

ADMINISTRATIVE PANEL DECISION

Zions Bancorporation, N.A., a National Banking Association, dba Zions First National Bank v. PrivacyGuardian.org / Lyudmila Chernikow
Case No. D2022-0384

1. The Parties

Complainant is Zions Bancorporation, N.A., a National Banking Association, dba Zions First National Bank, United States of America (“United States” or “U.S.”), represented by TechLaw Ventures, PLLC, United States.

Respondent is PrivacyGuardian.org, United States / Lyudmila Chernikow, United States.

2. The Domain Names and Registrar

The disputed domain names <zions-bank.ltd> and <zions-bank.net> (the “Domain Names”) are registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 4, 2022. On February 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On February 4, 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 February 7, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on February 7, 2022.

The Center verified that the Complaint together with the amendment to 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 Respondent of the Complaint, and the proceedings commenced on February 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 3, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on March 4, 2022.

The Center appointed John C. McElwaine as the sole panelist in this matter on March 10, 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

Complainant is a Salt Lake City, Utah-based bank. Complainant is the owner of the following trademarks registered with the United States Patent and Trademark Office that are relevant to this proceeding:

- ZIONS BANK, U.S. Reg. No. 2,381,006, registered on August 29, 2000 in International Class 36;
- ZIONSBANK.COM, U.S. Reg. No. 2,531,436, registered on January 22, 2002 in International Class 36; and
- ZIONS, U.S. Reg. No. 2,380,325, registered on August 29, 2000 in International Class 36.

Collectively these trademark registrations are referred to as the ZIONS BANK Marks.

The Domain Names were registered by Respondent on January 16, 2022. At the time of the filing of the Complaint, the Domain Name <zions-bank.ltd> resolved to a website purporting to be the website of Complainant, while the Domain Name <zions-bank.net> resolved to a parked page. At the time of the Decision, the Domain Names do not resolve to active websites.

5. Parties' Contentions

A. Complainant

Complainant is a United States bank. Complainant does business under the ZIONS BANK Marks, as well as, under the similar name Zions First National Bank. Complainant asserts that it has been doing business under the name Zions First National Bank since June 12, 1890. Complainant further asserts that since July 5, 1995, Zions Bancorporation, the parent of Complainant, has been the registrant of the domain name <zionsbank.com>, from which Complainant advertises and offers its banking services.

With respect to the first element of the Policy, Complainant points out that the only difference between Complainant's ZIONS BANK Marks and the Domain Names is the addition of the generic Top-Level domains ".ltd" and ".net". Complainant asserts that the applicable Top-Level Domain is viewed as a standard registration requirement and should be disregarded under the first element confusing similarity test.

With respect to the second element of the Policy, Complainant contends that Respondent is not a licensee of Complainant's trademarks, and has not otherwise obtained authorization to use Complainant's ZIONS BANK Marks. Complainant also asserts that it is not aware that Respondent, as an individual, business, or other organization, has been commonly known by the Domain Names. Complainant alleges that it has used the ZIONS BANK Marks years before the registration of the Domain Names. In sum, Complainant asserts that Respondent's use of the Domain Names, which are identical to the ZIONS BANK Marks, to resolve to websites that are displaying Complainant's registered marks, including one website that is identical to Complainant's website, is not a *bona fide* use of the Domain Names and is not fair use under the Policy.

With respect to the third element of the Policy, Complainant contends Respondent is clearly trying to exploit the goodwill of Complainant and its ZIONS BANK Marks by diverting customers of Complainant from Complainant's website to Respondent's websites for commercial gain or malicious purposes by copying Complainant's website and by creating a likelihood of confusion with Complainant's trademarks. In addition, Complainant asserts that its trademarks are widely known in the States of Utah and Idaho and surrounding regions and that bad faith registration of a domain name can also be found when the respondent knew or should have known about the existence of the complainant's trademarks, especially where the complainant's

marks are widely known. Complainant also points out that the Domain Names were registered using a private or proxy service, which supports an inference of bad faith registration.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Even though Respondent has defaulted, paragraph 4 of the Policy requires that, in order to succeed in this UDRP proceeding, Complainant must still prove its assertions with evidence demonstrating:

- (i) the Domain Names are 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 Names; and
- (iii) the Domain Names have been registered and are being used in bad faith.

