

ADMINISTRATIVE PANEL DECISION

Zimperium, Inc. v. Gia Bach Nguy\u1ec5n
Case No. DCO2023-0067

1. The Parties

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

The Respondent is Gia Bach Nguy\u1ec5n, Viet Nam.

2. The Domain Name and Registrar

The disputed domain name <zimperiumfoundation.co> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 21, 2023. On July 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 25, 2023, 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 (Redacted for Privacy, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 26, 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 August 1, 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 August 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 22, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 23, 2023.

The Center appointed Angelica Lodigiani as the sole panelist in this matter on September 6, 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 mobile security service provider established in 2010. The Complainant provides a leading mobile security platform for protecting enterprise mobile devices and applications.

The Complainant operates under the ZIMPERIUM trademark, which has been used uninterruptedly since 2012 in the United States, and for which it owns the following registrations:

- ZIMPERIUM, European Union registration No. 013006937, registered on December 3, 2014, for goods and services in classes 9, 42 and 45;
- ZIMPERIUM, Israel registration No. 265964, registered on March 2, 2016, for goods and services in classes 9, 42 and 45;
- ZIMPERIUM, United Kingdom registration No. UK00913006937, registered on December 3, 2014, for goods and services in classes 9, 42 and 45; and
- ZIMPERIUM, United States registration No. 4946676, registered on April 26, 2016, for goods and services in classes 9, 42 and 45.

The Complainant is also the owner of the domain name <zimmerium.com>, registered in 2010 and resolving to the Complainant's website.

The disputed domain name was registered on August 17, 2022 and resolves to a website operated by an entity called "Zimmerium Foundation". The relevant website depicts the Complainant's trademark and logo and promotes cryptocurrency lending platform, and a mobile app for storing and managing cryptocurrency. The FAQ page of the website associated with the disputed domain name directs Internet users to the Complainant's official website at "www.zimmerium.com" for more information.

5. Parties' Contentions

A. Complainant

The Complainant maintains that the disputed domain name is confusingly similar to its ZIMPERIUM mark as it fully incorporates this mark, while the addition of the term "foundation" cannot prevent a finding of confusing similarity.

The Complainant further maintains that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent does not appear to be commonly known by the ZIMPERIUM mark and is not affiliated with the Complainant. The Complainant did not license the use of the ZIMPERIUM mark to the Respondent. The disputed domain name resolves to a website allegedly affiliated with the Complainant, which imitates the Complainant's website. The FAQ page of the Respondent's website indicates that the Complainant is the organization behind the Respondent's website, and directs users to the Complainant's official website to learn more. The Respondent has copied the look and feel of the Complainant's official website. The Respondent is using the Complainant's identical trademark, font and logo on its website. This use is neither a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use of the disputed domain name as the Respondent is using the disputed domain name to divert Internet users to its website, which fraudulently imitates the Complainant's website. Furthermore, the Respondent does not seem to actually offer the services promoted on its website, and there is no obvious way to download the mobile app indicated in the website for storing and managing cryptocurrency.

Even if the Respondent actually offered the services advertised on its website, the use of the disputed domain name and the Complainant's ZIMPERIUM mark and logo in connection with these services would not amount to a *bona fide* offering of goods or services.

Lastly, the Complainant contends that the Respondent registered and is being using the disputed domain name in bad faith. The ZIMPERIUM mark is unique and distinctive. It is therefore unlikely that the Respondent created the disputed domain name independently. The fact that the Respondent mentions the Complainant on the FAQ page of its website and directs Internet users to the Complainant's website shows that the Respondent knew the Complainant and intentionally copied the Complainant's mark at the time of the registration of the disputed domain name.

The Respondent's use of the disputed domain name to resolve to a website imitating the Complainant's website constitutes bad faith registration and use. The Respondent is using the disputed domain name for commercial gain to intentionally attempt to divert traffic, attract Internet users to its own website, and induce them to believe that the website is owned by, or is somehow affiliated with, the Complainant. The Respondent's website invites users to create an account to access the Respondent's alleged ZIMPERIUM-branded cryptocurrency lending platform and mobile app for storing and managing cryptocurrency. The Complainant finds no indication that any of these offerings actually exist and are available to consumers. Therefore, the Complainant affirms that the Respondent's use of the disputed domain name is confusing and misleading, which is a further indication of bad faith. Lastly, the Respondent's choice to retain a privacy protection service to conceal the Respondent's identity, and failure to provide contact details in the Whois information also points to the Respondent's bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel finds that the disputed domain name is confusingly similar to the Complainant's ZIMPERIUM mark. The disputed domain name fully includes this trademark followed by the word "foundation" and the country code Top-Level Domain ("ccTLD") extension ".co", which can be disregarded. The ZIMPERIUM trademark is well recognizable within the disputed domain name, and the addition of the term "foundation" cannot prevent a finding of confusing similarity. Under section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), "[w]here 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". Previous UDRP panels have recognized that the incorporation of a trademark in its entirety or in its dominant feature is sufficient to establish that a domain name is identical or confusingly similar to the complainant's mark.

