

## **ADMINISTRATIVE PANEL DECISION**

### **Propulsion Talent LLC v. Design Company**

### **Case No. D2024-3309**

#### **1. The Parties**

Complainant is Propulsion Talent LLC, United States of America (“US”), represented by Manevitz Law Firm LLC, US.

Respondent is Design Company, US.

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

The disputed domain name <propulsiontalent.com> (the “Domain Name”) is registered with Name.com, Inc. (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 13, 2024. On August 13, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On August 13, 2024, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to Complainant on August 21, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on August 23, 2024. Respondent sent an email communication to the Center on August 21, 2024.

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 Respondent of the Complaint, and the proceedings commenced on August 29, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 18, 2024. Respondent did not submit any formal response. Accordingly, the Center notified the commencement of the panel appointment process on September 19, 2024.

The Center appointed Christopher S. Gibson as the sole panelist in this matter on September 25, 2024. 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**

In September 2023, Kate and John Johnston created Complainant, a professional recruitment firm specializing in executive level personnel search and acquisition. Complainant registered the Domain Name with GoDaddy on September 13, 2023.

Shortly thereafter, Complainant hired Respondent for branding and digital design services. That relationship began on or about September 14, 2023. Within a few weeks, Complainant states there were minor disagreements about billing and amounts due. Respondent then offered Complainant web services, further to which Respondent asked Complainant to transfer the Domain Name to Respondent. Complainant did so in mid-November 2023. In anticipation of those web services (including domain name management), Complainant paid to Respondent at least approximately USD 3,400. From the date of transfer through late January 2024, Complainant alleges there were ongoing difficulties in the service provided, including website downtime and similar service failures. Significantly, on December 13, 2023, without notice to Complainant and without authorization to do so, Complainant states Respondent further transferred the Domain Name to the current Registrar.

Complainant states that eventually the business relationship deteriorated beyond repair. On January 22, 2024, Complainant cancelled the services and demanded return of the Domain Name. Complainant claims Respondent agreed to return the Domain Name in exchange for a payment from Complainant of USD 1,015. Complainant paid the demanded amount, but transfer of the Domain Name did not occur. Instead, Complainant claims Respondent demanded an additional payment of USD 2,585. That number was negotiated down to USD 1,800, and Complainant agreed to pay that amount, but required use of a domain name escrow service, which Respondent has refused. Instead, Complainant alleges Respondent is holding the Domain Name hostage against further payments it feels it is owed, or perhaps as a simple matter of extortion, in an attempt to milk Complainant for as much money as possible. Until recently, Respondent was maintaining a copy of Complainant's website at the Domain Name, but has made it clear that any effort to reclaim the Domain Name will be met with retaliation. Complainant states Respondent recently changed the site so that the Domain Name lands on an "Account Suspended" page. The link for "contact your hosting provider," however, sends an email not to the hosting provider, but to Respondent. Respondent has since contacted Complainant to the effect that the site could be restored for a price.

Whois records indicate the date of registration of the Domain Name with the Registrar is December 13, 2023. When the Panel tested the Domain Name for purposes of this case, the Panel found that it appears to link to Complainant's website.

## 5. Parties' Contentions

### A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for transfer of the Domain Name. Complainant further contends Respondent is using the Domain Name in an attempt either to resolve an unrelated dispute or to extort Complainant into paying funds to Respondent.

#### (i) Identical or confusingly similar

Complainant contends that it has common law rights in its PROPULSION TALENT trademark. Complainant argues it is well settled that it may rely on common law rights because it is in a jurisdiction (the US) that recognizes those rights. Complainant further explains that a mark that is inherently distinctive will support a claim of common law rights sufficient for the first element of the Policy. Moreover, an "arbitrary" mark is a word that is in common usage in the language, but is arbitrarily applied to the goods or services in question in such a way that it does not suggest some aspect of the goods or services. Further, a word that suggests, but does not directly describe, some aspect of the goods or services falls into the "suggestive" category. Complainant claims arbitrary and suggestive words used as marks are regarded as inherently distinctive and immediately serve as a legally recognized symbol of origin. The phrase PROPULSION TALENT fits precisely within this paradigm. The term PROPULSION is a word in common use in English, but is arbitrary when applied to Complainant's services. The phrase overall is dominated by the PROPULSION element, but even considering the TALENT element – which suggests but does not directly describe an aspect of Complainant's services – the phrase as a whole is clearly inherently distinctive.

Complainant submits there is conflicting authority as to whether or not common law trademark rights for the purposes of the first element of the Policy require use in commerce. Assuming such use is required, Complainant submits there is ample evidence of prior and ongoing use in commerce of the PROPULSION TALENT mark by Complainant. Complainant has prominently displayed the mark on invoices, featured it in marketing materials, and incorporated it in various promotional efforts, thereby establishing its use in commerce. Complainant has submitted evidence to this effect in this case.

