

ADMINISTRATIVE PANEL DECISION

Nostrum Oil & Gas Plc v. Oloreso Petroleum
Case No. D2023-4425

1. The Parties

The Complainant is Nostrum Oil & Gas Plc, United Kingdom, represented by Keltie LLP, United Kingdom.

The Respondent is Oloreso Petroleum, Kazakhstan.

2. The Domain Name and Registrar

The disputed domain name <zhaikmunailp.com> 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 25, 2023. On October 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 26, 2023, 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, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 1, 2023, 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 November 1, 2023.

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 November 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 7, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 12, 2023.

The Center appointed Anna Carabelli as the sole panelist in this matter on December 26, 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.

4. Factual Background

The Complainant is Nostrum Oil and Gas Plc, a UK based oil and gas exploration and production company, with an operating subsidiary in Kazakhstan where the Respondent is purportedly based.

Through its Kasakh subsidiary, Zhaikmunai LLP, the Complainant operates the export hub Chinarevskoye field, which, according to the Complaint, has produced more than 100 million barrels of oil since 2004.

The Complainant owns the Kazakhstan Trade Mark Registration No. 52650



filed on January 21, 2015, and registered on July 1, 2016, in Classes 4, 6, 35, 37, 39, 40 and 42 (hereinafter the "Complainant's Mark").

The Respondent registered the disputed domain name <zhaikmunaiip.com> on July 24, 2023.

As per the evidence submitted in the Complaint, the disputed domain name redirects to an inactive webpage displaying the notice "www.zhaikmunaiip.com's server IP address could not be found" and has been used as part of a phishing scheme to contact various third parties seeking to engage them in non-existent commercial transactions by impersonating employees of the Complainant.

The evidence submitted in this regard consist of scam emails which pretended to be sent by the Complainant's employees, i.e., the current Director of Marketing at Nostrum Oil & Gas Plc and former sales manager at Zhaikmunai LLP, using the email address <[...@zhaikmunaiip.com>, and the General Director at Zhaikmunai LLP, using the email address <[...@zhaikmunaiip.com> and <[...@zhaikmunaiip.com>.

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 takes the Complainant's Mark in its entirety and therefore is virtual identical.
- The Respondent has no rights or legitimate interests in the disputed domain name since: (i) the Complainant has not authorized or somehow given consent to the Respondent to register and use the disputed domain name, (ii) the Respondent is not commonly known by the disputed domain name, and (iii) the Respondent's use of the disputed domain name is neither a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use. Indeed, the disputed domain name redirects to an inactive webpage and has been used by the Respondent for conducting phishing activities.

- The disputed domain name was registered and is being used in bad faith. In this regard the Complainant points out that: (i) the disputed domain currently redirects to an inactive webpage. Passive holding of a domain name which cannot be used legitimately by anyone other than the trade mark holder, is registration and use in bad faith insofar as the domain name is being used as a blocking registration, preventing the Complainant from using the domain name for legitimate commercial purposes; and (ii) the disputed domain name has been used as part of a malicious phishing campaign to approach third parties seeking to engage them in non-existent transactions with a view to obtaining personal and financial information, by impersonating employees of the Complainant.

Based on the above the Complainant requests 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

Paragraph 15(a) of the Rules instructs the panel to decide the complaint based on the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Under paragraph 4(a) of the Policy, the complainant must prove each of the following:

- (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.

Paragraph 4(b) of the Policy sets out four illustrative circumstances, which for the purposes of paragraph 4(a)(iii) of the Policy, shall be evidence of registration and use of a domain name in bad faith.

Paragraph 4(c) of the Policy sets out three illustrative circumstances any one of which, if proved by the respondent, shall be evidence of the respondent's rights to or legitimate interests in a disputed domain name for the purpose of paragraph 4(a)(ii) of the Policy above.

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 the 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.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the Complainant's Mark is recognizable within the disputed domain name. Indeed, the disputed domain name consists of, and exactly reproduces the term ZHAIKMUNAILLP which is a predominant and distinctive part of the Complainant's Mark. Accordingly, the disputed domain name is confusingly similar to the Complainant's Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. The addition of the gTLD such as ".com" is viewed as a standard registration requirement and as such is typically disregarded under the first element confusing similarity test (see section 1.11.1 of the [WIPO Overview 3.0](#)).

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the 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 the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the 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. There is no indication before the Panel of any activity in relation to the disputed domain name that would give rise to rights or legitimate interests to the Respondent.

According to the evidence submitted by the Complainant - which has not been challenged by the Respondent - the disputed domain name, despite not being directed to an active website, has been used as part of a phishing scheme, to contact various third parties seeking to engage them in non-existent commercial transactions by impersonating employees of the Complainant.

Panels have held that the use of a domain name for illegal activity (such as phishing, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent.

[WIPO Overview 3.0](#), section 2.13.1.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the 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.

The Respondent registered a domain name consisting of the term ZHAIKMUNAILLP which beside being a distinctive part of the Complainant’s Mark, has an obvious connection with the Complainant because it is the name of the Complainant’s principal operating subsidiary in Kazakhstan. In addition, as discussed above, the uncontested evidence submitted by the Complainant shows that the disputed domain name has been used to send scam emails impersonating employees of the Complainant. In the Panel’s view, all the above indicates that the Respondent knew and targeted the Complainant when registering the disputed domain name.

Panels have held that the use of a domain name for illegal activity (such as phishing, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

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

Based on the available record, the Panel 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 <zhaikmunailp.com> be transferred to the Complainant.

/Anna Carabelli/

Anna Carabelli

Sole Panelist

Date: January 9, 2024