

## **ADMINISTRATIVE PANEL DECISION**

CNU Online Holdings, LLC v. Dmytro  
Case No. D2022-3679

### **1. The Parties**

The Complainant is CNU Online Holdings, LLC, United States of America (“United States”), represented by Squire Patton Boggs (US) LLP, United States.

The Respondent is Dmytro, Ukraine.

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

The disputed domain name <cashnetusa.biz> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 3, 2022. On October 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 4, 2022, 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 service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 13, 2022, 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 13, 2022.

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 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 6, 2022.

The Center received two informal email communications from the Respondent on October 13 and 17, 2022, stating, among others, its interest in selling the disputed domain name. Accordingly, the Center sent a possible settlement email to the Parties. The Complainant did not request a suspension of the proceedings. The Respondent did not submit any formal response. Accordingly, the Center notified the Commencement of Panel Appointment Process on November 8, 2022.

The Center appointed Edoardo Fano as the sole panelist in this matter on November 14, 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.

The Panel has not received any requests from the Complainant or the Respondent regarding further submissions, waivers, or extensions of deadlines, and the Panel has not found it necessary to request any further information from the Parties.

Having reviewed the communication records in the case file provided by the Center, the Panel finds that the Center has discharged its responsibility under the Rules, paragraph 2(a), "to employ reasonably available means calculated to achieve actual notice to the Respondent". Therefore, the Panel shall issue its Decision based upon the Complaint, the Policy, the Rules, and the Supplemental Rules and without the benefit of a formal response from the Respondent.

The language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

#### **4. Further Procedural Considerations**

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition.

Since the Respondent's mailing address is stated to be in Ukraine (whether this is indeed accurate is not clear), which is subject to an international conflict at the date of this Decision that may impact case notification, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

Having considered all the circumstances of the case, the Panel is of the view that it should.

The Center sent the Notification of Complaint by email successfully to the Respondent as the Respondent replied by sending an informal email communication.

The Panel notes that the Center also did successfully send the written notice of the Complaint to the named Privacy service.

Furthermore, the Panel also notes that the Complainant has specified in the Complaint that any challenge made by the Respondent to any decision to transfer or cancel the disputed domain name shall be referred to the jurisdiction of the Courts of the location of the principal office of the concerned registrar. In this case, the principal office of the Registrar, Namecheap, Inc., is in Arizona, United States of America.

It is moreover noted that, for the reasons which are set out later in this Decision, the Panel has no serious doubt (albeit in the absence of a formal Response) that the Respondent registered and has used the disputed domain name in bad faith and with the intention of unfairly targeting the Complainant's goodwill in its trademark.

The Panel concludes that the Parties have been given a fair opportunity to present their case, and so that the administrative proceeding takes place with due expedition the Panel will proceed to a Decision accordingly.

#### **4. Factual Background**

The Complainant is CNU Online Holdings, LLC, a United States company operating in the field of financial services, owning several trademark registrations for CASHNETUSA, among which:

- United States Trademark No. 3,210,976 for CASHNETUSA, registered on February 20, 2007;
- United States Trademark No. 4,521,941 for CASHNETUSA, registered on April 29, 2014.

The Complainant operates on the Internet at the website “www.cashnetusa.com”.

The Complainant provided evidence in support of the above.

According to the Whois records, the disputed domain name was registered on October 1, 2021, and it resolves to a website where the Complainant’s trademark is reproduced, and seemingly the same financial services as the Complainant are offered.

On August 2, 2022, the Complainant’s legal representatives sent a cease-and-desist letter to the Respondent’s email address set out in the “contact us” information of the website at the disputed domain name, but the delivery failed.

#### **5. Parties’ Contentions**

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

The Complainant states that the disputed domain name is identical to its trademark CASHNETUSA.

Moreover, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name since it has not been authorized by the Complainant to register the disputed domain name or to use its trademark within the disputed domain name, it is not commonly known by the disputed domain name, and it is not making either a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name. The Respondent is using the disputed domain name for a website where the Complainant’s trademark is reproduced and the same financial services as the Complainant are offered. Moreover, the Complainant asserts that the disputed domain name is used to collect personally identifiable information from Internet users, including names and email addresses.

The Complainant submits that the Respondent has registered the disputed domain name in bad faith, since the Complainant’s trademark CASHNETUSA is distinctive and internationally known in the financial services field. Therefore, the Respondent targeted the Complainant’s trademark at the time of registration of the disputed domain name, and the Complainant contends that the use of the disputed domain name with the purpose of attracting, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant’s trademark as to an affiliation between the Respondent and the Complainant, and trading upon the Complainant’s reputation, qualifies as bad faith registration and use.

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

The Respondent has made no formal reply to the Complainant’s contentions.

A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, reasonable

facts asserted by a complainant may be taken as true, and appropriate inferences, in accordance with paragraph 14(b) of the Rules, may be drawn (see, e.g., *Reuters Limited v. Global Net 2000, Inc.*, WIPO Case No. [D2000-0441](#); *Microsoft Corporation v. Freak Films Oy*, WIPO Case No. [D2003-0109](#); *SSL International PLC v. Mark Freeman*, WIPO Case No. [D2000-1080](#); *Altavista Company v. Grandtotal Finances Limited et. al.*, WIPO Case No. [D2000-0848](#); *Confédération Nationale du Crédit Mutuel, Caisse Fédérale du Crédit Mutuel Nord Europe v. Marketing Total S.A.*, WIPO Case No. [D2007-0288](#)).

