

## **ADMINISTRATIVE PANEL DECISION**

**Cresset Administrative Services Corporation and Cresset Partners LLC v.  
Lai Wen Dong  
Case No. D2023-4496**

### **1. The Parties**

The Complainants are Cresset Administrative Services Corporation and Cresset Partners LLC, United States of America (“United States”), represented by Fuksa Khorshid, LLC, United States.

The Respondent is Lai Wen Dong, China.

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

The disputed domain name <cressetindialive.live> (the “Domain Name”) is registered with Web Commerce Communications Limited dba WebNic.cc (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 27, 2023. On October 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On November 14, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 November 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 11, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 15, 2023.

The Center appointed Marina Perraki as the sole panelist in this matter on December 26, 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 Complainants are active in the financial advisory and wealth management services, and each owns several trademark registrations for CRESSET in the United States, including but not limited to:

- trademark registration CRESSET (word) with registration no. 5531975, filed on November 14, 2017 and registered on July 31, 2018 for services in international class 36; and

- trademark registration for a device mark consisting of the Complainants' logo with registration no. 5826446, filed on January 4, 2019 and registered on August 6, 2019 for services in international class 36.

The Domain Name was registered on July 2, 2023, and at the time of filing of the Complaint it leads to a website prominently displaying the Complainants' trademarks and purportedly providing the same services as the Complainants, with a live stream featuring wealth management services and the Complainants' trademarks (the "Website"). In the live stream, the Respondent claimed to be "one of the wholly owned subsidiaries" of the Complainants. The Respondent used this live stream to distribute financial information of the same type that the Complainants provide. Furthermore, the Website featured a log-in screen which required login and password information to be provided by Internet users. Currently, the Domain Name leads to an inactive website.

The Complainants have taken judicial action against the Respondent before the High Court of Delhi, in India to obtain an injunction preventing the registrant of the Domain Name from using the Domain Name and other confusingly similar domains, which they won. Furthermore, as the Complainants demonstrated, the Respondent is listed on websites which report the presence of online scammers/fraudulent entities.

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

##### **A. The Complainants**

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the Domain Name.

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

The Respondent did not reply to the Complainants' contentions.

#### **6. Discussion and Findings**

Paragraph 4(a) of the Policy lists the three elements, which the Complainants must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainants have rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name 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 the Complainants' trademark and the Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

Based on the available record, the Panel finds the Complainants have shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the Domain Name. Accordingly, the Domain Name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here, “India” and “live”, may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the Domain Name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The generic Top-Level Domain (“gTLD”) “.live” is disregarded, as gTLDs typically do not form part of the comparison on the grounds that they are required for technical reasons (*Rexel Developpements SAS v. Zhan Yequn*, WIPO Case No. [D2017-0275](#); *Hay & Robertson International Licensing AG v. C. J. Lovik*, WIPO Case No. [D2002-0122](#)).

Based on the available record, 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 the Respondent may demonstrate rights or legitimate interests in a Domain Name.

Although the overall burden of proof in UDRP proceedings is on the 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 the Complainants have established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has not rebutted the Complainants’ *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Domain Name such as those enumerated in the Policy or otherwise.

On the contrary, the Domain Name falsely stated that the Website is an official site of an entity affiliated to the Complainants and suggested that it is an official site endorsed by the Complainants. The Website extensively reproduced, without authorization by the Complainants, the Complainants’ trademarks, claiming to be “one of the wholly owned subsidiaries” of the Complainants and requesting a username and password to be provided.

Panels have held that the use of a domain name for illegal activity, here, claimed impersonation/passing off or other types of fraud, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Based on the available record, the Panel finds the second element of the Policy has been established.

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

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

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.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the Domain Name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness of the Complainants' trademark, and the composition of the Domain Name, and finds that in the circumstances of this case the passive holding of the Domain Name does not prevent a finding of bad faith under the Policy.

Panels have held that the use of a domain name for illegal activity, here, claimed impersonation/passing off, or other types of fraud), constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the Domain Name constitutes bad faith under the Policy.

The Panel has also taken into account that, as the Complainants demonstrated, the Respondent is listed on websites which report the presence of online scammers/fraudulent entities, that the Complainant provides evidence that the High Court of Delhi, in India has issued an injunction against the registrant of the Domain Name.

Based on the available record, the Panel finds that the Complainants have 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 <cressetindialive.live> be transferred to the Complainants.

*/Marina Perraki/*

**Marina Perraki**

Sole Panelist

Date: January 9, 2024