

ADMINISTRATIVE PANEL DECISION

Zions Bancorporation, N.A., a National Banking Association, dba Zions First National Bank v. Babcock Kenneth
Case No. D2022-3622

1. The Parties

The Complainant is Zions Bancorporation, N.A., a National Banking Association, dba Zions First National Bank, United States of America (“United States”), represented by TechLaw Ventures, PLLC, United States. The Respondent is Babcock Kenneth, Russian Federation.

2. The Domain Name and Registrar

The Disputed Domain Name <zionsbank.site> (the “Disputed Domain Name”) is registered with Registrar of Domain Names REG.RU LLC (the “Registrar”).

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 29, 2022. On September 30, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On October 1, 2022, the Registrar transmitted by email to the Center its verification response disclosing the registrant and contact information for the Disputed Domain Name which differed from the named Respondent and contact information in the Complaint. On October 3, 2022, the Center sent an email communication to the Complainant, 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 October 3, 2022.

The Registrar confirmed that the language of the Registration Agreement for the Disputed Domain Name was Russian. On October 3, 2022, the Center sent an email communication to the Parties in both English and Russian regarding the language of the proceeding. The Complainant confirmed its request that English be the language of the proceeding on October 3, 2022. The Respondent did not comment on the language of the proceeding.

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 of the Complaint, and the proceedings commenced on October 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 6, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 7, 2022.

The Center appointed Pham Nghiem Xuan Bac as the sole panelist in this matter on November 10, 2022. 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, Zions Bancorporation, offers banking and financial services on a comprehensive scale under the name Zions First National Bank since 1890.

The Complainant holds many registered trademarks that consist of or contain "ZIONS" or "ZIONS BANK" (the "ZIONS and ZIONS BANK trademarks") for banking services, including, but not limited to the United States Registrations No. 2380325 and No. 2381006, both registered on August 29, 2000; the United States Registration No. 2531436 registered on January 22, 2002.

In addition, the Complainant is the owner of numerous domain names featuring the ZIONS and ZIONS BANK trademarks, notably the domain name <zionsbank.com> registered on July 5, 1995.

The Disputed Domain Name was registered on September 7, 2022. As of the date of this Decision, the Disputed Domain Name is resolving to an inactive website. However, the Disputed Domain Name was used to resolve to a website that is displaying Complainant's trademark without offering any apparent services.

5. Parties' Contentions

A. Complainant

The Complainant contends that each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case, as follows:

(i) The Disputed Domain Name is identical or confusingly similar to a trademark or service mark, in which the Complainant has rights.

First, the Complainant contends that it has rights in and to the ZIONS and ZIONS BANK trademarks.

Second, the Complainant argues that the Disputed Domain Name is confusingly similar to the ZIONS and ZIONS BANK trademarks owned by the Complainant because the Disputed Domain Name incorporates the Complainant's ZIONS and ZIONS BANK trademarks in its entirety. The only difference between the Complainant's trademarks and the Disputed Domain Name is the new generic Top-Level Domain ("gTLD") ".site", which is disregarded under the first element confusing similarity test as it is viewed as a standard registration requirement.

(ii) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

First, the Complainant argues that there is no evidence that the Respondent has used or prepared to use the Disputed Domain Name in connection with a *bona fide* offering of goods or services, nor has ever been commonly known by the Disputed Domain Name. Moreover, the Respondent has never acquired any trademark or service mark rights in the Disputed Domain Name.

Second, the Complainant contends that the Respondent is not making a legitimate noncommercial use of the Disputed Domain Name. On the contrary, the Respondent is intentionally diverting consumers to the Respondent's website under the Disputed Domain Name for commercial gain that may tarnish the Complainant's trademarks.

Finally, the Complainant contends that it has never granted the Respondent any license or otherwise authorization to use the ZIONS and ZIONS BANK trademarks.

(iii) The Disputed Domain Name was registered and is being used in bad faith.

First, the Complainant argues that the Respondent should have been aware of the Complainant's ZIONS and ZIONS BANK trademarks as the Respondent registered the Disputed Domain Name that comprises the ZIONS and ZIONS BANK trademarks which are distinct and widely known through being used in commerce for at least 132 years.