Further, Complainant urges that the Domain Name is not merely confusingly similar to Complainant's trademark, but is identical to it, while the addition of the ".com" generic Top-Level Domain ("gTLD") is disregarded for purposes of the first element of the Policy.

#### (ii) Rights or legitimate interests

Complainant states that Respondent is completely without any rights or legitimate interests in the Domain Name. Except as discussed above, Complainant has not authorized or consented to Respondent's use of the mark, nor is Respondent affiliated in any way with Complainant. Any such authority or consent which may have been implied at the beginning of the business relationship has been revoked by Complainant, and cannot be relied on by Respondent in defense of this element of the Policy.

Complainant further states Respondent is not and has never been commonly known (or referred to at all) by the phrase PROPULSION TALENT. Further, Respondent cannot claim to be making a noncommercial or fair use of the Domain Name. Because Respondent is not actually offering any goods or services in connection with the Domain Name, Respondent cannot pretend to be making a bona fide offering in that regard. Respondent was supposed to accept the transfer of the Domain Name on behalf of and for the benefit of Complainant, but instead Respondent transferred it improperly and is holding it hostage in order to extort money from Complainant. Those facts are sufficient to establish a prima facie case that Respondent has no rights or legitimate interests in the Domain Name.

In sum, Complainant contends that Respondent is without any rights or legitimate interests in the Domain Name, and Respondent is naked of any of the defenses noted under paragraph 4(c) of the Policy.

(iii) Registered and used in bad faith

Complainant submits that although the Policy sets forth examples of bad faith registration and use, those examples are merely illustrative and non-exclusive. Here, Complainant argues Respondent's bad faith is obvious.

First, Complainant states that while there is no dispute the November 2023 transfer of the Domain Name from Complainant to Respondent was made pursuant to an agreement between the Parties, the issue is more complicated. Complainant claims the date of transfer that should be used for a determination of bad faith registration is not the November transfer of the Domain Name, but instead the unauthorized transfer by Respondent from GoDaddy to a different registrar – the Registrar in this case – in December 2023. This transfer by Respondent in December 2023 was without notice to or authorization from Complainant; it was not a mere renewal or extension of the November 2023 transfer; instead, it was an intentional effort by Respondent to further remove the Domain Name from the control of Complainant. Complainant argues that without its knowledge (and against Complainant's interests), Respondent effected the equivalent of a third-party transfer. Moreover, by the time Respondent hijacked the Domain Name in December 2023, there had already been some disputes with Complainant as to fees and services.

Thus, Complainant alleges that at the time of the December 2023 registration, Respondent clearly intended to use that registration as leverage against Complainant, either to extort funds or to force Complainant to continue to use Respondent's services. Respondent's intention at the time of registration was to hijack and then hold hostage the Domain Name, and such intent constitutes registration in bad faith under the Policy.

Further, Respondent's refusal to transfer the Domain Name to Complainant as required by the explicit terms of its agreement with Complainant, and the subsequent indication that it would transfer the Domain Name in return for a payment of USD 2,585, taken together, clearly indicate that Respondent is holding the Domain Name hostage and is seeking the payment of a ransom from Complainant, thereby using the Domain Name in bad faith. Respondent is currently holding the Domain Name in direct contravention of its agreement to return it to Complainant, as well as in direct contravention of its obligations under the initial agreements. Complainant has already paid the amount demanded, and even that amount was questionably extortionist in light of prior payments. Respondent is simply holding the Domain Name in an effort to mulct Complainant for more funds. That behavior is clearly use of the Domain Name in bad faith.

Finally, Complainant observes the Domain Name currently resolves to an "Account Suspended" landing page. Complainant argues it is well-established that resolution to such a page can be considered use of the Domain Name in bad faith. There is no plausible good faith use by Respondent of the Domain Name, and in that context an "Account Suspended" page is bad faith use under the third element of the Policy.

In conclusion, Complainant submits Respondent's actions clearly constitute bad faith registration and use of the Domain Name under the third element of the Policy.

## **B. Respondent**

Respondent did not formally reply to Complainant's contentions. However, on August 21, 2024, Respondent sent the following message: "What is the complaint about? Where can i see the details?". As reported above, despite notice of the Complaint being provided to the Respondent on August 29, 2024, no further communications were received from the Respondent.

## 6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed Complainant must demonstrate that:

- (i) the 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 Domain Name; and
- (iii) the Domain Names has been registered and is being used in bad faith.

