

ADMINISTRATIVE PANEL DECISION

Zacks Investment Research, Inc. v. AimDaddy LLC
Case No. D2022-4422

1. The Parties

Complainant is Zacks Investment Research, Inc., United States of America (“United States”), represented by Latimer LeVay Fyock LLC, United States.

The Respondent is AimDaddy LLC, United States.

2. The Domain Name and Registrar

The disputed domain name <zackstradings.com> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 18, 2022. On November 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 20, 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 (PrivacyGuardian.org LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on December 5, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on December 8, 2022.

The Center verified that the Complaint together with the amendment to the 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 December 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 10, 2023. Respondent did not submit any formal response, but sent emails to the Center on December 23, 2022, and December 28, 2022. In one of these messages, Respondent offered to transfer the disputed domain name to Complainant. Accordingly, the Center sent out a ‘Possible Settlement’ email to the Parties. Complainant replied stating that it did not wish

to pursue settlement negotiations and requested that the proceedings continue. Accordingly, the Center notified the Parties of the Commencement of Panel Appointment Process on January 16, 2023. Respondent sent another e-mail to the Center on January 16, 2023.

The Center appointed Ingrida Kariņa-Bērziņa as the sole panelist in this matter on January 26, 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

Complainant offers investment research and asset management services to professional investors. It trades under the marks ZACKS, ZACKS ULTIMATE, ZACKS INVESTOR COLLECTION, ZACKS. OUR RESEARCH. YOUR SUCCESS. ZACKS RANKS and ZACKS CONFIDENTIAL. Complainant is the proprietor of registrations for these marks, including United States Registration No. 5652428 for ZACKS (word mark), registered on January 15, 2019, for services in class 36, claiming a date of first use in 2000.

Complainant and its related entities operate business websites at the domain names <zacks.com> and <zackstrade.com>.

The disputed domain name was registered on October 31, 2022. At the time of this Decision, it did not resolve to an active website. The record contains evidence that it previously resolved to a website offering cryptocurrency trading services by an entity calling itself “Zacks Tradings”.

5. Parties' Contentions

A. Complainant

Complainant's contentions may be summarized as follows:

Complainant states that it has been offering independent research and investment related content under the ZACKS mark since 1978. Complainant provides professional investors with financial data and analysis which allows customers to make better investment decisions for proprietary accounts and the investment accounts of clients. Its research services are used by thousands of analysts at hundreds of brokerages. Complainant also manages over USD 5 billion of client assets through a subsidiary. Complainant's parent company operates a website at the domain name <zackstrade.com> through which individual investors may trade stocks.

Under the first element, Complainant states that the disputed domain name reflects Complainant's ZACKS mark in its entirety, together with the non-distinctive term “trades”.

Under the second element, Complainant states that Respondent is not affiliated or related to Complainant in any way and is not licensed by Complainant or otherwise authorized to use the ZACKS Trademarks. Respondent registered and used the disputed domain name to unlawfully advertise a company calling itself “Zacks Tradings”.

Under the third element, Complainant states that Respondent has registered and used a domain name that incorporates the Complainant's well-known ZACKS mark, with the addition of the generic term “tradings”. The disputed domain name is used to resolve to a website that claims to offer online trading services, which compete with the services offered by Complainant. The disputed domain name could mislead Internet users into believing that the disputed domain name and services offered are related to Complainant.

Complainant requests transfer of the disputed domain name.

B. Respondent

Respondent did not provide a formal Response to Complainant's contentions. In email messages to the Center prior to the due date for Response, Respondent stated that it was willing to release the disputed domain name for a fee of USD 200. In its email message sent following the Notification of Panel Appointment, Respondent stated "you think you have power yet you wish not to pay, this is a blog, we have right to retain the domain unless sale commerce."

6. Discussion and Findings

Paragraph 4(a) of the UDRP requires Complainant to make out all three of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) Respondent has registered and is using the disputed domain name in bad faith.

Under paragraph 15(a) of the Rules, "[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

A. Identical or Confusingly Similar

Complainant has provided evidence establishing that it has trademark rights in the ZACKS mark through registration in the United States. Complainant thereby satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2.1.