Because of Respondent's default, the Panel may accept as true the reasonable factual allegations stated within the Complaint and may draw appropriate inferences therefrom. See *St. Tropez Acquisition Co. Limited v. Anonymous Speech LLC and Global House Inc.*, WIPO Case No. [D2009-1779](#); *Bjorn Kasso Andersen v. Direction International*, WIPO Case No. [D2007-0605](#); see also paragraph 5(f) of the Rules ("If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint"). Having considered the Complaint, the Policy, the Rules, and the Supplemental Rules, the Panel's findings on each of the above cited elements are as follows.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires Complainant show that each of the Domain Names is identical or confusingly similar to a trademark or service mark in which Complainant has rights. Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2. On this point, Complainant has provided evidence that it is the owner of several trademark registrations for the ZIONS BANK Marks.

The Domain Names in this matter, <zions-bank.ltd> and <zions-bank.net>, are both confusingly similar to Complainant's ZIONS BANK trademark registration (U.S. Reg. No. 2,381,006), except for the addition of the hyphen between "zions" and "bank". The applicable gTLDs shall be disregarded for the purpose of determining whether a domain name is identical or confusingly similar to a trademark. Accordingly, the Panel finds that the Domain Names are both confusingly similar to Complainant's ZIONS BANK Marks in which Complainant has valid trademark rights. Therefore, Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under the Policy paragraph 4(a)(ii), Complainant has the burden of establishing that Respondent has no rights or legitimate interests in the Domain Names. Complainant need only make a *prima facie* showing on this element, at which point the burden shifts to Respondent to present evidence that it has some rights or legitimate interests in the Domain Names. If Respondent has failed to do so, Complainant is deemed to have satisfied its burden under paragraph 4(a)(ii) of the Policy. See *Vicar Operating, Inc. v. Domains by Proxy, Inc. / Eklin Bot Systems, Inc.*, WIPO Case No. [D2010-1141](#); see also *Nicole Kidman v. John Zuccarini, d/b/a Cupcake Party*, WIPO Case No. [D2000-1415](#); *Inter-Continental Hotels Corporation v. Khaled Ali Soussi*, WIPO Case No. [D2000-0252](#).

Complainant asserts that Respondent is not authorized to have registered the Domain Names and allegedly set up one website that is a copy of Complainant's website. Although properly notified by the Center, Respondent failed to submit any response on these points. The silence of a respondent may support a finding that it has no rights or legitimate interests in respect of the domain name. See *Alcoholics Anonymous World Services, Inc., v. Lauren Raymond*, WIPO Case No. [D2000-0007](#); *Ronson Plc v. Unimetal Sanayi ve Tic. A. S.*, WIPO Case No. [D2000-0011](#). Additionally, previous UDRP panels have found that when respondents have not availed themselves of their rights to respond to complainant, it can be assumed in appropriate circumstances that respondents have no rights or legitimate interests in the disputed domain name. See *AREVA v. St. James Robyn*, WIPO Case No. [D2010-1017](#); *Nordstrom, Inc. and NIHC, Inc. v. Inkyu Kim*, WIPO Case No. D2003-0269.

Nevertheless, under paragraph 4(c) of the Policy, a respondent's rights or legitimate interests to a domain name may be established by demonstrating any of the following three conditions: (i) before any notice to respondent of the dispute, respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or (ii) respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if respondent has acquired no trademark or service mark rights; or (iii) respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. The Panel finds that Respondent was not able to show rights or legitimate interests under any of the three conditions.

As an initial matter, Respondent cannot satisfy paragraph 4(c)(ii) of the Policy. There is no evidence in the record that Respondent is commonly known by the name "Zions Bank". In fact, to the contrary, the Whois information indicates that Respondent's name is "Lyudmila Chernikow".

Complainant asserts that one of the Domain Names resolved to a website that is an identical copy of Complainant's website. In addition, Complaint asserts that the Domain Names, and the website that was copied, may be used for phishing or other fraudulent purposes by preying on unsuspecting Internet visitors trusting the Domain Names or the website due to their use of the ZIONS BANK Marks. Respondent has not submitted any response to rebut or explain these allegations.

