

ADMINISTRATIVE PANEL DECISION

Cetera Financial Holdings, Inc. v. Daniel James
Case No. D2023-0975

1. The Parties

Complainant is Cetera Financial Holdings, Inc., United States of America (“United States”), represented by Pryor Cashman, LLP, United States.

Respondent is Daniel James, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <ceterainvest.com> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 3, 2023. On March 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 3, 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, PrivacyGuardian.org llc), and from the Respondent identified by reference to Annex 1 to the Complaint (Domain administrator, PrivacyGuardian.org llc)) and contact information in the Complaint. The Center sent an email communication to Complainant on March 8, 2023, 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 March 8, 2023.

The Center verified that 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 March 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 11, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on April 12, 2023.



The Center appointed Gabriel F. Leonardos as the sole panelist in this matter on April 21, 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

Complainant is CETERA, a United States privately held, independent broker-dealer and investment adviser family, with four independently managed firms, namely, Cetera Advisors LLC, Cetera Advisor Networks LLC, Cetera Investment Services LLC, and Cetera Financial Specialists LLC.

Complainant owns and operates websites with several domain names, such as <ceterainvestors.com>.

Complainant owns a wide portfolio of trademark registrations internationally containing the word mark CETERA, such as:

Registration No.	Trademark	Jurisdiction	International Classes	Date of Registration
4386541	CETERA	United States	35 and 36	August 20, 2013
4386542	 Cetera	United States	35 and 36	August 20, 2013
3953736	 Cetera FINANCIAL GROUP	United States	35 and 36	May 3, 2011
3953295	CETERA FINANCIAL GROUP	United States	35 and 36	May 3, 2011

The disputed domain name was registered on December 19, 2022, and resolves to a webpage which presents a trading business under the name of “cetera invest” promoting investment services similar to Complainant.

5. Parties’ Contentions

A. Complainant

Complainant pleads that the disputed domain name is confusingly similar to the registered trademark CETERA, since it fully incorporates the Complainant’s trademark CETERA.

Complainant affirms that the disputed domain name uses the trademark CETERA in its entirety with the addition of the generic word “invest” – which would not avoid a confusingly similarity between the disputed domain name and Complainant’s domain name <ceterainvestors.com> since merely replaces the term “investors” with the term “invest”.

Therefore, according to Complainant, the disputed domain name is confusingly similar with Complainant’s trademark CETERA, fulfilling paragraph 4(a)(i) of the Policy and paragraphs 3(b)(viii) and 3(b)(ix)(1) of the Rules.

In addition, Complainant states that Respondent would not have any rights or legitimate interests in respect of the disputed domain name, nor is Respondent commonly known by the disputed domain name. Further, Respondent has not been authorized, or licensed to use Complainant's trademark CETERA as a domain name nor is Respondent associated with Complainant.

Complainant observes that Respondent would have registered the disputed domain name for the purpose of exploiting Complainant's rights and well-known reputation of the CETERA trademark, to collect visitors' personal and confidential financial information, which would not constitute a *bona fide* offering of goods and services, nor represent a legitimate noncommercial or fair use of the disputed domain name.

This way, Complainant states that no legitimate use of the disputed domain name could be reasonably claimed by Respondent, thus paragraph 4(a)(ii) of the Policy and paragraph 3(b)(ix)(2) of the Rules have been fulfilled.

Finally, Complainant states that (i) Respondent was well aware of the existence of the trademark CETERA, and is intentionally diverting customers into the website hosted by the disputed domain name through the confusion caused by the unauthorized use of the trademark CETERA on the Internet; and (ii) the website which purports from the disputed domain name promises to provide investment services, similar to Complainant's business – which led Complainant to the conclusion that Respondent tries to scam Internet users into believing Respondent purportedly provides Complainant's investment services for commercial gain.

Thus, according to Complainant, the requirements for the identification of a bad faith registration and use of the disputed domain name have been fulfilled, pursuant to paragraph 4(b)(iv) of the Policy.

Accordingly, Complainant requests transfer of the disputed domain name to Complainant.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

To succeed in a UDRP complaint, Complainant must demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied, as following:

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

The burden of proving these elements is upon Complainant.

Respondent had 20 days to submit a response in accordance with paragraph 5(a) of the Rules and failed to do so. Paragraph 5(f) of the Rules establishes that if a respondent does not respond to the complaint, in the absence of exceptional circumstances, the panel's decision shall be based upon the complaint.

A. Identical or Confusingly Similar

Complainant has duly proven that it owns prior trademark rights for CETERA, and that the disputed domain name is constituted by the trademark CETERA in its entirety with the sole addition of the word “invest”.

The addition of the term “invest” does not prevent a finding of confusing similarity with Complainant’s trademark CETERA – since the well-known trademark CETERA is fully integrated, and recognizable, in the disputed domain name.

Thus, the Panel finds that the disputed domain name is confusingly similar to Complainant’s trademark CETERA, and so the requirement of the first element of paragraph 4(a) of the Policy is satisfied.

B. Rights or Legitimate Interests

The consensus view of UDRP panels on the burden of proof under paragraph 4(a)(ii) of the Policy is summarized in section 2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) as follows: “[w]hile 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 often impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.”