In this case, the Respondent submitted two informal email communications on October 13 and 17, 2022, stating the following:

“Hello I can confirm that information is correct and I will not change anything from it. Sincerely” (on October 13, 2022);

“I would like to resolve the problem with the domain amicably. As a solution to the problem, I can offer: 1. Is it possible to continue working as an affiliate under your affiliate program 2. If not, then I can sell the domain name Waiting for your response. Sincerely” (on October 17, 2022).

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy lists three elements, which the Complainant must satisfy in order to succeed:

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

(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 Panel finds that the Complainant is the owner of the trademark CASHNETUSA both by registration and acquired reputation and that the disputed domain name is identical to the trademark CASHNETUSA.

It is well accepted that a generic Top-Level Domain (“gTLD”), in this case “.biz”, is typically ignored when assessing the confusing similarity between a trademark and a domain name. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.11.1.

The Panel finds that the Complainant has therefore met its burden of proving that the disputed domain name is identical to the Complainant’s trademark, pursuant to the Policy, paragraph 4(a)(i).

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

Paragraph 4(a)(ii) of the Policy requires the Complainant to prove that the Respondent has no rights or legitimate interests in the disputed domain name.

The Respondent may establish rights or legitimate interests in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following circumstances, in particular but without limitation:

“(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.”

According to paragraph 4(a) of the Policy, the Complainant has the burden of proving the three elements of the Policy. However, satisfying the burden of proving a lack of the Respondent’s rights or legitimate interests in respect of the disputed domain name according to paragraph 4(a)(ii) of the Policy is potentially quite difficult, since proving a negative circumstance is often more complicated than establishing a positive one. As such, it is well accepted that it is sufficient for the Complainant to make a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name in order to shift the burden of production to the Respondent. If the Respondent fails to demonstrate rights or legitimate interests in the disputed domain name in accordance with paragraph 4(c) of the Policy or on any other basis, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant in its Complaint, and as set out above, has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The *prima facie* case presented by the Complainant is enough to shift the burden of production to the Respondent to demonstrate that it has rights or legitimate interests in the disputed domain name. However, the Respondent has not presented any evidence of any rights or legitimate interests it may have in the disputed domain name.

The Panel finds that the Respondent is not currently associated with the Complainant in any way, is not commonly known by the disputed domain name and is not making a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name: the disputed domain name is used by the Respondent to resolve to a website where the Complainant’s trademark is displayed, and the same financial services as the Complainant are offered, trying to pass off as a Complainant’s official website and likely in connection with a phishing scheme.

According to the [WIPO Overview 3.0](#), section 2.13:

“2.13.1 Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent [...].”

Moreover, the Panel finds that the composition of the disputed domain name carries a risk of implied affiliation. See [WIPO Overview 3.0](#), section 2.5.1.

The Panel therefore finds that paragraph 4(a)(ii) of the Policy has been satisfied.

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

Paragraph 4(b) of the Policy provides that “[...] for the purposes of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that [the Respondent has] registered or has 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 the complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or

(ii) that [the Respondent has] 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 [the Respondent has] engaged in a pattern of such conduct; or

(iii) that [the Respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) that by using the domain name, [the Respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the Respondent's] 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 [the Respondent's] website or location or of a product or service on [the Respondent's] website or location."

Regarding the registration in bad faith of the disputed domain name, the reputation of the Complainant's trademark CASHNETUSA in the field of financial services is clearly established, and the Panel finds that the Respondent likely knew of the Complainant and deliberately registered the disputed domain name, especially because the disputed domain name resolves to a website in which the Complainant's trademark is reproduced and the same financial services as the Complainant are seemingly offered.

The Panel further notes that the disputed domain name is also being used in bad faith since the Respondent is trying to impersonate the Complainant, likely in connection to a phishing scheme, with the purpose of intentionally attempting to create a likelihood of confusion with the Complainant's trademark as to the disputed domain name's source, sponsorship, affiliation or endorsement, an activity clearly detrimental to the Complainant's business.

The above suggests to the Panel that the Respondent intentionally registered and is using the disputed domain name in order both to disrupt the Complainant's business, in accordance with paragraph 4(b)(iii) of the Policy, and to attract, for commercial gain, Internet users to its website in accordance with paragraph 4(b)(iv) of the Policy.

Furthermore, the Panel considers that the nature of the inherently misleading disputed domain name, which is identical to the Complainant's trademark, further supports a finding of bad faith. See, [WIPO Overview 3.0](#), section 3.2.1.

The Panel finds that the Complainant has presented evidence to satisfy its burden of proof with respect to the issue of whether the Respondent has registered and is using the disputed domain name in bad faith.

The Panel therefore finds that paragraph 4(a)(iii) of the Policy has been satisfied.

## **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 <cashnetusa.biz> be transferred to the Complainant.

*/Edoardo Fano/*

**Edoardo Fano**

Sole Panelist

Date: November 28, 2022