

## **ADMINISTRATIVE PANEL DECISION**

Evergreen Federal Bank v. victory victor, Admintechologies  
Case No. D2022-4662

### **1. The Parties**

The Complainant is Evergreen Federal Bank, United States of America (“United States”), represented by 101domain.com, United States.

The Respondent is victory victor, Admintechologies, Nigeria.

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

The disputed domain name <evergreenfed.com> is registered with OwnRegistrar, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 6, 2022. On December 6, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 6, 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 (Information not available on WHOIS) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 7, 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 December 9, 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 December 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 11, 2023.

The Center appointed Steven A. Maier as the sole panelist in this matter on January 16, 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**

The Complainant is a mutual financial institution based in Oregon, United States.

The Complainant is the owner of the following trademark registrations:

- State of Oregon trademark registration number 43016 for the word mark EVERGREEN, registered from November 29, 2013 with a date of first use of 1976, for services in Oregon Class 136, namely insurance and finance;
- State of Oregon trademark registration number 43017 for the word mark EVERGREEN FEDERAL BANK, registered from November 29, 2013 with a date of first use of 1993, for services in Oregon Class 136, namely insurance and finance; and
- State of Oregon trademark registration number 43018 for a figurative mark, registered from November 29, 2013 with a date of first use of 1993, for services in Oregon Class 136, namely insurance and finance.

The figurative mark referred to above is described in the registration as: “THE STYLIZED WORDS EVERGREEN FEDERAL BANK, WITH THE WORD EVERGERREN IN LARGER SIZE FONT ABOVE THE WORDS FEDERAL BANK; THE BOTTOM PORTION OF THE FIRST LETTER “R” IN THE WORD EVERGREEN EXTENDS BELOW THE REST OF THE WORD AND IS IN THE SHAPE OF THE END OF A BRANCH OF A PINE TREE” (the “Complainant’s Logo”).

The Complainant operates a website at “www.evergreenfederal.bank”. The website includes the Complainant’s Logo together with text and images relating to its services.

The disputed domain name was registered on October 11, 2022.

The Complainant provides evidence that the disputed domain name has resolved to a website headed “Evergreen Federal Bank” and prominently featuring the Complainant’s logo. The website included images similar to those found on the Complainant’s own website, including an image of a mobile app incorporating the Complainant’s logo. The website offered registration, login and contact links as well as what appeared to be sponsored advertising.

#### **5. Parties’ Contentions**

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

The Complainant submits that it has traded under the EVERGREEN name and mark since 1976 and that it has become extremely well known, at least in its own geographical region, for commercial banking services.

The Complainant submits that the disputed domain name is confusingly similar to its EVERGREEN trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It states that it has never authorized the Respondent to use its EVERGREEN trademark, that the Respondent has not commonly been known by the disputed domain name and that the Respondent is

making neither *bona fide* commercial use nor legitimate noncommercial or fair use of the disputed domain name. Instead, the Complainant contends that the Respondent has used the disputed domain name to impersonate the Complainant for financial gain.

The Complainant contends that the disputed domain name was registered and has been used in bad faith. The Complainant submits that it is apparent from the Respondent's copying of its name, trademark, and logo that the Respondent was aware of the Complainant's brand and services. The Complainant submits that Internet users will assume that the disputed domain name represents a shortening of its name and trademark EVERGREEN FEDERAL BANK. The Complainant contends that the Respondent has misled Internet users by its use of the disputed domain name to divert them to an unauthorized and unaccredited banking website and to tarnish the Complainant's reputation. The Complainant further contends that the Respondent has used the disputed domain name to obtain sensitive consumer information. It provides evidence that it succeeded in having the Respondent's website taken down by its hosting provider in October 2022.

The Complainant requests the transfer of the disputed domain name.

## **B. Respondent**

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

## **6. Discussion and Findings**

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of 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 Complainant has demonstrated to the satisfaction of the Panel that it is the owner of trademark rights for and including the trademark EVERGREEN in particular noting its use of the same since 1976. The disputed domain name comprises that term together with the suffix "fed" which does not prevent the Complainant's trademark from being recognizable within the disputed domain name. The Panel therefore finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

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

In the view of the Panel, the Complainant's submissions set out above give rise to a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. However, the Respondent has failed to file a Response in this proceeding and has not submitted any explanation for its registration and use of the disputed domain name, or evidence of rights or legitimate interests on its part in the disputed domain name, whether in the circumstances contemplated by paragraph 4(c) of the Policy or otherwise. The Panel finds, on the contrary, that the Respondent has used the disputed domain name dishonestly to target the Complainant's trademark and to impersonate the Complainant, which activities cannot give rise to rights or legitimate interests. The Panel therefore finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

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

The Panel finds that the Respondent has used the disputed domain name for the purpose of a website which impersonated the Complainant by appropriating its name, trademark and the Complainant's Logo with the obvious intention of misleading Internet users. It is obvious in these circumstances that the Respondent registered the disputed domain name in the knowledge of the Complainant's business and trademark and with the intention of taking unfair advantage of the Complainant's goodwill attaching to that trademark.

The Panel finds the disputed domain name to be inherently misleading, as inevitably implying a legitimate connection with the Complainant in connection with banking services. The Panel finds further that the Respondent has used the disputed domain for the purpose of dishonestly enticing Internet users to its website. The Panel accepts the Complainant's submission that the website appears to have been intended to obtain individuals' personal and and/or financial information and it also appears to the Panel that it has been used for sponsored advertising. The Panel therefore finds in particular that, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of its website or of a product or service on its website (paragraph 4(b)(iv) of the Policy).

The Panel finds in the circumstances that the disputed domain name has been registered and is being 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 disputed domain name, <evergreenfed.com>, be transferred to the Complainant.

*/Steven A. Maier/*

**Steven A. Maier**

Sole Panelist

Date: January 24, 2023