In light of the above, the Panel is satisfied that the first condition under the Policy is met.

B. Rights or Legitimate Interests

While the overall burden of proof rests with the complainant, UDRP panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge 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 shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

In the instant case, the Panel notes that the Complainant has no relation with the Respondent and that the Complainant did not authorize the Respondent to incorporate its ZIMPERIUM trademark in the disputed

domain name. The Complainant did not license the use of the ZIMPERIUM mark to the Respondent and the Respondent does not appear to be commonly known by the disputed domain name. Already the disputed domain name by itself, which consists of the Complainant's trademark ZIMPERIUM followed by the word "foundation", that is a type of entity generally operating in the charitable or non-profit fields, impersonates or suggests sponsorship or endorsement by the Complainant. Moreover, the Respondent use of the disputed domain name to resolve to a website prominently displaying the Complainant's trademark and logo, and advertising an alleged ZIMPERIUM cryptocurrency lending highly secure platform, and a mobile app for storing and managing cryptocurrency, is highly misleading. The FAQ section of the Respondent's website contains several references to "zimperium", which both stands for the Complainant and for its corresponding ZIMPERIUM mark. This circumstance increases confusion among Internet users, who will believe that there is a strong connection between the Respondent's website and the Complainant.

Such use cannot amount to a *bona fide* offering of goods or services, or to a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to divert consumers or to tarnish the trademark or service mark at issue. The Respondent is clearly targeting the Complainant and its ZIMPERIUM trademark for its own profit or for any other kind of illegitimate advantage. Thus, the Respondent cannot obtain any rights or legitimate interests in the disputed domain name because of the use described above.

For all these reasons, the Panel finds that the Respondent has made out a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. Therefore, the burden of production shifts to the Respondent to provide convincing arguments and evidence supporting its rights or legitimate interests. However, the Respondent failed to meet this burden by choosing not to file its Response.

The Panel is therefore satisfied that the second requirement under the Policy is met.

C. Registered and Used in Bad Faith

The Panel finds it clear from all the circumstances of the case that the Respondent knew the Complainant and its trademark when it registered the disputed domain name. The disputed domain name incorporates the Complainant's trademark ZIMPERIUM. This trademark consists of a coined word that is distinctive and uniquely associated with the Complainant. It therefore cannot be by mere coincidence that the Respondent registered the disputed domain name. On the contrary, the Respondent was aware of the ZIMPERIUM trademark and of the Complainant's business at the time of the registration of the disputed domain name. The Panel is of the opinion that the Respondent registered the disputed domain name with the precise intent to target the Complainant and its trademark. The Complainant is a mobile security company. It is therefore a mobile threat defender. As such, consumers perceive the Complainant as a reliable trustworthy company and have confidence in the ZIMPERIUM trademark. The Respondent uses the disputed domain name to advertise a cryptocurrency lending platform and a mobile app for storing and managing cryptocurrency, which is a very risky field that most consumers distrust. The incorporation in the disputed domain name of a reliable trademark, such as ZIMPERIUM, may have the effect to lower the consumers' distrust and approach the services offered through the Respondent's website with less suspicion. The fact that the disputed domain name also includes the word "foundation", which is a type of entity operating in the charity and/or non-profit fields, is another strong indication of why the Respondent selected the disputed domain name.

The disputed domain name resolves to a website promoting a cryptocurrency lending platform and related mobile app. The word "zimperium", which indicates both the Complainant's trademark and company name, appears throughout the Respondent's website and related FAQs. The Respondent is evidently trying to impersonate convincingly the Complainant and to take advantage of its good name and reputation to mislead potential consumers. Thus, by using the disputed domain name, the Respondent is attempting to attract, for commercial gain or for other illegitimate purpose, Internet users to its own website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or of a product or service on this website.

Lastly, the fact that the Respondent used a privacy shield to conceal its identity and render the defense of the Complainant's rights more complicated, is another indication of bad faith.

Therefore, the Panel finds that the Respondent registered and is being using the disputed domain name in bad faith and that the third and last condition under the Policy is met.

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 <zimperiumfoundation.co> be transferred to the Complainant.

/Angelica Lodigiani/

Angelica Lodigiani

Sole Panelist

Date: September 20, 2023