Second, the Complainant submits that the Respondent's registration of the Disputed Domain Name that is identical or confusingly similar to the Complainant's trademarks appear to be intended to attract Internet users for commercial gain to the website under the Disputed Domain Name. In addition, the Complainant submits that the Disputed Domain Name is intentionally registered and used to take advantage of the goodwill of the Complainant's trademarks and intentionally create a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of Respondent's website, which suggests bad faith.

Third, the Complainant contends that the Respondent's use of the Disputed Domain Name resolved to a website incorporating the Complainant's trademarks is considered misleading. In addition, the Respondent may use the Disputed Domain Name in connection with various phishing and fraudulent activities.

Finally, the Complainant contends that taking into account many prior UDRP decisions that ruled in favor of the Complainant and which ordered the transfer of numerous disputed domain names, the result in this instant case should be under circumstances similar to consistent with prior decisions.

With the said arguments, the Complainant requests 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

A. Procedural Issues

(I) Respondent's Identity

The Panel notes that at the time the Complaint was filed on September 29, 2022, the Respondent was identified as "Private Person". On October 1, 2022, the Registrar revealed the underlying Registrant "Babcock Kenneth". The Center sent an email communication to the Complainant on October 3, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint which was made by the Complainant on the same day.

(II) Language of the Proceeding

The Complaint was filed in English. However, the Registrar confirmed that the language of the Registration Agreement is Russian.

As the Complaint was filed in English, the Center, in its email of the language of proceeding dated October 3, 2022, invited the Complainant to submit either (i) satisfactory evidence of an agreement between the Complainant and the Respondent to the effect that the proceeding should be in English, or (ii) the Complaint translated into Russian, or (iii) a substantiated request for English to be the language of the proceeding by October 6, 2022.

On October 3, 2022, the Complainant submitted a request that English be the language of the proceeding. The Respondent did not give any comment on this issue.

According to paragraph 11(a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

Similar to previous UDRP decisions, the Panel finds that the spirit of paragraph 11(a) is to ensure fairness in the selection of language by giving full consideration to the Parties' level of comfortability with each language, the expenses to be incurred, and the possibility of delay in the proceeding in the event translations are required and other relevant factors (see, *e.g.*, *Deutsche Messe AG v. Kim Hyungho*, WIPO Case No. [D2003-0679](#)).

In the present case, the Panel takes into account the circumstances of the proceeding, including, but not limited to:

(i) the fact that the Complainant, an American entity, does not appear to be able to communicate in Russian, and therefore if the Complainant was required to have the documents translated into Russian, the proceeding would be unduly delayed, and the Complainant would have to incur substantial expenses for translation;

(ii) the Disputed Domain Name itself contains the English words "bank", and "site"; this suggests that the Respondent has knowledge of the English language and would be able to communicate in English; and

(iii) the Respondent did not object to English being the language of the proceeding and did not submit a Response in either English or Russian.

Therefore, for easy comprehension of the Complainant (ultimately, the Party solely taking part in the proceeding) of the Panel's decision without any necessity of translations, and in the interest of fairness to both Parties as well as the Panel's obligation under paragraph 10(c) of the Rules, which provides that "the Panel shall ensure that the administrative proceeding takes place with due expedition", the Panel hereby decides, under paragraph 11(a) of the Rules, that the language of the proceeding shall be English and shall render its decision in English.

(III) The Respondent's Failure to Respond

The Respondent's failure to file a Response does not automatically result in a decision in favor of the Complainant (see, *e.g.*, *Tradewind Media, LLC d/b/a Intopic Media v. Jayson Hahn*, WIPO Case No. [D2010-1413](#), and *M. Corentin Benoit Thiercelin v. CyberDeal, Inc.*, WIPO Case No. [D2010-0941](#)). However, the Panel may draw appropriate inferences from the Respondent's default.

B. Identical or Confusingly Similar

The Complainant is required to establish the two following elements: (i) that it has trademark rights, and, if so, (ii) that the Disputed Domain Name is identical or confusingly similar to its trademark.

First, the Panel acknowledges that the Complainant registered trademark rights to ZIONS BANK, and has been first using its ZIONS mark in commerce in the field of financial services since at least as early as 1891, which predates the registration of the Disputed Domain Name.

Second, the Panel finds the Disputed Domain Name is confusingly similar to the Complainant's trademark. In comparing the Complainant's trademarks with the Disputed Domain Name, the Panel is satisfied that the ZIONS and ZIONS BANK trademarks are clearly incorporated and recognizable within the Disputed Domain Name.

