

ADMINISTRATIVE PANEL DECISION

Budage Pty Ltd v. PS Backup
Case No. D2025-1030

1. The Parties

The Complainant is Budage Pty Ltd, Australia, represented by Clayton Utz Solicitors, Australia.

The Respondent is PS Backup, United States of America (the “United States”).

2. The Domain Name and Registrar

The disputed domain name <claytonutzs.com> is registered with Wild West Domains, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 13, 2025. On March 13, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 13, 2025, 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 (Registration Private, Privacy service provided by Domains by Proxy LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 18, 2025, 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 March 20, 2025.

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 March 31, 2025. In accordance with the Rules, paragraph 5, the due date for Response was April 20, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 28, 2025.

The Center appointed Angelica Lodigiani as the sole panelist in this matter on May 2, 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 is a special purpose vehicle established by the Australian law firm partnership that trades under the name Clayton Utz. The Complainant is wholly owned in equal share by the Chief Executive Partner and Deputy Chief Executive Partner of Clayton Utz and provides, amongst others, marketing, promotional and business development services to Clayton Utz pursuant to a service agreement.

The Complainant is the owner of the following marks:

- CLAYTON UTZ (word), Australian registration No. 1348381, registered on March 3, 2010, for goods and services in classes 9, 35, 36, 41, 42 and 45;

- CLAYTON UTZ (figurative), Australian registration No. 826782, registered on March 8, 2000, for goods and services in classes 9, 35, 41 and 42.

The CLAYTON UTZ trademarks are used to distinguish legal and related services by the Australian law firm Clayton Utz, pursuant to a license agreement with the Complainant.

The Complainant is also the administrative and technical contact for the domain name <claytonutz.com>, registered on September 22, 1997 and used as the official website of the Clayton Utz law firm.

The Respondent is allegedly located in the United States. The disputed domain name has been registered on February 25, 2025 and has been used to send email communications to actual clients of the Clayton Utz law firm requesting the payment of professional fees.

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 Complainant's CLAYTON UTZ mark as it incorporates this mark with the sole addition of the letter "s" at the end. This minor difference with the Complainant's mark cannot prevent a finding of confusing similarity.

The Complainant further contends that the Respondent lacks rights or legitimate interests in the disputed domain name. The Complainant did not authorize the Respondent to register and use a domain name incorporating its CLAYTON UTZ mark. Moreover, to the best of the Complainant's knowledge, the Respondent does not appear to have been commonly known by the disputed domain name. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. The disputed domain name has been used to send emails to actual clients of the law firm Clayton Utz, requesting the payment of alleged outstanding invoices. The emails were signed by an individual who claimed to be a partner of the firm working for the Debt Recovery and Resolution department at Clayton Utz. However, the name of the signer of the email does not match the name of any partner or other individual working for the Clayton Utz law firm. Moreover, there is no Debt Recovery and Resolution department within this firm. The emails sent under the disputed domain name included forged remittance advices created to mirror the Complainant's remittance advices. In order to deceive the Complainant's customers, the remittance notices indicated an address corresponding to the address of the Clayton Utz law firm in Perth. In contrast, the bank

details listed in these remittance advices did not correspond to any bank account associated with the Complainant. Finally, the remittance advices included the logo that Clayton Utz currently uses on its website. Accordingly, the Complainant maintains that the use of the disputed domain name is fraudulent and intended for commercial gain; therefore, it cannot confer rights or legitimate interests to the Respondent on the disputed domain name.

Lastly, the Complainant maintains that the disputed domain name has been registered and is being used in bad faith. The CLAYTON UTZ mark is distinctive and unique. The law firm Clayton Utz has used this mark since at least 1924. The Respondent must have had the Complainant's mark in mind when registering the disputed domain name.

The emails sent through the disputed domain name were clearly sent fraudulently in an attempt to confuse consumers into believing that they are corresponding with an authorized representative of the Complainant, and to elicit some payment from the recipient through the use of deception based on the similarity of the disputed domain name with the Complainant's mark.

B. Respondent

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

6. Discussion and Findings

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.

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 mark is recognizable within the disputed domain name as it is fully incorporated therein with the sole addition of a letter "s" at the end. Thus, the disputed domain name consists of a common, obvious, or intentional misspelling of the Complainant's mark and is confusingly similar to that mark for the purpose of the first element of the Policy. [WIPO Overview 3.0](#), section 1.9.

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.

In particular, the Complainant did not authorize the Respondent to register and make use of its CLAYTON UTZ mark within the disputed domain name. The Respondent is neither an affiliate, nor a licensee of the Complainant, nor has any other kind of relationship with the Complainant. Nothing in the case file indicates that the Respondent might have been commonly known by the disputed domain name.

The Respondent does not appear to use the disputed domain name in connection with a bona fide offering of goods or services, or for a legitimate noncommercial or fair use. The disputed domain name has been used to send fraudulent emails to actual clients of the Clayton Utz law firm, soliciting undue payments and enclosing forged remittance advices bearing the CLAYTON UTZ mark. These emails were sent on behalf of a nonexistent Clayton Utz partner allegedly working at the nonexistent Debt Recovery and Resolution department within that firm. The invoice reproduces the actual address of Clayton Utz's office in Perth, but the bank account to which to send the remittance does not belong to Clayton Utz. Accordingly, the Respondent has sent fraudulent email communications to deceive Clayton Utz's clients in order to convince them to pay alleged outstanding invoices to its personal economic advantage. Such illegal use of the disputed domain name does not amount to a bona fide offering of goods or services or to a legitimate noncommercial or fair use of the disputed domain name.

Panels have held that the use of a domain name for illegal activity here, 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.

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.

In the present case, the Panel notes that the Complainant's mark is distinctive and exclusively associated with the Complainant and the associated law firm Clayton Utz. The Panel, in compliance with the general powers conferred to the Panel in paragraph 10 of the Rules, has performed some independent online research using the keyword "clayton utz". It appears that the Australian law firm Clayton Utz is one of the "Big 6" Australian law firms, and the research has disclosed hits linked to the Complainant only. Moreover, the way the disputed domain name has been used, clearly demonstrates that at the time of the registration, the Respondent had good knowledge of the Complainant's activity and of its mark. The impersonation of the Complainant through the disputed domain name in order to fraudulently attempt to deceive consumers to the Respondent's personal economic advantage shows that the Respondent has intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark.

Panels have held that the use of a domain name for an illegal activity such as the one described above 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.

In light of the foregoing, 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 <claytonutzs.com> be transferred to the Complainant.

/Angelica Lodigiani/

Angelica Lodigiani

Sole Panelist

Date: May 16, 2025