would be necessary to seek relief in another forum.

The Panel finds the third element of the Policy has not been established.

7. Decision

For the foregoing reasons, the Complaint is denied.

/William F. Hamilton/

William F. Hamilton

Sole Panelist

Date: November 25, 2024