In this case, noting the facts and contentions listed above, the Panel finds that Complainant has made out a *prima facie* case showing that Respondent lacks rights or legitimate interests in the disputed domain name, so the burden of production shifts to Respondent. As Respondent has not replied to Complainant’s contentions, the Panel has considered Complainant’s un rebutted *prima facie* case to be sufficient to demonstrate that Respondent has no rights or legitimate interests in the disputed domain name.

It should be noted that Respondent’s lack of response (in the broader context of the case), according to the above-mentioned guidelines from [WIPO Overview 3.0](#), suggests that Respondent has no rights or legitimate interests in the disputed domain name that it could put forward.

Furthermore, Respondent has not used the disputed domain name in the context of a *bona fide* that could demonstrate legitimate interests, since the evidence shows that the confusingly similar disputed domain name resolves to a website in that at minimum unfairly trades on the reputation of Complainant’s mark to offer competing investment services, and moreover is likely involved in a fraudulent scheme to obtain visitor’s data, as discussed further below.

The Panel notes that Respondent registered an almost identical domain name to Complainant’s domain name <ceterainvestors.com>. The nature of the disputed domain name, including Complainant’s trademark CETERA in its entirety with the addition of the term “invest”, relating to Complainant’s activity, carries a risk of implied affiliation (see section 2.5.1 of the [WIPO Overview 3.0](#)).

Therefore, the Panel finds that the requirement of the second element of paragraph 4(a) of the Policy is also satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists a number of circumstances that, without limitation, are deemed evidence of registration and use of a domain name in bad faith.

Respondent has registered the disputed domain name that fully incorporates Complainant's well-known trademark CETERA, plus the addition of the word "invest", which has a close relation to the investment services provided by Complainant and is almost identical to Complainant's domain name <ceterainvestors.com>. The Panel finds that it was duly demonstrated that Respondent was aware of Complainant's rights to the trademark CETERA at the time of the registration – as Complainant enjoys a worldwide reputation with the use of the referred trademark.

In addition, the use of the disputed domain name in the present circumstances allows a finding of bad faith registration and use, since Respondent's website offers competing investment services under a name that wholly incorporates Complainant's trademark with a related, dictionary term in an apparent attempt to attract, for commercial gain, Internet users to its website and obtaining personal information by creating a likelihood of confusion with the trademark of Complainant.

Moreover, the evidence indicates that Respondent's website is not legitimate and that Respondent most likely uses the disputed domain name to run a fraudulent investment scheme. In this regard, Complainant provides evidence of aspects of the website, such as graphics featuring investment growth, showing casing cryptocurrency investment options and a form to obtain personal information of visitors, and contends that this shows Respondent is engaged in a pattern of bad faith.

Section 3.4 of the [WIPO Overview 3.0](#) establishes that "Panels have held that the use of a domain name for purposes other than to host a website may constitute bad faith. [...] Many such cases involve the respondent's use of the domain name to send deceptive emails, e.g., to obtain sensitive or confidential personal information from prospective job applicants, or to solicit payment of fraudulent invoices by the complainant's actual or prospective customers."

The UDRP panel in *Twitter, Inc. v. Whois Agent, Whois Privacy Protection Service, Inc. / Domain Support*, WIPO Case No. [D2015-1488](#) came to a similar conclusion:

"The Panel notes that Respondent's use of the website at the Domain Name which incorporates Complainant's trademark in its entirety indicates that Respondent possibly registered the Domain Name with the intention to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the trademark of Complainant as to the source, sponsorship, affiliation, or endorsement of its website or location or of a service on its website or location, as per paragraph 4(b)(iv) of the Policy. Furthermore, the Panel accepts Complainant's undisputed submission that bad faith registration and use of the Domain Name is further indicated by the fact that there is strong suspicion of Respondent using the Domain Name in an elaborate common phishing scam."

The Panel finds that the circumstances of the present case allows a finding of bad faith in the registration and use of the disputed domain name, considering that (i) Respondent tries to obtain commercial gain by using the trademark CETERA in its entirety, and supposedly offering financial services at the disputed domain name – likely in connection to a fraudulent scam at the disputed domain; (ii) the provision of false and/or misleading information on Respondent's website as well as the incomplete contact information for purposes of registering the Domain Name evidenced by the inability of the courier to send the Center's written communication to the address disclosed by the Registrar for the Respondent; and (iii) the trademark CETERA is well known internationally and the Complainant operating an almost identical domain name, such that Respondent most likely knew (or should have known) of its existence, taking advantage of the confusion caused on the public by its use in the disputed domain name.

Moreover, the Panel finds it relevant that Respondent has not provided any evidence of good faith registration or use, or otherwise participated in this dispute. Complainant has put forward serious claims regarding the apparent bad faith use of the disputed domain name that the Panel would expect any legitimate party would seek to refute.

In light of the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith. Therefore, the requirement of the third element of 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 <ceterainvest.com> be transferred to Complainant.

/Gabriel F. Leonardos/

Gabriel F. Leonardos

Sole Panelist

Date: May 5, 2023