### A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between Complainant's trademark and the Domain Name. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

Here, the Panel finds that Complainant has established unregistered trademark or service mark rights for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3. Complainant has submitted evidence to demonstrate commercial use of its PROPULSION TALENT mark within the professional recruitment field. Moreover, the Domain Name is identical to Complainant's PROPULSION TALENT mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

According, the Panel finds the first element of the Policy has been established.

### B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which Respondent may demonstrate rights or legitimate interests in the Domain Name. Although the overall burden of proof in UDRP proceedings is on Complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the Domain Name, while Respondent has failed to rebut Complainant's prima facie showing. Here, Respondent is not commonly known by the Domain Name or the PROPULSION TALENT mark. Further, there is no indication that Respondent is making a noncommercial or fair use of the Domain Name, or using it in relation to a bona fide offering of goods or services. Instead, it appears that Respondent registered the PROPULSION TALENT mark in December 2023 (as further described under the bad faith element below) to obtain control over the Domain Name and hold it hostage in order to mulct money from Complainant.

As stated in *Pitchtime, Inc. v. Constantine Zamiesov (a/k/a Kostiantine Zamiesov, a a/k/a Kostiantyn Zamiesov) d/b/a Cruxlab, Inc., Cruxlab, Codevirium*, WIPO Case No. [D2019-0511](#): "Whatever the dispute Respondent might have with Complainant does not entitle Respondent to hold Complainant's property as ransom in order to secure the payment of an alleged debt. To the extent Respondent has a legitimate claim against Complainant for an alleged debt, such belongs in a different forum. Simply put, Respondent's use of the disputed domain

names to secure the payment of an alleged debt does not support a finding that Respondent has rights or legitimate interests in the disputed domain names.” (Citing *Athena Infonomics India Private Limited v. Registration Private, Domains By Proxy, LLC, Renji Mathew*, WIPO Case No. [D2017-1779](#).)

In the face of these allegations by Complainant, Respondent has failed to submit any formal response.

Accordingly, the Panel finds the second element of the Policy has been established.

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

The third element of paragraph 4(a) of the Policy requires Complainant demonstrate that Respondent registered and is using the Domain Name in bad faith. [WIPO Overview 3.0](#), section 3.1, states, “bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark”. Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Here, the Panel determines that Respondent registered and is using the Domain Name in bad faith. As explained by Complainant, Respondent, who was in a contractual relationship with Complainant that included domain name management services, “re-registered” the Domain Name in December 2023 without notice to or authorization from Complainant. There is no indication that this new registration was done for any purpose in support of Respondent’s services for Complainant. The evidence submitted by Complainant suggests that it is more likely than not Respondent registered the Domain Name so that Respondent could secure additional control over the Domain Name and use that registration as leverage against Complainant, either to extort funds or force Complainant to continue to use Respondent’s services. The evidence from the exchange of text messages between the Parties, where Respondent is seeking additional money after Complainant had already made a payment, supports this view, where Respondent stated “[b]ut if you take a different route [other than paying additional monies], legal actions or anything, then things will be very difficult[,] that I already know.”

Thus, the evidence suggests that the Domain Name was registered by Respondent in December 2023 in an unauthorized manner, and is now being used by Respondent for bad faith purposes. Respondent’s unauthorized registration, and its refusal to transfer the Domain Name to Complainant as required by the terms of its agreement with Complainant, and the subsequent requests for repeated sums of money, even after Complainant had already paid certain sums, would appear to indicate that “Respondent is, in effect, holding the disputed domain name ‘hostage’ and is seeking the payment of a ‘ransom’ from the Complainant . . . [and] is using the disputed domain name in bad faith.” See *Rainbow Play Systems, Inc. v. Lisa Devenish, Freeplay Pty. Ltd.*, WIPO Case No. [DAU2015-0035](#); *Pitchtime v. Constantine Zamiesov (a/k/a Kostiantine Zamiesov, a a/k/a Kostiantyn Zamiesov) d/b/a Cruxlab, Inc., Cruxlab, Codevirium*, WIPO Case No. [D2019-0511](#).

The Panel also observes that Respondent appears to be switching the content of the website to which the Domain Name resolves, from an “Account Suspended” page prior to the filing of the Complaint in this case, to re-activating the website to resolve to Complainant’s website after this case arose. In the context of this case, these actions are further evidence of bad faith and the Respondent’s control over the Domain Name represents an ongoing implied threat to the Complainant. See *Confederation Nationale du Credit Mutuel v. Diego Christian, et. al.*, WIPO Case No. [D2023-0197](#).

Accordingly, the Panel finds that Complainant has established 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 Domain Name <propulsiontalent.com> be transferred to Complainant.

*/Christopher S. Gibson/*  
**Christopher S. Gibson**  
Sole Panelist  
Date: October 27, 2024