

DRAFT ADMINISTRATIVE PANEL DECISION

Zimmer, Inc. v. Paul Fargo
Case No. D2023-3959

1. The Parties

The Complainant is Zimmer, Inc., United States of America (“USA”), represented by Marta L. Paul, USA .

The Respondent is Paul Fargo, USA .

2. The Domain Name and Registrar

The disputed domain name <zimmerbiometcenter.com> is registered with Web4Africa Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 21, 2023. On September 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 25, 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 (Privacy Protect, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 2, 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 amendment to the Complaint on October 3, 2023.

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 the Respondent of the Complaint, and the proceedings commenced on October 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 24, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 25, 2023.

The Center appointed Dennis A. Foster as the sole panelist in this matter on October 30, 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

Founded in 1927 and headquartered in Warsaw, Indiana, USA, the Complainant designs and produces orthopedic reconstructive products for various parts of the human body. The Complainant has operations in more than 25 countries around the world and has over 18,000 employees.

Complainant is the owner of the trademarks ZIMMER, BIOMET, and ZIMMER BIOMET. Complainant owns two (2) federal registrations in the United States for the mark ZIMMER BIOMET, Reg. Nos. 5880337 (registered on October 8, 2019) and 5913232 (registered on November 19, 2019).

The Complainant also has shown it has rights in many other countries for the mark ZIMMER BIOMET.

The Complainant maintains a primary website at the domain name <zimmerbiomet.com> which provides information about its medical devices and services. The Complainant adopted the domain name <zimmer.com> in 1996, and <zimmerbiomet.com> in 2014 following the acquisition of Biomet, Inc.

The Respondent is Paul Fargo who registered the disputed domain name on February 18, 2023.

5. Parties' Contentions

A. Complainant

Respondent has registered the disputed domain name that is confusingly similar to the Complainant's trademark ZIMMER BIOMET. Persons confronted with Respondent's domain name would not be able to distinguish it from the Complainant based on the incorporation of the registered trademark ZIMMER BIOMET as the leading term. The use of the famous, registered trademark ZIMMER BIOMET creates an association with the Complainant. The word "center" is insufficient to distinguish that portion of the domain name from the corporate name and registered trademark ZIMMER BIOMET.

The disputed domain name is not being used for any legitimate purpose. There is no indication that Respondent is using the domain name to provide goods or services, or is commonly known by the domain name. Additionally, Respondent has no legitimate noncommercial or fair use purpose for the disputed domain name.

Respondent is not affiliated in any respect with the Complainant and does not have permission to use the disputed domain name at issue or any domain name incorporating the registered mark ZIMMER BIOMET. Complainant has not licensed or otherwise permitted Respondent to use any of Complainant's marks or to apply for or use any domain name incorporating any of its marks.

Respondent uses the disputed domain name for communications as part of a fake check scheme to acquire money by defrauding various individuals the Respondent identifies as potential victims.

The circumstances surrounding the disputed domain name and the activities of the Respondent require a conclusion of bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraphs 4(a)(i-iii) of the Policy require that, in order to gain transfer or cancellation of the disputed domain name, a complainant must show:

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

A. Identical or Confusingly Similar

The Complainant has demonstrated registered trademark rights in ZIMMER BIOMET. The disputed domain name is confusingly similar to the Complainant's registered trademark since it is incorporated entirely. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7. In fact, the disputed domain name is identical to the Complainant's trademark with the exception of the word "center" added at the end.

In the context of the Policy, the word "center" does not prevent the disputed domain name from being confusingly similar to the Complainant's registered trademark ZIMMER BIOMET. The generic Top-Level Domain (gTLD) ".com" is not relevant for this comparison.

The Panel therefore finds the Complainant has carried its burden of proof under paragraph 4(a)(i) of the Policy to show that the disputed domain name is confusingly similar to its ZIMMER BIOMET trademark.

B. Rights or Legitimate Interests

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name and, in any case, is not using the disputed domain name for any legitimate purpose. It is the consensus under the Policy that at this juncture the burden of production shifts to the Respondent to come forth and rebut the Complainant's *prima facie* case. There being no response, the Panel will nonetheless examine the case file to see if there is any evidence that the Respondent might have rights or legitimate interests in the disputed domain name per Policy paragraph 2(c)(i-iii). In doing so, again per prior Policy decision consensus, the Panel will accept as true all of the Complainant's reasonable contentions. (See [WIPO Overview 3.0](#), section 2.1)

Based on the complete case file, the Panel finds there is no indication that Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services per Policy paragraph 2(c)(i). A fake check scheme using the disputed domain name can hardly be called a *bona fide* provision of goods and services, about which more in the Bad Faith section below. Rather, such use can never confer rights or legitimate interests upon a respondent. [WIPO Overview 3.0](#), section 2.13. Nor is the Respondent commonly known by the disputed domain name per Policy paragraph 2(c)(ii). Furthermore, Respondent has no discernible legitimate noncommercial or fair use purpose for the disputed domain name per Policy paragraph 2(c)(iii).

The Panel thus finds that the Complainant has demonstrated that the Respondent does not have rights or legitimate interests in the disputed domain name per paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Complainant has demonstrated that the Respondent uses the disputed domain name in a scheme to acquire money by defrauding various individuals it contacts using the disputed domain name. The steps of the Respondent's scheme are as follows:

1. The Respondent contacts a law firm and states that Respondent is a former employee of the Complainant who has been fired.

2. The Respondent alleges to the law firm that he has signed a six figure plus dollar settlement agreement with the Complainant.
3. The Respondent provides a fake termination letter, a fake settlement agreement and a fake check. This correspondence is sent from the disputed domain name.
4. The Respondent then attempts to have the law firm deposit the fake check and requests that the law firm wire the Respondent the money out of their own funds while the law firm waits for the check to clear, which never occurs.
5. The Complainant has been contacted by at least 15 different law firms who have realized that this is a fraudulent scheme and have alerted the Complainant.

This Respondent's elaborate scam is one of the most pernicious examples of bad faith registration and use that the Panel has come across in some twenty-three (23) years of UDRP domain name adjudication. Within weeks of registering the disputed domain name, the Respondent was already using it for his fake check scam so he clearly had this intricate scam in mind when he registered the disputed domain name on February 18, 2023. Moreover, the Respondent was also redirecting the disputed domain name to the Complainant's primary website at the domain name <zimmerbiomet.com>, clearly in an attempt to legitimize the use of the disputed domain name in the above-referenced fraudulent email scheme.

The Panel agrees with the Complainant that the circumstances of this case require a finding that Respondent registered and is using the disputed domain in bad faith per Policy paragraph 4(a)(iii) and 4(b)(iv).

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 <zimmerbiometcenter.com> be transferred to the Complainant.

/Dennis A. Foster/

Dennis A. Foster

Sole Panelist

Date: November 13, 2023