

## **ADMINISTRATIVE PANEL DECISION**

ZipRecruiter Inc. v. Mushe Magoro  
Case No. D2022-2215

### **1. The Parties**

The Complainant is ZipRecruiter Inc., United States of America (“United States”), represented by SafeNames Ltd., United Kingdom.

The Respondent is Mushe Magoro, South Africa.

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

The disputed domain name <ziprecruiterworkdayjobs.com> is registered with Tucows Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 17, 2022. On June 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 17, 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 June 20, 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 June 21, 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 June 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 18, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 20, 2022. However, an email communication was received by the Center on July 20, 2022 from the Respondent after the “Notification of Respondent Default” email was sent, indicating an intention to take down the disputed domain name, see further below in Section

5B. On July 21, 2022, the “Possible Settlement” email was sent by the Center. However, there is no request for suspension by the Complainant.

Accordingly, the Center appointed Knud Wallberg as the sole panelist in this matter on August 2, 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 well-known American online recruitment company, attracting over 7 million active job seekers and over 10,000 new companies every month. It was founded in 2010 and has today marketing operations in the United States, Canada and the United Kingdom.

The Complainant is the owner of several trademarks for the word mark ZIPRECRUITER, including the United States Trademark Registration No. 3934310, which was registered on March 22, 2011 in international class 42.

The disputed domain name was registered on December 24, 2021. At the date of the filing of the Complaint, it redirected to a website that offered job openings enabling users to submit applications. The disputed domain name does currently not redirect to an active website.

#### **5. Parties’ Contentions**

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

The Complainant contends that the disputed domain name is confusingly similar to its well-known trademark ZIPRECRUITER because it incorporates this trademark in its entirety, whereas the inclusion of the descriptive terms “work”, “day”, and “jobs” are insufficient to avoid confusing similarity.

The Complainant further contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has no connection or affiliation with the Complainant and has not received any license or consent to use the mark ZIPRECRUITER in any way. Furthermore, the Respondent is not known, nor have they ever been known as ZIPRECRUITER, nor is the Respondent using the disputed domain name in connection with a *bona fide* offering of goods or services.

The Complainant finally contends that the Respondent registered and uses the disputed domain name in bad faith to offer services identical to that offered by the Complainant. By using the disputed domain name in this manner, the Respondent has demonstrated actual knowledge of the ZIPRECRUITER trademark and, in doing so, has chosen to act in opposition to the Complainant by redirecting users who are looking for the Complainant’s services to the services of the Respondent.

##### **B. Respondent**

The Respondent did not reply to the Complainant’s contentions. In the above in section mentioned e-mail for the Respondent, the Respondent stated the following:

“Good evening. We acknowledge the receipt of your email. We apologise for the inconvenience, as only we received today’s email and noticed that previous emails were received under spam. We were not aware that part of the domain name already exists as we have purchased the domain from a third party. We appreciate that you have contacted us with this regard .and we resolved to take down the domain to not further contradict the proceedings against the domain name in question. We would like to notify that we will take down the domain within the next 48 hours. Regards”

## 6. Preliminary Issue: Respondent's willingness to "take down" the Disputed Domain Name

The parties to this proceeding have not been able to settle the dispute using the "standard settlement process". As far as the Respondent's willingness to "take down" the disputed domain name, the Panel finds that the Respondent's reply is ambiguous and does clearly not assent to the claims put forward in the Complaint that the registration and use of the disputed domain name was done in bad faith as stipulated in paragraph 4(a) of the Policy and to the request that the disputed domain name be transferred. In such cases a UDRP panel has different possible courses to follow, as outlined in paragraph 4.10 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), and in the present case the Panel agrees with the UDRP panel in *Research In Motion Limited v. Privacy Locked LLC / Nat Collicot*, WIPO Case No. [D2009-0320](#), that the Panel must satisfy itself that the three elements of paragraph 4(a) of the Policy are in fact presented before granting the requested remedy.

Considering all the circumstances of the present case, the Panel will therefore proceed to review the facts of the case and subsequently make a decision on the merits.

## 7. Discussion and Findings

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following:

- (i) that the domain name registered by the respondent is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) that the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) that the domain name has been registered and is being used in bad faith.

Paragraph 4(a) of the Policy states that the burden of proving that all these elements are present lies with the Complainant. At the same time, in accordance with paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules, or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

### A. Identical or Confusingly Similar

The Panel finds that the disputed domain name is confusingly similar (in the sense of the Policy) to the Complainant's registered trademark ZIPRECRUITER, since the disputed domain name contains this mark in its entirety together with the terms "work", "day" and "jobs". See section 1.8 of [WIPO Overview 3.0](#).

The generic Top-Level Domain ("gTLD") ".com" is a standard registration requirement and as such is generally disregarded under the first element confusing similarity test. See section 1.11.1 of the [WIPO Overview 3.0](#).

The Panel finds that the conditions in paragraph 4(a)(i) of the Policy are therefore fulfilled in relation to the disputed domain name.

### B. Rights or Legitimate Interests

It is obvious from the Complaint, that the Complainant has not licensed or otherwise permitted the Respondent to use the trademark ZIPRECRUITER.

Further, given the circumstances of this case, the Panel finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has not rebutted this. On the contrary, the content of the above in Section 5B cited email from the Respondent supports a finding that the Respondent lacks any rights or legitimate interests in the disputed domain name.

Consequently, the Panel finds that the conditions in paragraph 4(a)(ii) of the Policy are also fulfilled.

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

Paragraph 4(a)(iii) of the Policy requires the complainant to prove both registration and use of the domain name in bad faith. Paragraph 4(b) of the Policy provides examples of circumstances, which shall be evidence of registration and use in bad faith:

- (i) circumstances indicating that the respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the holder's documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the holder has intentionally attempted to attract, for commercial gain, Internet users to the respondent's website or other online location, 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 location or of a product or service on the respondent's website or location.

Accordingly, for the Complainant to succeed, the Panel must be satisfied that the disputed domain name has been registered and is being used in bad faith.

Given the circumstances of the case, including the distinctive nature of the Complainant's trademark ZIPRECRUITER and evidence on record of the use and reputation of mark and the way the disputed domain name has been used, it is obvious to the Panel in the current circumstances that the Respondent registered the disputed domain name in bad faith.

The disputed domain name has been used for a website that listed vacant job positions and internships *i.e.* for a service that is identical or very similar to the services offered by the Complainant. By doing so, the Respondent has obviously tried to capture web traffic that might otherwise be looking for the Complainant, which constitutes bad faith use. Although this use appears to have ceased the Respondent still retains control over the disputed domain name and may thus at any time resume the use of the disputed domain name. In addition, as it was first stated in *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), and repeated in many subsequent decisions under the UDRP: "the concept of a domain name 'being used in bad faith' is not limited to positive action; inaction is within the concept. That is to say, it is possible, in certain circumstances, for inactivity by the Respondent to amount to the domain name being used in bad faith." See section 3.3 of the [WIPO Overview 3.0](#)

Noting that the disputed domain name incorporates the Complainant's distinctive and reputed trademark ZIPRECRUITER and the gTLD ".com", that the Respondent has not substantively replied to the Complainant's contentions, and that there appears to be no conceivable good faith use that could be made by the Respondent of the disputed domain name, and considering all the facts and evidence of the case, the

Panel finds that the requirements of paragraph 4(a)(iii) of the Policy are also fulfilled in this case.

## **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 <ziprecruiterworkdayjobs.com> be transferred to the Complainant.

*/Knud Wallberg/*

**Knud Wallberg**

Sole Panelist

Date: Monday, August 22, 2022