

## **ADMINISTRATIVE PANEL DECISION**

Zenith Payments Pty Ltd v. BPW / Mysin Vadim Yurievich  
Case No. D2022-3156

### **1. The Parties**

The Complainant is Zenith Payments Pty Ltd, Australia, represented by Cooper Mills Lawyers, Australia.

The Respondent is BPW / Mysin Vadim Yurievich, Russian Federation.

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

The disputed domain name <universalgiftcard.org> (the “Domain Name”) is registered with Nicenic International Group Co., Limited (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 26, 2022. On August 26, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On September 3, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on September 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 amended Complaint on September 6, 2022.

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 9, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 29, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 30, 2022. On October 5 and 19, 2022, the Complainant submitted supplemental filings respectively. The Panel notes that the supplemental filings referred to diverse subsequent uses of the Domain Name.

The Center appointed Willem J. H. Leppink as the sole panelist in this matter on October 11, 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 following facts are undisputed.

The Complainant is an Australian company. It provides a range of prepaid card services and one of its main brands is Universal Gift Card. It has used this brand since 2004 and has an Australian trademark registration no. 1097606 for UNIVERSAL GIFT CARD and associated logo with a registration date of November 1, 2006 (the "Trademark").

The Domain Name was registered on January 9, 2021. At the time of filing the Complaint, it has been linked to a website (the "Website") which fraudulently impersonates the Complainant by mimicking the Complainant's website. The Website resolves from "www.universalgiftcard.org" to "www.universalgiftcard.ro". The Website has been used to commit fraud on innocent customers and as least AUD 25,000 has been obtained by the Respondent from such customers who thought they were dealing with the Complainant.

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

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

The Complainant's contentions can be summarized as follows.

The Domain Name is confusingly similar to the Complainant's Trademark.

The Respondent has no rights or legitimate interests in the term "universal gift card", this follows from the fraudulent behavior by the Respondent as described under section 4 above. Furthermore, a previous panel in *Zenith Payments Pty Ltd v. BPW Mysin Vadim Yurievich*, WIPO Case No. [D2021-3217](#), found bad faith use and registration of <universalgiftcard.com>, which has almost identical facts to this case. Based on the name and location of the registrant from the Whois search, the Complainant believes that the same party engaging in the fraud is also behind the same criminal conduct in this case. Such conduct could not be further from legitimate. The Complainant has not authorized or licensed the Respondent to use the Complainant's Trademark or permitted the Respondent to register the Domain Name. The Respondent is not in any way associated with the Complainant and has never sought nor received authorization or a license to use any of the Complainant's trademarks or logos, or any variation thereof, in any way or manner. The Respondent is not making any legitimate noncommercial use of the Domain Name.

The Domain Name was registered and is being used in bad faith. The Complainant says the use of the Domain Name in connection with manifestly fraudulent activity is clear evidence of bad faith. It says the Respondent's motive was dishonest financial gain.

In two brief supplemental filings, the Complainant mentioned *inter alia*, that after filing of the Complaint, the Respondent changed the destination of the Domain Name. The Domain Name diverted to <universalgifcard.com> first, then to <universalgiftcardes.com> (which are misspellings).

##### **B. Respondent**

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

## 6. Discussion and Findings

Pursuant to paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements:

- (i) the Domain Name is identical or confusingly similar to 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 Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

### A. Identical or Confusingly Similar

The Complainant has sufficiently proven to have rights in the Trademark.

The Panel finds the Domain Name is confusingly similar to the Trademark. The Domain Name consists of the verbal elements of the Trademark in their entirety. Therefore, the Trademark is clearly recognizable in the Domain Name.

Accordingly, the Panel finds that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

### B. Rights or Legitimate Interests

The Complainant in its Complaint and as set out above has established a *prima facie* case that the Respondent has no rights or legitimate interests in the Domain Name.

The Panel could not find any evidence by referring to the types of evidence set forth in paragraph 4(c) of the Policy from which the Panel might conclude that the Respondent has rights or legitimate interests in the Domain Name, such as:

- (i) use or preparation to use the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services prior to notice of the dispute; or
- (ii) being commonly known by the Domain Name (as an individual, business or other organization) even if the Respondent has not acquired any trademark or service mark rights; or
- (iii) making 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.

The *prima facie* case presented by the Complainant is enough to shift the burden of production to the Respondent to demonstrate that it has rights or legitimate interests in the Domain Name. However, the Respondent has not presented any evidence of any rights or legitimate interests it may have in the Domain Name, and the Panel is unable to establish any such rights or legitimate interests on the basis of the evidence in front of it.

To the contrary, the Respondent uses the Website for fraudulent purposes, in particular to mimic the Complainant's website and thus to defraud visitors of the Website. The two supplemental filings do not change this.

Hence, the Respondent's use cannot be considered a legitimate noncommercial or fair use of the Domain Name either.

The Panel, therefore, finds that the second element has been satisfied.

### C. Registered and Used in Bad Faith

In the present circumstances the fact that the Domain Name was used to link to the Website, which impersonated the Complainant and which was fraudulent in nature leads the Panel to conclude the registration and use were in bad faith.

Under paragraph 4(b) of the Policy a non-exhaustive list of factors evidencing registration and use in bad faith comprises:

(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.

In the present circumstances, the Panel agrees with the Complainant that paragraph 4(b)(iv) of the Policy applies, as the Respondent is clearly engaged in fraud which relies on confusion with the Complainant's mark and is clearly with a view to dishonest financial gain. This is manifestly indicative of bad faith as has been held in many previous decisions under the Policy – see for example *Nordic Waterproofing AB v. Contact Privacy Inc. Customer 1245905149 / Name Redacted*, WIPO Case No. [D2020-0217](#).

Finally, although the lack of a response by the Respondent as such cannot by itself lead to the conclusion that there is registration and use in bad faith, the cumulative circumstances as outlined in the Decision are sufficient for the Panel to find that the registration and use of the Domain Name by the Respondent are in bad faith.

In light of the above circumstances, the Panel is satisfied that the third element of the Policy is met and that the Domain Name has been registered and 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 Domain Name, <universalgiftcard.org>, be transferred to the Complainant.

*/Willem J.H. Leppink/*

**Willem J. H. Leppink**

Sole Panelist

Date: October 17, 2022