

ADMINISTRATIVE PANEL DECISION

Early Warning Services, LLC v. Zelle Pay, Zelle
Case No. D2022-4481

1. The Parties

The Complainant is Early Warning Services, LLC, United States of America (“United States”), represented by Bryan Cave Leighton Paisner, United States.

The Respondent is Zelle Pay, Zelle, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <zellepay.website> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 28, 2022. On November 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 29, 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 (Contact Privacy Inc. Customer 0165041928) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 30, 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 December 1, 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 December 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 22, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 10, 2023.

The Center appointed Mihaela Maravela as the sole panelist in this matter on January 13, 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.

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

4. Factual Background

According to information in the Complaint, the Complainant is one of the world's leading and fastest-growing digital payment networks. The Complainant's services enable individuals and companies to transfer money between bank accounts. The Complainant's services target a wide consumer base, and more than 1,700 financial institutions worldwide currently use such services.

The Complainant is the exclusive owner of a number of registered trademarks consisting of ZELLE and ZELLEPAY including the United States trademark no. 5,449,233 for ZELLE, registered on April 17, 2018, or the United States trademark no. 5,938,276 for ZELLEPAY, registered on December 17, 2019. The Complainant owns and operates the website at "www.zellepay.com", to promote its services.

The disputed domain name was registered on August 19, 2022, and does not resolve to an active website.

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain name is identical to its ZELLEPAY trademark and incorporates its ZELLE trademark.

As regards the second element, the Complainant argues that the Respondent is not associated with the Complainant and has never sought or received authorization or a license to use the Complainant's ZELLE trademarks in any way or manner. Moreover, there is no evidence suggesting that the Respondent is known under the disputed domain name, and the Complainant's trademarks are well known.

With respect to the third element, the Complainant argues that the Respondent registered the disputed domain name, which wholly incorporates the Complainant's famous ZELLE trademarks, and is passively holding it as an inactive website with no content, which also indicates bad faith.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Matters

No communication has been received from the Respondent in this case. However, given that the Complaint was sent to the relevant physical and electronic addresses disclosed by the Registrar, the Panel considers that this satisfies the requirement in paragraph 2(a) of the Rules to "employ reasonably available means calculated to achieve actual notice". Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules and to draw inferences from the Respondent's failure to file any Response. While the

Respondent's failure to file a Response does not automatically result in a decision in favor of the Complainant, the Panel may draw appropriate inferences from the Respondent's default.

The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

6.2. Substantive Matters

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following elements:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant must establish that it has a trademark or service mark and that the disputed domain name is identical or confusingly similar to that trademark or service mark for the Complainant to succeed.

The Complainant has provided evidence of its rights in the ZELLE and ZELLEPAY trademarks.

As regards the question of identity or confusing similarity for the purpose of the Policy, it requires a comparison of the disputed domain name with the trademarks in which the Complainant holds rights. The disputed domain name is identical to the Complainant's trademark ZELLEPAY. Also, the disputed domain name is confusingly similar to the Complainant's trademark ZELLE, which is reproduced in its entirety in the disputed domain name. The fact that a domain name wholly incorporates a complainant's trademark is sufficient to establish identity or confusing similarity for the purpose of the Policy, despite the addition of other words to such trademarks. The addition of another term (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity. See section 1.8 of the [WIPO Overview 3.0](#).

It is well accepted by UDRP panels that a generic Top-level-Domain ("gTLD"), such as ".website", is typically ignored when assessing whether a domain name is identical or confusing similar to a trademark. See section 1.11 of the [WIPO Overview 3.0](#).

This Panel concludes that the Complainant has satisfied the requirement of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* case demonstrating that the Respondent has no rights or legitimate interests in the disputed domain name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)). In the present case, the Complainant has established a *prima facie* case that it holds rights over the trademarks ZELLE and ZELLEPAY and claims that the Respondent has no rights, legitimate interests or any other legitimate reason to acquire and use the disputed domain name.

There is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services, nor does the Respondent appear to engage in any legitimate noncommercial or fair use of the disputed domain name within the meaning of paragraphs 4(c)(i) and (iii) of the Policy.

Also, there is no evidence that the Respondent is commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy. Whilst the registrant of the disputed domain name is “Zelle Pay, Zelle”, there is no evidence before the Panel to establish that the Respondent is commonly known by the disputed domain name. The Respondent has not provided any explanation for its use of registrant details similar to the Complainant’s trademarks; such details appear intended to falsely suggest an affiliation with the Complainant. The Respondent has not replied to the Complainant’s contentions, claiming any rights or legitimate interests in the disputed domain name.

Furthermore, the nature of the disputed domain name carries a high risk of implied affiliation and cannot constitute a fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

With the evidence on file, the Panel finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, “in particular but without limitation”, be evidence of the disputed domain name’s registration and use in bad faith.

According to the unrebutted assertions of the Complainant, its ZELLE and ZELLEPAY trademarks were widely used in commerce well before the registration of the disputed domain name and are well known. The disputed domain name includes the Complainant’s ZELLE trademarks and is identical to the Complainant’s ZELLEPAY trademarks, in addition to the relevant gTLD. Under these circumstances, it is most likely that the Respondent was aware of the Complainant’s trademark at the registration date of the disputed domain name. The Respondent provided no explanations for why it registered the disputed domain name.

As regards to the use, the disputed domain name is passively held.

Section 3.3 of the [WIPO Overview 3.0](#) describes the circumstances under which the passive holding of a domain will be considered to be a bad faith registration: “While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.”

The Panel finds that passive holding of the disputed domain name does not in the circumstances of this case prevent a finding of bad faith. There is no evidence in the record of a legitimate use of the disputed domain name. The trademark of the Complainant is distinctive and widely used in commerce. UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

Moreover, the Respondent has not formally participated in these proceedings, and has failed to rebut the Complainant’s contentions or to provide any evidence of actual or contemplated good faith use, and indeed none would seem plausible.

In the Panel's view, the circumstances of the case represent evidence of registration and use in bad faith of the disputed domain name. The Respondent failed to bring evidence as to the contrary. Consequently, the Panel concludes that the condition of paragraph 4(a)(iii) of the Policy is fulfilled.

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, <zellepay.website>, be transferred to the Complainant.

/Mihaela Maravela/

Mihaela Maravela

Sole Panelist

Date: January 27, 2023