

## **ADMINISTRATIVE PANEL DECISION**

The Optimism Foundation v. Dirk Berg  
Case No. DIO2022-0042

### **1. The Parties**

The Complainant is The Optimism Foundation, United Kingdom, represented by COBALT Legal, United States of America (“United States”).

The Respondent is Dirk Berg, United States.

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

The disputed domain name <app-optimism.io> is registered with TLD Registrar Solutions Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 31, 2022. On September 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 7, 2022, the Center transmitted by email to the Registrar a formal reminder for the request for registrar verification in connection with the disputed domain name. On September 12, 2022, absence a response from the Registrar, the Center contacted the .IO Registry who provided on September 13, 2022, a privacy service email connected to the disputed domain name. The Center notified the Complaint on September 16, 2022, with the information provided by the .IO Registry.

On September 28, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on September 29, 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 September 29, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the .IO Domain Name Dispute Resolution Policy (the “Policy”), the Rules for .IO Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .IO 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 September 30, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 20, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 21, 2022.

The Center appointed John Swinson as the sole panelist in this matter on October 26, 2022. 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 non-profit organization from the Cayman Islands, United Kingdom.

The Complainant facilitates access to the blockchain and to other financial transactions on the Internet, through the development of open-source software that is used in conjunction with the Ethereum blockchain.

The Complainant registered the domain name <optimism.io> on May 19, 2015 and currently uses that domain name. The Complainant first began using OPTIMISM in commerce in 2019. In February 2021, the Complainant filed a trademark application for OPTIMISM in the United States. This trademark application is still pending.

The Complainant has a webpage at <app.optimism.io> that is used to deposit or withdraw funds.

The Respondent did not file a Response, so little is known of the Respondent. According to the Registrar's records, the Respondent has an address in California, United States.

The disputed domain name was registered on June 3, 2022.

On August 31, 2022, the disputed domain name resolved to a website that was titled "Optimism" in the same colour and font as the Complainant's logo, included menu headings and a "connect wallet" button that were the same as appearing on the Complainant's website, included a city drawing identical to the city drawing on the Complainant's website (including the Complainant's "O" logo in a flag), and that stated: "Welcome to the digital city of Optimism. You can participate in the growth and development of this city through governance. Your voting power is determined by carefully selected eligibility criteria." This website also includes terms such as "Optimism User" and "Ethereum".

At the present time, the disputed domain name resolves to what appears to be an error page, which states "Index of /".

The Respondent is also the owner of <optimism.io>, which is the subject of a pending ioDRP dispute (*The Optimism Foundation v. Dirk Berg*, WIPO Case No. [DIO2022-0041](#)).

#### **5. Parties' Contentions**

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

In summary, the Complainant makes the following submissions:

The disputed domain name is substantially identical to, and confusingly similar to the Complainant's OPTIMISM trademark. The disputed domain name is merely a misspelling of the Complainant's domain name designed to lure third parties into believing that the Respondent is the Complainant.

Save the intentional misuse of the dash (“-”) rather than a dot (“.”) between “app” and “optimism,” the disputed domain name would be identical to Complainant’s <app.optimism.io> website address.

The Complainant allows certain third parties to connect their software applications, or “apps”, to the Complainant’s website, at <app.optimism.io>.

Consumers trust the OPTIMISM brand in managing their digital wealth. The Complainant has seen unprecedented growth in the Optimism community and the recognition of the OPTIMISM trademark. OPTIMISM has become and remains synonymous with secure access to digital currency, and is famous within the meaning of United States trademark law and the Paris Convention.

The Complainant has been recognized by numerous media outlets, including Yahoo! Finance, CoinDesk, Cryptoslate, CBInsights, and Currency.com. The Complainant operates several popular Twitter handles, including @optimismFND, which has more than 260,000 followers.

The disputed domain name is identical to, and confusingly similar to Complainant’s OPTIMISM trademark and even to the Complainant’s app address; the disputed domain name simply substitutes a “dash” for a “dot,” and, using the Complainant’s logo, attempts to lure third parties into believing its fraudulent website is the Complainant’s website.

The disputed domain name intentionally and deceptively replaces a dot with a dash in the Complainant’s subdomain, making it appear identical to the uncaring eye, and then using the Complainant’s home page artwork, logo, and content to further trick and confuse consumers into falsely believing the website belongs to the Complainant.

The Respondent registered the Domain Name approximately three years after the Complainant first began using the OPTIMISM trademark.

The Complainant has found no evidence of the Respondent having common-law or registered trademark or service mark rights or applications anywhere in the world for OPTIMISM or for its misspelling.

