

## ADMINISTRATIVE PANEL DECISION

Mr. Daniel Imhof, v. Name Redacted

Case No. D2023-1209

### 1. The Parties

The Complainant is Mr. Daniel Imhof, Switzerland, represented by BrandIT GmbH, Switzerland.

The Respondent is Name Redacted.<sup>1</sup>

### 2. The Domain Name and Registrar

The disputed domain name <danielimhof.com> (the “Domain Name”) is registered with Wix.com Ltd. (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 17, 2023. On March 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On March 28, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Statutory Masking Enabled) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 28, 2023, 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 March 31, 2023.

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”).

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<sup>1</sup> The Respondent appears to have used the name of a third party when registering the Domain Name. In light of the potential identity theft, the Panel has redacted the Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the Domain Name, which includes the name of the Respondent. The Panel has authorised the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on April 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 25, 2023. The Center informed the Parties of its commencement of Panel appointment process on April 27, 2023.

The Center appointed Jeremy Speres as the sole panelist in this matter on May 2, 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 Complainant, an individual resident in Switzerland, has over 30 years of global experience in wealth and asset management as well as investment banking, including in senior, public-facing leadership roles. Presently he is employed by the once well-known Swiss bank, Credit Suisse (subject at present to being taken over by UBS), as Global Head of Investment Management and is a voting member of the bank's Global Investment Committee. He is also an experienced speaker for events, education, and investment conferences globally. The Complainant does not have any registered trade marks for his DANIEL IMHOF name, but claims a reputation and common law rights in the mark since at least 1992.

The Domain Name was registered on March 8, 2023, and currently resolves to the Registrar's parking page. The Complainant's evidence establishes that the Domain Name previously resolved to a website composed of photographs of the Complainant alongside text claiming that the Complainant is involved in various scandals. These claims are according to the Complainant unsubstantiated, no sources were provided, and the Complainant denies them.

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

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

The Complainant contends that the Domain Name is identical to his DANIEL IMHOF mark and that the Respondent has no rights or legitimate interests in, and registered and has used in bad faith, the Domain Name given the Domain Name's usage for blatantly defamatory content without substantiation.

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

The Respondent did not reply to the Complainant's contentions.

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

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

The Complainant's evidence establishes that the Complainant's name enjoys strong recognition in his industry, and that it has become a distinctive identifier of the Complainant's services conferring common law rights (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") at section 1.5). As discussed below, the Respondent has clearly targeted the Complainant's mark, which supports the Complainant's contention that his mark has achieved significance as a source identifier ([WIPO Overview 3.0](#) at section 1.3). As the Domain Name is plainly identical to that mark, the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

## **B. Rights or Legitimate Interests**

The Complainant's DANIEL IMHOF mark gained a reputation prior to registration of the Domain Name. The Domain Name is identical to the Complainant's mark and the Complainant has certified that the Domain Name is unauthorised by it.

The Complainant's evidence establishes that the Domain Name has been used to display content that is claimed to harm the Complainant's reputation. In the absence of a response from the Respondent justifying its claims made on its website, and in the face of the Complainant's denials, the Panel is of the view that it is more likely than not that such claims were made without specific justification. To support fair use under UDRP paragraph 4(c)(iii), a respondent's criticism must be genuine, legitimate criticism and the Respondent has not come forward to advance such a claim ([WIPO Overview 3.0](#) at section 2.6.1).

Additionally, the Domain Name is identical to the Complainant's mark, and any right to legitimate criticism typically does not extend to registering or using a domain name identical to a trade mark given the risk of impersonation ([WIPO Overview 3.0](#) at section 2.6.2).

The Complainant has satisfied paragraph 4(a)(ii) of the Policy by virtue of having made out an unrebutted *prima facie* case ([WIPO Overview 3.0](#) at section 2.1).

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

Given the prior usage of the Domain Name and its identity with the Complainant's mark, the Respondent clearly intended to target the Complainant through its registration and prior use of the Domain Name. As noted above, no specific justification for the registration and use of the Domain Name is advanced by the Respondent. Using a domain name to post false or defamatory content (as is claimed by the Complainant) is an indicator of bad faith ([WIPO Overview 3.0](#) at section 3.12).

The fact that the Respondent registered a domain name identical to the Complainant's mark, rather than one clearly indicating that the Domain Name was intended for criticism, is a further indicator of bad faith. The identity of the Domain Name to the Complainant's mark means that the Domain Name is particularly suited to the Respondent's apparent goal of attracting traffic intended for the Complainant; an inherent risk of impersonation. See *Dr. med. Andreas Frei v. Domain Discreet Privacy Service / John Smith*, WIPO Case No. [D2013-0560](#).

The Respondent supplied an address to the Registrar, which in the Whois record for the Domain Name corresponds to that of the German Federal Ministry of Justice, and the German Government's copyright and publishing law office. Clearly this is a false address, which, in the circumstances of this case, suggests an attempt by the Respondent to evade pursuit (*Kabushiki Kaisha Raibudoa v. Kubota, A*, WIPO Case No. [D2001-0817](#)). The Panel draws an adverse inference from the Respondent's failure to take part in the present proceeding where an explanation is certainly called for ([WIPO Overview 3.0](#) at section 4.3).

The Panel also takes note of the fact that the Domain Name now points to a Registrar holding page indicative of an attempt to evade a decision.

The Complainant has satisfied 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 Name, <danielimhof.com>, be transferred to the Complainant.

*/Jeremy Speres/*

**Jeremy Speres**

Sole Panelist

Date: May 16, 2023