In comparing Complainant's mark with the disputed domain name, the Panel finds that the disputed domain name is confusingly similar to this mark, as the ZACKS mark is clearly recognizable within the disputed domain name. The disputed domain name additionally contains the word "tradings", which does not prevent a finding of confusing similarity. UDRP panels have consistently held that, where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. See [WIPO Overview 3.0](#), sections 1.7 and 1.8.

It is the well-established view of UDRP panels that a generic Top-Level Domain such as ".com" is viewed as a standard registration requirement and as such is typically disregarded under the first element confusing similarity test. See [WIPO Overview 3.0](#), section 1.11.1.

Accordingly, the Panel finds that Complainant has established the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in a domain name by demonstrating any of the following:

- (i) before any notice to it of the dispute, respondent's use of, or demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or

(iii) respondent is making a 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 Panel finds that there is no evidence that Respondent is commonly known by the disputed domain name nor is using the ZACKS marks with the permission of Complainant. The nature of the disputed domain name, which reflects Complainant's mark in its entirety followed by the dictionary word "tradings", cannot constitute fair use since it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. See [WIPO Overview 3.0](#), section 2.5.1.

The Panel therefore finds that the evidence submitted by Complainant establishes a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name.

Pursuant to [WIPO Overview 3.0](#), section 2.1, and cases thereunder, where Complainant makes out a *prima facie* case that Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

Respondent has not submitted any evidence or arguments demonstrating such rights or legitimate interests, nor has he rebutted any of Complainant's contentions. There is no evidence that Respondent is commonly known by the disputed domain name, nor that there are any circumstances or activities that would establish Respondent's rights or legitimate interests therein.

Respondent states that the website is a blog and that therefore it has rights in the disputed domain name. The Panel finds that the evidence demonstrates that the disputed domain name does not resolve to a criticism or fan site. Respondent's website is clearly associated with a commercial enterprise, stating that "our investment plans are carefully formulated to generate maximum profits with minimum investment" and featuring a "payment gateway" for customers. There is no evidence the disputed domain name is being used for any free speech purposes. Rather, the Panel finds that Respondent's statements are pretextual and its use cannot establish rights or legitimate interests in the disputed domain name. See [WIPO Overview 3.0](#), section 2.6.1.

Further, Respondent acknowledges that the disputed domain name may be transferred for a fee. Therefore, it would appear that currently Respondent has no interest in the disputed domain name.

Accordingly, the Panel finds that Complainant has established the second element under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Pursuant to paragraph 4(b) of the Policy, the Panel finds that Complainant has demonstrated Respondent's bad faith registration and use of the disputed domain name. Complainant's rights in its ZACKS mark predate the registration of the disputed domain name by over 20 years. The disputed domain name reflects Complainant's mark followed by the dictionary word "tradings". The disputed domain name is therefore confusingly similar to Complainant's marks and inherently misleading. The Panel finds that, by registering such a domain name, Respondent has attempted to create an association with Complainant's well-established mark.

The Panel finds that Respondent has demonstrated bad faith use of the disputed domain name. The evidence on record supports a finding that Respondent has, by using the disputed domain name to point to its website offering cryptocurrency trading services, intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with Complainant's mark.

The evidence in the record raises doubts about the nature of Respondent's business at that website. The website promises significant financial returns to customers, and states that "Zacks Tradings" was founded in

2017, is headquartered in Paris, France and regulated in Europe. However, the contact information provided gives no address or telephone number, stating only “Washington, DC” and identifying the company CEO as “Ken.” Assuming that Respondent is indeed operating a legitimate cryptocurrency trading business, it is difficult to reconcile the conduct of such an ongoing business with Respondent’s readiness to part with the disputed domain name, which is identical to the name under which Respondent is said to be trading, for USD 200. Respondent’s subsequent communication reiterating its demands for payment only reinforces these doubts. On balance, the Panel finds that Respondent has registered and is using the disputed domain name in bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

The Panel therefore finds that Complainant has established the third element under paragraph 4(a) 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 <zackstradings.com> be transferred to Complainant.

/Ingrīda Kariņa-Bērziņa/

Ingrīda Kariņa-Bērziņa

Sole Panelist

Date: February 9, 2023