

## **ADMINISTRATIVE PANEL DECISION**

Zilch Technology Limited v. Helen Atkinson / Helen Garvey  
Case No. D2023-2741

### **1. The Parties**

The Complainant is Zilch Technology Limited, United Kingdom, represented by Gill Jennings & Every, United Kingdom.

The Respondent is Helen Atkinson, formerly known as Helen Garvey, United Kingdom.

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

The disputed domain names <zilchcard.com> and <zilch-uk.com> are registered with FastDomain, Inc. FastDomain, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 27, 2023. On June 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On June 27, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed in the case of the disputed domain name <zilchcard.com> from the named Respondent (Helen Atkinson) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 29, 2023 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 July 4, 2023.

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 July 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 2, 2023. The Respondent sent email communications to the Center on July 13, 2023.

The Center appointed Steven A. Maier as the sole panelist in this matter on July 31, 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. Identity of Respondent**

The Complainant submits and provides evidence that the two registrar-disclosed registrants, Helen Atkinson and Helen Garvey, are one and the same person. The Respondent confirms in the name of Helen Atkinson that she is the owner of both of the disputed domain names and that she is no longer known as Helen Garvey. The Panel finds therefore that the correct Respondent in the proceeding is Helen Atkinson, formerly known as Helen Garvey.

#### **5. Factual Background**

The Complainant is a financial technology company registered in the United Kingdom. It provides online payments services to retailers, including the ability for customers to pay in instalments. It also offers cash-back incentives known as “Zilch Rewards” to customers in certain circumstances.

The Complainant is the owner of various trademark registrations including the following:

- United Kingdom trademark registration number 00003328933 for the word mark ZILCH, registered on October 26, 2018 in International Classes 9, 36, and 42, for goods and services including financial services; and
- United Kingdom trademark registration number 0000355498 for a figurative mark in the form of a green “Z” device, registered on March 26, 2021 in International Classes 9, 36 and 42, for goods and services including financial services (“the Figurative Mark”).

The Complainant operated a website at “www.payzilch.com” until July 2022 and at “www.zilch.com” from that date onwards.

The disputed domain names <zilchcard.com> and <zilch-uk.com> were both registered on April 19, 2022.

The Complainant submits evidence by way of screenshots that the disputed domain name <zilchard.com> has resolved to a website which includes:

- a mock-up of a Mastercard-style credit card labelled “zilchcard” and including a white “Z” design similar to the Figurative Mark;
- the headings “Home”, “About Zilch”, “Zilch Rewards”, “Zilch Merchants” and “Join Zilch”;
- a link to a page on “www.trustpilot.com” which contains reviews of the Complainant’s services; and
- repeated use of the mark ZILCH and the Figurative Mark.

The Complainant submits evidence by way of screenshots that the disputed domain name <zilch-uk.com> has resolved to a website which includes:

- the heading “Zilch UK”;
- further headings “Home”, “About Zilch”, “Affiliate Disclosure”, “Zilch Rewards - How Does it Work?” and “Zilch Merchants”;

- boxes stating “Two ways to pay with Zilch”, offering the Complainant’s mobile app to download and a QR code linking to that app.

## 6. Parties’ Contentions

### A. Complainant

The Complainant submits that it has, since inception, been involved in GBP 1 billion of sales, saving customers GBP 105 million. It states that it is used by 37 million retailers and three million registered customers.

The Complainant submits that the disputed domain names are identical or confusingly similar to its ZILCH trademark. It states that both disputed domain names begin with that mark and that the addition of the terms “card” and “uk” respectively do not distinguish the disputed domain names from that trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain names. It states that the Respondent is not commonly known by the disputed domain names and is making neither *bona fide* commercial use, nor legitimate noncommercial or fair use, of the disputed domain names. The Complainant contends that the Respondent is instead using the disputed domain names to divert Internet users to her websites in the mistaken belief that they are websites operated by the Complainant. The Complainant submits that the Respondent’s website have a similar “look and feel” to the Complainant’s website and that they purport to offer information about the Complainant and its services, while using the ZILCH mark and the Figurative Mark in connection with financial services.

The Complainant submits that the Respondent cannot meet the criteria set out in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#), for the legitimate inclusion of a third-party trademark in a domain name. The Complainant contends in particular that the Respondent’s websites do not offer the Complainant’s services, but are intended instead to derive revenue from affiliate links. The Complainant exhibits evidence of pages on the Respondent’s websites headed “Affiliate Disclosure” which indicates that the Respondent will receive commission from affiliate links included in “blog posts” on those websites. The Complainant further contends that the websites do not disclose the Respondent’s relationship with the Complainant and are intended instead to imply an official connection with the Complainant.

