

## **ADMINISTRATIVE PANEL DECISION**

Zimperium, Inc. v. Marko Levineo

Case No. D2022-3658

### **1. The Parties**

The Complainant is Zimperium, Inc., United States of America (“United States”), represented by Fenwick & West LLP, United States.

The Respondent is Marko Levine, Viet Nam.

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

The disputed domain name <zimperiumfoundation.com> is registered with Instra Corporation Pty Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 1, 2022. On October 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 4, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on October 4, 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 October 8, 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 October 18, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 7, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 8, 2022.

The Center appointed Alvaro Loureiro Oliveira as the sole panelist in this matter on November 18, 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**

Complainant is Zimperium, Inc., an American company organized under the laws of the State of Delaware and with its main seat in Texas, United States. The Complainant operates in the field of mobile security services provider. The Complainant provides a leading mobile security platform for protecting enterprise mobile devices and applications, under the trademark ZIMPERIUM.

Complainant is the owner of the ZIMPERIUM trademark and company name. Complainant was established in and has been operating continually since 2010. The mark ZIMPERIUM is distinctive and is an original expression, created by the Complainant and with no direct or indirect meaning.

Complainant has used its ZIMPERIUM mark continuously since at least as early as 2012 and claims to have built a strong reputation in the mark.

Trademark ZIMPERIUM is registered in jurisdictions throughout the world, including United States Registration No. 4946676, registered April 26, 2016, and the European Union Trade Mark No. 013006937, registered December 12, 2014. A sample proof of these and other registrations owned by the Complainant for trademark ZIMPERIUM was attached to the Complaint as Annex E.

The Complainant also holds domain name <zimperium.com> registered and in use since 2010, as evidenced in Annex D of the Complaint.

The disputed domain name was registered on October 23, 2021 and resolves to a website that is supposedly operated by "Zimperium Foundation", reproducing the Complainant's mark, name, and logo. This website offers cryptocurrency services under the Complainant's mark. Annexes F and G evidence this part.

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

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

The Complainant is the owner of registrations worldwide for the mark ZIMPERIUM, which has been in use worldwide since at least 2010.

The Respondent registered the disputed domain name, which incorporates the trademark ZIMPERIUM, registered by the Complainant. The disputed domain name bears the trademark ZIMPERIUM together with the word "foundation", apparently in an attempt to link their website to the Complainant.

As stated by the documents presented, the registration and use of the trademark ZIMPERIUM predates the registration of the disputed domain name.

The disputed domain name is apparently being used in an attempt of scam, as it uses Zimperium's name and ZIMPERIUM mark and logo, and advertises a ZIMPERIUM-branded cryptocurrency token, cryptocurrency lending platform, and a mobile app for storing and managing cryptocurrency. Nevertheless the Respondent is apparently not offering these services, but operating a suspicious website, using the mark of the Complainant.

In sum, the Complainant alleges that the registration and use of the disputed domain name is intentional to mislead Internet users by leading them to scams, that it is clear that the Respondent has no rights or legitimate interests in the disputed domain name, and that the disputed domain name was registered and is being used in bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

The Policy, in its paragraph 4(a), determines that three elements must be present and duly proven by a complainant to obtain relief. These elements are:

- (i) the disputed 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 to the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

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

The disputed domain name is, indeed, confusingly similar to the ZIMPERIUM trademark, as the latter is entirely incorporated in the disputed domain name.

The Complainant has presented consistent evidence of ownership of the trademark ZIMPERIUM in jurisdictions throughout the world, by presenting proof of registrations for it.

The use of the trademark with the addition of the word "foundation" in the disputed domain name does not prevent a finding of confusing similarity, as the mark ZIMPERIUM is reproduced in its entirety and clearly recognizable in the disputed domain name.

Given the above, the Panel concludes that the disputed domain name is confusingly similar to the registered trademark of the Complainant.

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

Given the clear evidence that the trademark ZIMPERIUM is registered in the Complainant's name and is widely known as identifying the Complainant's activities, and that the Complainant has not licensed this to the Respondent, the Panel finds that the Complainant has established *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. In the absence of a Response, the Respondent has not rebutted such *prima facie* case.

The use of the disputed domain name is intentionally misleading for consumers – it resolves to a website that states that it is affiliated with the Complainant and substantially imitates the Complainant's website. The Respondent's website also provides information about the Respondent's alleged ZIMPERIUM-branded cryptocurrency token, cryptocurrency lending platform, and mobile app for storing and managing cryptocurrency. However, there is no indication that any of these offerings exist and are available to consumers. In any event, existing or not, the offer is clearly intended to take unfair advantage of the trademarks of the Complainant, both ZIMPERIUM as well as the logo, which is not a *bona fide* practice.

The Panel, thus, finds for the Complainant under the second element of the Policy.

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

It is clear to the Panel that the Respondent has in all probability registered the disputed domain name with the purpose of taking advantage of the Complainant's mark.

The Panel finds that the disputed domain name was likely registered to mislead consumers – hence the addition of the word “foundation”. Further, the additional word can surely be considered an allusion to an extension of the Complainant's business, a fact from which the Respondent may well profit by giving Internet users the illusion that the disputed domain name belongs to the Complainant. This is endorsed by the webpage to which the disputed domain name leads, reproducing the Complainant's mark, name, and logo, as well as offering services under the Complainant's mark.

The Respondent intended to give an overall impression that the disputed domain name is associated with the Complainant, and the Panel accepts that the disputed domain name is likely intended for illegitimate purposes.

All the points above lead to the conclusion by this Panel that the Respondent was fully aware of the Complainant when registering the disputed domain name and that the Respondent registered and is using the disputed domain name in bad faith.

The Panel finds that the Complainant has also proved the third element of the Policy.

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

*/Alvaro Loureiro Oliveira/*

**Alvaro Loureiro Oliveira**

Sole Panelist

Date: December 3, 2022