Third, the Panel finds, similarly to the other UDRP panels, that the addition of the gTLD ".site" to the Disputed Domain Name can be disregarded for the purposes of the Policy (see, e.g., *WhatsApp LLC v. Gustavo Ceccato*, WIPO Case No. [D2022-2786](#); *Carrefour SA v. Miftari Jack*, WIPO Case No. [D2022-2359](#); *Carrefour SA v. Dexter Turner*, WIPO Case No. [D2022-2032](#); *Skyscanner Limited v. James Newman*, WIPO Case No. [D2021-4150](#); and *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

Based on the foregoing findings, the Panel finds that the Disputed Domain Name is confusingly similar to the ZIONS and ZIONS BANK trademarks, and paragraph 4(a)(i) of the Policy is established.

C. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists circumstances, in particular, but without limitation, which, if found by the Panel to be proved, demonstrate the Respondent's rights or legitimate interests in the Disputed Domain Name for the purposes of paragraph 4(a)(ii) of the Policy, including:

"(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

The Panel finds that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The Respondent did not reply to the Complainant's contentions and, therefore, did not refute them.

The consensus of previous UDRP decisions is that while the overall burden of proof in UDRP proceedings is on the complainant, once a *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating its rights or legitimate interests in the Disputed Domain Name (see section 2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")). In this instant case, the Panel finds that the Respondent has failed to meet that burden since no response was submitted with evidence to the contrary.

Regarding paragraph 4(c)(i) of the Policy, the Panel finds, on the evidence provided by the Complainant, that no license, permission, or authorization of any kind to register or use the Complainant's trademarks or the Disputed Domain Name has been granted to the Respondent. In addition, there is no indication before the Panel that the Respondent holds any registered or unregistered trademark rights related to either the ZIONS and ZIONS BANK trademarks or the Disputed Domain Name. Thus, the Panel is satisfied that the Respondent has no rights in the ZIONS and ZIONS BANK trademarks.

Furthermore, the Panel finds, according to what the Complainant established, that the Disputed Domain Name was used to resolve to a website where the Complainant's trademarks were incorporated, while no statement or disclaimer disclosing accurately the relationship between the Complainant and the Respondent is placed. This unauthorized use of the ZIONS and ZIONS BANK trademarks may mislead Internet visitors into believing in a connection or association between the Respondent and the Complainant, where such connection or association does not exist in reality. Therefore, the Panel finds that by using the Disputed Domain Name in such a manner, the Respondent is attempting to ride on the reputation of the ZIONS and ZIONS BANK trademarks, and thus, such use does not constitute a *bona fide* use within paragraph 4(c)(i) of the Policy.

Regarding paragraph 4(c)(ii) of the Policy, the Panel finds that there is no evidence showing that the Respondent has been commonly known by the Disputed Domain Name. Further, there is also no evidence showing that the Respondent operates any *bona fide* business or organization under the Disputed Domain Name. Therefore, it is not evidenced that the Respondent is identified by "zionsbank" or that the Respondent has any right to it.

Regarding paragraph 4(c)(iii) of the Policy, the Panel finds that there is no evidence that the Respondent is making any noncommercial or fair use of the Disputed Domain Name. In fact, after reviewing the facts and circumstances in the record, the Panel is satisfied that the Respondent had full knowledge of the ZIONS and ZIONS BANK trademarks and had the intention to gain profit by riding on the goodwill and reputation of the Complainant.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests regarding the Disputed Domain Name, and the second element, paragraph 4(a)(ii) of the Policy, is established.

D. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy identifies, in particular, but without limitation, four circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith, including:

"(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location."

The above four circumstances are not exhaustive, and the Panel may find bad faith alternatively.

The Panel finds that the Complainant has put forth evidence that the Respondent has registered and used the Disputed Domain Name in bad faith. The Respondent did not reply to the Complainant's contentions and, therefore, did not refute the Complainant's contentions.

Registration in bad faith

The Panel has considered the Complainant's assertions and evidence concerning the Respondent's bad faith registration and use of the Disputed Domain Name. In this regard, the Panel finds that the Complainant's ZIONS and ZIONS BANK trademarks have been registered significantly predating the registration of the Disputed Domain Name. Besides, the Complainant's trademarks have been used for many years and have gained a certain reputation in financial services. In addition to this, ZIONS and ZIONS BANK trademarks have been used in commerce by the Complainant well before the registration of the Disputed Domain Name.