The Complainant further submits that the Respondent is using the disputed domain names to tarnish its trademark. It exhibits evidence of material on the Respondent’s website at “www.zilchard.com” which refers to the Complainant’s app as “just another sham unrewarding app” and states that “their promise to receive 5% cashback is a con...”.

The Complainant submits that the disputed domain names were registered and are being used in bad faith. It refers to the Respondent’s extensive use of the ZILCH trademark and the Figurative Mark on the relevant websites and to the mock-up of a “zilchcard” credit card, which the Complainant contends is similar to a card known as a “Zilch Card” which it operates itself. It also refers to the link to the Complainant’s Trustpilot ratings. It contends in the circumstances that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the relevant websites by creating a likelihood of confusion with the Complainant’s trademarks.

The Complainant requests the transfer of the disputed domain names.

### B. Respondent

The Respondent states that she acquired the disputed domain names as “short and sweet” domain names to use in connection with her blog posts.

The Respondent submits that, contrary to the Complainant's contentions, her websites do not provide a financial benefit for her. She states that, instead, they point Internet users to the Complainant's website and therefore promote the Complainant.

The Respondent says that her websites are not highly ranked and do not pose any threat to the Complainant. She states that she "... thought I could earn Zilch points by their friend referral system, while I wrote posts to alert people of the Zilch system..." She submits that she has not received any money from the websites but has received approximately 4,500 Zilch points from the Complainant's friend referral system.

The Respondent states that she would have been happy to transfer her websites to the Complainant had it asked her to do so and that she remains willing to transfer over or delete the disputed domain names.

While the Respondent accepts that she wrote blog posts reflecting her disappointment at the Complainant having changed its rewards policies, she denies having tarnished its trademarks and contends that her websites have largely promoted the Complainant. She questions whether freedom of speech is not allowed in these circumstances.

The Respondent includes other submissions related to her personal circumstances and her inability to deal with an overwhelming legal proceeding.

## **7. 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 names are 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 names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

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

The Complainant has established that it has registered trademark rights in respect of the mark ZILCH. Both of the disputed domain names include that trademark in full, together with the terms "card" and "-uk" respectively, neither of which prevent the Complainant's trademark from being recognizable within the disputed domain names. The Panel therefore finds that the disputed domain names are confusingly similar to a trademark in which the Complainant has rights.

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

The Panel finds that the Complainant's ZILCH trademark and the Figurative Mark are distinctive in nature and have become widely associated with the Complainant in the field of financial services and online consumer payments in particular. The Complainant has also established that it operates a "Zilch Card" in connection with those services. In these circumstances, the Panel finds that both of the disputed domain names are inherently misleading, as inevitably representing to consumers that they are in some way officially affiliated with the Complainant, in connection with its card services and its UK operations respectively.

In these circumstances, it is very difficult for the Respondent to establish either *bona fide* commercial use or legitimate noncommercial or fair use of either of the disputed domain names (see e.g. sections 2.5.1 and 2.8.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#))).

So far as *bona fide* commercial use is concerned, the Respondent does not make any serious submissions that the disputed domain names have been used in that regard. The Panel finds in any event that the Respondent's websites do not meet the criteria set out the *Oki Data* case (*supra*) since the Respondent is not offering the Complainant's services (or other services legitimately related to them) and the websites do not accurately and prominently disclose the Respondent's lack of any relationship with the Complainant.

Nor does the Panel find that the Respondent is making legitimate noncommercial or fair use of the disputed domain names. Based on the Parties' submissions, the Panel finds on balance that the primary purpose of the Respondent's websites is to generate a financial return for the Respondent, whether by way of sponsored affiliate links or (if the Panel has understood the Respondent's case correctly) generating "friend referral" points for the Respondent. The Panel finds the Respondent's blog posts (and limited criticism of the Complainant) to be incidental to that primary purpose and that the Respondent could not in any event overcome the inherently misleading nature of the disputed domain names themselves.

The Panel finds in the circumstances that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

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

Similar considerations inform the Panel's view of the registration and use of the disputed domain names. It is clear on the evidence available to the Panel that the Respondent registered the disputed domain names with the Complainant's ZILCH trademark and services in mind. The Panel further finds that both the disputed domain names themselves, and the contents of the Respondent's websites, which include extensive use of the Complainant's trademarks and references to its services, imply an official affiliation with the Complainant.

In view of the Panel's findings above concerning the primary purpose of the Respondent's websites, the Panel finds that, by using the disputed domain names, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to her websites by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of her websites or of a product or service on her websites (paragraph 4(b)(iv) of the Policy).

The Panel finds in the circumstances that the disputed domain names have been registered and are being used in bad faith.

## **8. 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 names, <zilchcard.com> and <zilch-uk.com>, be transferred to the Complainant.

*/Steven A. Maier/*

**Steven A. Maier**

Sole Panelist

Date: August 23, 2023