

## **ADMINISTRATIVE PANEL DECISION**

Zacks Investment Research, Inc. v. growl brandley  
Case No. D2024-2750

### **1. The Parties**

Complainant is Zacks Investment Research, Inc., United States of America (“United States”), represented by Latimer LeVay Fyock LLC, United States.

Respondent is growl brandley, United States.

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

The disputed domain name <zackprime.com> is registered with Hostinger Operations, UAB (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 5, 2024. On July 8, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 9, 2024, 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 (unknown) and contact information in the Complaint. The Center sent an email communication to Complainant on July 9, 2024 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 July 10, 2024.

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 July 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 4, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on August 6, 2024.

The Center appointed Georges Nahitchevansky as the sole panelist in this matter on August 9, 2024. 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, Zacks Investment Research, Inc., is a provider of independent financial research and investment related content. Complainant, through its subsidiary Zacks Investment Management, also manages client assets worth over USD 11 billion. Lastly, the owner of Complainant also operates a website at <zackstrade.com> that allows individual investors to trade certain financial instruments.

Complainant owns several United States trademark registrations that incorporate the name and mark ZACKS. These include a registration for ZACKS alone (Registration No. 5,652,428) which issued to registration on January 15, 2019, and several ZACKS formative marks, including by way of example, ZACKS ULTIMATE (Registration No. 5,683,596) which issued to registration on February 26, 2019, ZACKS RANK (Registration No. 5,664,114) which issued to registration on January 29, 2019, and ZACKS PREMIUM (Registration No. 5,683,593) which issued to registration on February 26, 2019. Complainant also owns and operates a website at <zacks.com> for its services. Complainant's subsidiary, Zacks Investment Management, also operates a website at <zacksim.com>.

Respondent, who is purportedly based in the United States, looks to have registered the disputed domain name on November 3, 2023. At some point thereafter, Respondent posted a website at the disputed domain name offering cryptocurrency and other financial trading services. Respondent also set up the disputed domain name for email purposes. Currently, the disputed domain name does not resolve to an active website or page.

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

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

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, Complainant contends that it has rights in the ZACKS name and mark through its use of the mark since 1978 in connection with its financial services and through Complainant's trademark registrations for the ZACKS mark.

Complainant argues that the disputed domain name is confusingly similar as the disputed domain name simply drops the letter "s" from the ZACKS mark and is then coupled with the non-distinctive term "prime" which is associated with trading and financial services.

Complainant asserts that Respondent does not have rights or a legitimate interest in the disputed domain name as Respondent (i) is not affiliated with or licensed by Complainant, (ii) is not commonly known by the disputed domain name, and (iii) is using the disputed domain name for a website offering financial trading under the name "ZackPrime" and for email purposes.

Lastly, Complainant maintains that the disputed domain name has been registered and used in bad faith as the domain name consists of Complainant's exact ZACKS mark and has been used for a website claiming to offer identical services as those of Complainant. Additionally, Complainant contends that Respondent has acted in bad faith by setting up the disputed domain name for email purposes which carries a high risk of implied affiliation given the confusing similarity between the disputed domain name and Complainant's ZACKS trademark.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

- (i) the disputed domain name is 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 disputed domain name; and
- (iii) the disputed domain name was 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 Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

Here, Complainant has shown rights in its ZACKS mark for purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. The Panel finds that the disputed domain name is confusingly similar to Complainant's ZACKS mark as the disputed domain name fully incorporates the ZACKS mark without the letter "s" at the head of the disputed domain name. Although the addition of other terms, here the word "prime," may bear on the assessment of the second and third elements, the Panel finds the addition of such word does not prevent a finding of confusing similarity between the disputed domain name and the mark for purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The first element of the Policy has thus been established by Complainant.

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

Paragraph 4(c) of the Policy provides a list of circumstances in which Respondent may demonstrate rights or legitimate interests in a disputed 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 Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Respondent's registration of the disputed domain name that is clearly based on the ZACKS mark does not seem coincidental, particularly as Respondent has used the disputed domain name to offer competing financial services. Moreover, because the disputed domain name fully incorporates a close version of the

ZACKS mark without the letter “s” in conjunction with the word “prime,” a term that is often used in the financial industry, the disputed domain name is likely to be mistakenly seen by consumers as related to Complainant and its various financial services under the ZACKS mark. As such, it is hard to see how Respondent could have any rights or legitimate interests in the disputed domain name. WIPO Overview at section 2.5.1.

The Panel finds the second element of the Policy has been established.

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

The Panel notes that, for 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.

In view of Respondent’s actions, and failure to appear in this proceeding, it is easy to infer that Respondent’s registration and use of the disputed domain name, which is clearly based on Complainant’s ZACKS mark, to offer competing financial services has been done opportunistically and in bad faith for the benefit or profit of Respondent. The disputed domain name on its face suggests a connection to Complainant and its various ZACKS financial products and services and was registered well after Complainant had established rights in its ZACKS mark. In all, Respondent’s actions make it more probable than not that Respondent was fully aware of Complainant and its ZACKS name when it registered the disputed domain name for purposes of offering competing financial services.

The Panel thus finds that Complainant has 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 disputed domain name <zackprime.com> be transferred to Complainant.

*/Georges Nahitchevansky/*

**Georges Nahitchevansky**

Sole Panelist

Date: August 21, 2024