Also, the Disputed Domain Name comprises the ZIONS and ZIONS BANK trademarks in their entirety. Further, the Panel finds that given the fact that the dominant part in the Complainant's trademarks, *i.e.*, ZIONS, which is a coined word, without any dictionary meaning, is not descriptive of anything and devoid of meaning, it is very unlikely that the Respondent would have registered the Disputed Domain Name incorporating the trademark without knowledge of the trademark (see in the same way *Hoffmann-La Roche Inc. v. Hightech Industries, Andrew Browne*, WIPO Case No. [D2010-0240](#); *Volkswagen AG v. Swiss Recruitment*, WIPO Case No. [D2013-0534](#)) and that it defies common sense to believe that the Respondent coincidentally selected this precise domain name without any knowledge of the Complainant and its trademarks, particularly noting the Respondent's use of the Disputed Domain Name (see in the same way *Asian World of Martial Arts Inc. v. Texas International Property Associates*, WIPO Case No. [D2007-1415](#); *Volkswagen AG v. Swiss Recruitment, supra*).

Furthermore, the Panel finds that in addition to the unauthorized adoption of the Complainant's trademarks as a uniquely distinctive part of the Disputed Domain Name, the Respondent used, without permission, the Complainant's trademarks on the website under the Disputed Domain Name. In consideration of the use in such a manner, the Panel is of the view that the Respondent obviously knew of the Complainant and its ZIONS and ZIONS BANK trademarks when it registered the Disputed Domain Name. The Panel considers the registration of the Disputed Domain Name as an attempt by the Respondent to take unfair advantage of the Complainant's goodwill, and the reputation of the Complainant's ZIONS and ZIONS BANK trademarks.

Given the above-mentioned circumstances of this case, the Panel is satisfied that the Respondent did not register the Disputed Domain Name in a fortuity. It is therefore more likely than not that the Respondent obviously knew of the Complainant and its ZIONS and ZIONS BANK trademarks before the registration of the Disputed Domain Name.

Use in bad faith

In Section 6.C. above, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name. In the Panel's view, the use of a domain name, to which one has no rights or legitimate interests, is very often a clear indication of use in bad faith.

Besides, it is well proven and evidenced by the Complainant that the Respondent used the Complainant's trademarks on the website under the Disputed Domain Name. In the absence of any reply by the Respondent, the Panel considers such use indicates the Respondent was intentionally attempting to attract Internet users to its website, by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of the Respondent. In contrast, no such connection exists in fact. The Panel finds that the likelihood of confusion as said is an indication of bad faith use of the Disputed Domain Name.

On the date of this Decision, the Panel accesses the Disputed Domain Name and finds that it is resolving to an inactive website. However, it is well proven and evidenced by the Complainant that in addition to the adoption of the Complainant's ZIONS and ZIONS BANK trademarks as a uniquely distinctive part of the Disputed Domain Name, the Respondent used the Complainant's trademarks on the website. Moreover, it is a well-established fact under the UDRP that the current passive holding of a domain name does not prevent a finding of bad faith in certain circumstances (see section 3.3, [WIPO Overview 3.0](#)). Rather, in these circumstances, the use change further supports an inference that the Respondent lacked any good faith explanation for the previous website hosted at the Disputed Domain Name.

With the said facts, the Panel finds the Respondent intentionally registered and is using the Disputed Domain Name and that the Respondent's use of the Disputed Domain Name is likely to mislead consumers and confuse them by making them believe that the website is associated, fostered or recommended by the Complainant. Such misleading behavior is indicative of bad faith.

The Panel notes that the website under the Disputed Domain Name had never been offering any apparent services. However, with the above-mentioned likelihood of confusion and misleading behaviour, bad faith must be found on the side of the Respondent, even without evidence on commercial gain at present.

Taking into account all of the above and the available record, the Panel finds that the Disputed Domain Name was registered and is being used by the Respondent in bad faith, and the third element under paragraph 4(a)(iii) of the Policy is established.

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 <zionsbank.site> be transferred to the Complainant.

/Pham Nghiem Xuan Bac/

Pham Nghiem Xuan Bac

Sole Panelist

Date: November 24, 2022