The Respondent is not affiliated with the Complainant and has not now or ever been licensed or permitted to use the Complainant’s OPTIMISM trademark, or any domain names incorporating the OPTIMISM trademark. Therefore, the Respondent has no rights or legitimate interests in the OPTIMISM trademark.

The Respondent is not making a *bona fide* offering of goods or services through the disputed domain name, nor is the Respondent making a legitimate noncommercial or fair use of the disputed domain name. The Respondent currently uses the disputed domain name to pass itself off as the Complainant by using the Complainant’s home page and OPTIMISM trademark in an attempt to confuse unsuspecting consumers into believing they have found the Complainant’s website.

The Respondent clearly registered and is using the disputed domain name to attempt to extort funds from the Complainant’s community members by attempting to pass itself off as the Complainant and inducing unsuspecting visitors to enter the “seed phrase” of their cryptocurrency wallets into the Respondent’s interface.

The use of the disputed domain name to pass off content falsely purporting to originate from the Complainant is clear evidence that the Respondent lacks any rights and legitimate interests in the disputed domain name.

The Respondent’s use of the disputed domain name is not a *bona fide* offering of goods and services.

The Respondent registered the disputed domain name for the sole purpose of attempting to defraud the Complainant’s community members and diverting their digital assets to the Respondent’s sole custody and control.

The Respondent's use of the disputed domain name in connection with a fraudulent scheme involving passing itself off as the Complainant and attempting to defraud, is clearly indicative of bad faith under Policy.

The Respondent has engaged in a pattern of bad faith. The Complainant has filed a separate complaint against the Respondent regarding another domain name, <optimism.io>, which is the subject of WIPO Case No. [DIO2022-0041](#).

The Respondent has registered the disputed domain name containing the Complainant's OPTIMISM trademark and has built a website at the disputed domain name using a slavish copy of the Complainant's home page, which is designed to defraud the Complainant's community members. As such, the Respondent is not making a *bona fide* offering of goods and services, nor is the Respondent's use a legitimate noncommercial or fair use. Furthermore, the Respondent's unlawful behavior is clear evidence of bad faith.

## **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; and
- (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 or is being used in bad faith.

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

The Complainant has provided sufficient evidence to demonstrate that the Complainant has common law rights in OPTIMISM (the "OPTIMISM trademark"). Further, the fact that the Respondent has copied the Complainant's trademark on the website at the disputed domain name supports that for the purposes of the Policy OPTIMISM has achieved significance as a source identifier in respect of the Complainant's blockchain-related services.

The disputed domain name includes the Complainant's OPTIMISM trademark, and simply adds "apps" which is part of one of the Complainant's sub-domains.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

The Panel therefore finds that the first element under paragraph 4(a) of the Policy is satisfied.

### **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. The Respondent has failed to file any 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 that the disputed domain name has been used to resolve to a website which attempts to impersonate the Complainant's own website as further discussed below. Such use by the Respondent cannot give rise to rights or legitimate interests in respect of the disputed domain name. See *Dapper Labs Inc. v. Privacy Service Provided by Withheld for Privacy ehf / Christian Balandó*, WIPO Case No. [DIO2021-0022](#).

The Panel therefore finds that the second element under paragraph 4(a) of the Policy is satisfied.

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

It is clear to the Panel from the evidence submitted by the Complainant that the Respondent's website prominently reproduced the Complainant's OPTIMISM trademark and copyright logos, copies content lifted from the Complainant's own website, and is intended to deceive Internet users into believing it is owned or operated by the Complainant.

In the circumstances, including once again the lack of any explanation on the part of the Respondent, the Panel has no hesitation in inferring that the Respondent registered the disputed domain name in the knowledge of the Complainant's OPTIMISM trademark and blockchain-related services and with the intention of taking unfair advantage of the Complainant's reputation and goodwill attaching to that trademark.

Concerning the Respondent's use of the disputed domain name, there is no doubt, in view of the Respondent's clearly deceptive use of the Complainant's name, trademark, logo and other intellectual property, that its website linked to the disputed domain name was intended to deceive Internet users. The Panel further accepts the Complainant's submission that, by offering a "Connect Wallet" functionality on that website, the Respondent is likely employing its deception for the purpose of illicit financial gain. See *Meta Platforms, Inc. v. Whois Privacy Registrant, Private by Design, LLC / Giovanni Niemann and Dangidi Dangido*, WIPO Case No. [DIO2022-0008](#).

The Panel finds therefore 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 mark 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 therefore finds that the third element under paragraph 4(a) of the Policy is satisfied.

## **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 <app-optimism.io> be transferred to the Complainant.

*/John Swinson/*

**John Swinson**

Sole Panelist

Date: November 9, 2022