The Panel finds that the use of the Domain Names to divert Internet traffic or to confuse and deceive the Internet users is not a *bona fide* offering of goods or services under paragraph 4(c)(i) of the Policy. Prior UDRP panels deciding this issue have held that such use of a domain name cannot be a "*bona fide* offering of goods or services" and is not "fair use of the domain name." See *Hulu, LLC v. Helecoops, Vinod Madushanka*, WIPO Case No. [D2016-0365](#) (finding that an infringing website operating under the name "HuluMovies" does not entail a *bona fide* offering of services in the sense of paragraph 4(c)(i) of the Policy, nor a legitimate noncommercial or fair use under Policy paragraph 4(c)(iii), without intent for commercial gain to misleadingly divert consumers or to tarnish the HULU mark.) Without a response from Respondent justifying its use of the Domain Names as authorized by Complainant or as fair use, the Panel cannot find Respondent has a legitimate interest.

Moreover, to the extent the Domain Names were registered to engage in fraud, then such use would clearly not be a *bona fide* offering of goods or services. [WIPO Overview 3.0](#), section 2.13.1 ("Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent."); see also, *CMA CGM v. Diana Smith*, WIPO Case No. [D2015-1774](#) (finding that the respondent had no rights or legitimate interests in the disputed domain name holding, "such phishing scam cannot be considered a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the Domain Name".) The undisputed evidence of impersonation, deception, and fraud nullifies any possible basis for the acquisition of rights or legitimate interests by Respondent. See *Afton Chemical Corporation v. Meche Kings*, WIPO Case No. [D2019-1082](#).

In addition, the Panel finds that the Domain Names carry a risk of implied affiliation with the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

In sum, Complainant has made a *prima facie* showing of Respondent's lack of rights or legitimate interests and Respondent has failed to come forward to rebut that showing. As provided for by paragraph 14 of the Rules, the Panel may draw such inference from Respondent's default as it considers appropriate. For all these reasons, the Panel is entitled to accept that the second element of the Policy is established by Complainant, and Respondent has no rights or legitimate interests in respect of the Domain Names, pursuant to paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, Complainant must show that Respondent registered and is using the Domain Names in bad faith. A non-exhaustive list of factors constituting bad faith registration and use is set out in paragraph 4(b) of the Policy.

Bad faith registration can be found where a respondent "knew or should have known" of a complainant's trademark rights and nevertheless registered a domain name in which it had no right or legitimate interest. See *Accor v. Kristen Hoerl*, WIPO Case No. [D2007-1722](#). As detailed above, Respondent registered the Domain Names, which incorporate the entirety of the well-known ZIONS BANK Marks. There is no explanation for Respondent to have chosen to register the Domain Names other than to intentionally trade off the goodwill and reputation of Complainant's trademarks or otherwise create a false association with Complainant. In fact, one of the Domain Names linked a website displaying a copy of Complainant's website showing that Respondent must have had knowledge of Complainant when the Domain Names were registered. With no response from Respondent, such a claim of bad faith registration is undisputed.

The Domain Name <zions-bank.ltd> resolved to a website using Complainant's ZIONS BANK Marks and displaying a copy of Complainant's website, while the Domain Name <zions-bank.net> resolved to a parked page. Such use is in bad faith because Respondent is using the Domain Names to attract, for commercial gain, Internet users to Respondent's website by creating a likelihood of confusion with the ZIONS BANK Marks as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location. *Philip Morris USA Inc. v. WhoisGuard Protected, WhoisGuard, Inc. / Raph Lionnel Noundjeu*, WIPO Case No. [D2020-0556](#). Thus, the Panel holds that Complainant has met its burden of providing sufficient evidence that Respondent registered and is using the Domain Names in bad faith under paragraph 4(b)(iv) of the Policy.

The fact that the Domain Names do not currently resolve to active websites does not prevent a finding of bad faith. Section 3.3 of the [WIPO Overview 3.0](#), instructs that UDRP panelists should examine the totality of the circumstances in each case and that the following factors that have been considered relevant in applying the passive holding doctrine: "(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, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put." *Id.* Here, Complainant's ZIONS BANK Marks are distinctive and have acquired significant reputation. As discussed herein, Respondent has submitted no substantive response justifying its prior development of an infringing website. Moreover, as discussed above, there is simply no plausible reason to register the Domain Names, and as a financial institution, the risk to the public of phishing or fraud is an all-too-familiar real one. As such, the current passive holding of the Domain Names cannot transform Respondent's prior bad faith registration and use of the Domain Name.

For these reasons, the Panel holds that Complainant has met its burden of showing that Respondent registered and is using the Domain Names in bad faith under paragraph 4(a)(iii) 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 Names, <zions-bank.ltd> and <zions-bank.net>, be transferred to Complainant.

/John C McElwaine/

John C McElwaine

Sole Panelist

Date: March 21, 2022