

## ADMINISTRATIVE PANEL DECISION

Guggenheim Capital, LLC v. wei wei  
Case No. D2024-5237

### 1. The Parties

The Complainant is Guggenheim Capital, LLC, United States of America ("United States"), represented by Snell & Wilmer, L.L.P., United States.

The Respondent is wei wei, Hong Kong, China.

### 2. The Domain Name and Registrar

The disputed domain name <guggenfund.vip> is registered with Gname.com Pte. Ltd. (the "Registrar").

### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on December 19, 2024. On December 20, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 23, 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 (REDACTED FOR PRIVACY, wei wei) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 24, 2024, 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 in English on December 26, 2024.

On December 24, 2024, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the disputed domain name is Chinese. On December 26, 2024, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant's submission.

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").

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent in English and Chinese of the Complaint, and the proceedings commenced on December 27, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 16, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 17, 2025.

The Center appointed James Wang as the sole panelist in this matter on January 22, 2025. 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 claims to be a global leader in providing investment and financial advisory services, operating at least 16 offices in six different countries and employing more than 2,200 employees worldwide.

The Complainant claims that it currently manages over USD 335 billion in assets, and that it has owned and used GUGGENHEIM trademarks for over 20 years.

The Complainant is the registrant of trademarks consisting of or containing GUGGENHEIM in different jurisdictions, including but not limited to:

- United States trademark Reg. No. 3,121,127, GUGGENHEIM, registered on July 25, 2006;
- United States trademark Reg. No. 4,394,586, GUGGENHEIM CAPITAL, registered on September 3, 2013; and
- United States trademark Reg. No. 3,935,451, GUGGENHEIM SECURITIES, registered on March 22, 2011.

Since 2003, the Complainant has provided a website at <guggenheimpartners.com> where it uses its GUGGENHEIM mark to advertise its services.

The disputed domain name was registered on October 19, 2024. The disputed domain name resolved to a web page prompting users to enter a login user name and password, and purportedly offering investment management services.

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

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

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

Notably, the Complainant contends that the disputed domain name is confusingly similar to the trademark in which the Complainant has rights. The Respondent has no rights or legitimate interests in respect of the disputed domain name. The disputed domain name was registered and is being used in bad faith.

The Complainant requested that the disputed domain name be transferred to the Complainant.

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

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

## **6. Discussion and Findings**

### **6.1 Language of the Proceeding**

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English.

The Respondent did not make any submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.5.1).

Considering the Center has already sent Chinese-English dual language case-related communications to the Parties, including communications regarding the language of the proceeding, and thereby given the Respondent an opportunity to comment on or to oppose the Complainant's request and arguments, and considering the Respondent's default and lack of reaction after having been given a fair chance to comment or oppose, together with the fact that the disputed domain name consists of only Latin letters instead of Chinese characters and resolved to a website in English, the Panel finds it would not be unfair to proceed in English as requested by the Complainant.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

### **6.2 Substantive Elements**

According to paragraph 4(a) of the Policy, the Complainant must prove that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the 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.

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

The Complainant has provided evidence that it is the registrant of multiple trademarks consisting of or containing GUGGENHEIM.

The applicable Top-Level Domain ("TLD") in a domain name is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. The practice of disregarding the TLD in determining identity or confusing similarity is applied irrespective of the particular TLD; the ordinary meaning ascribed to a particular TLD would not necessarily impact assessment of the first element. Therefore, the term "vip", as the TLD of the disputed domain name, shall be disregarded under the confusing similarity test in this case. See [WIPO Overview 3.0](#), section 1.11.1.

The disputed domain name incorporates “guggen”, which is the dominant portion of the Complainant’s trademark GUGGENHEIM, together with the term “fund”. As the dominant portion of the Complainant’s trademark is recognizable within the disputed domain name, the disputed domain name is confusingly similar to the Complainant’s trademark. The addition of “fund” into the disputed domain name does not prevent a finding of confusing similarity. See [WIPO Overview 3.0](#), sections 1.7 and 1.8.

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

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

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. See [WIPO Overview 3.0](#), section 2.1.

According to the Complaint, the Complainant has not authorized the Respondent to register or use the Complainant’s trademarks. The Complainant and the Respondent are not affiliated, connected, or associated with one another. There is no evidence that the Respondent has used or is preparing to use the disputed domain name in connection with a bona fide offering of goods or services or has made or is making a legitimate noncommercial or fair use of the disputed domain name. There is no evidence that the Respondent has been commonly known by the disputed domain name.

The Panel finds that the Complainant has made a prima facie case that the Respondent lacks rights or legitimate interests, and the Respondent failed to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

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

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

Given the fact that GUGGENHEIM is a coined and distinctive mark associated with the Complainant, the dominant part of this mark is incorporated in the disputed domain name with a term “fund” referring to the Complainant’s business, and the use of the GUGGENHEIM mark on the website at the disputed domain name, it would be inconceivable that the Respondent registered the disputed domain name without knowledge of the Complainant’s trademark at the time of the registration. The Panel therefore agrees with the Complainant’s contention that the disputed domain name was registered in bad faith.

The Panel noticed that the disputed domain name resolved to a web page prompting users to enter a login user name and password, and purportedly offering investment management services, which indicates that the Respondent had an intent to trick unsuspecting consumers into providing their personal information. In addition, the Complainant’s evidence shows that an Internet user informed the Complainant of the website at the disputed domain name, expressed its concern regarding the legitimacy of the website, and requested the Complainant to confirm if the website is associated with the Complainant. The Panel therefore finds that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the website, which constitutes bad faith.

Having reviewed the record, the Panel finds the Respondent’s registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel therefore finds that the 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 <guggenfund.vip> be transferred to the Complainant.

*/James Wang/*

**James Wang**

Sole Panelist

Date: February 5, 2025