

ADMINISTRATIVE PANEL DECISION

Gain.Energy, Inc. v. Premium Domain
Case No. D2025-1796

1. The Parties

The Complainant is Gain.Energy, Inc., United States of America ("United States"), represented by ChaseLawyers, United States.

The Respondent is Premium Domain, Russian Federation.

2. The Domain Names and Registrar

The disputed domain names <upstrima.ai> and <upstrima.com> are registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 5, 2025. On May 6, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On May 7, 2025, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Name and Address of Respondent) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 7, 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 amendment to the Complaint on May 12, 2025.

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 May 13, 2025. In accordance with the Rules, paragraph 5, the due date for Response was June 2, 2025. The Response was filed with the Center on May 30, 2025. In addition, the Respondent submitted an unsolicited supplemental filing on June 6, 2025.

The Center appointed Steven A. Maier as the sole panelist in this matter on June 13, 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.

On June 27, 2025, the Respondent sent a second unsolicited supplemental filing to the Center.

4. Identity of Respondent

On June 2, 2025, the Center sent an email to the party filing the Response querying a discrepancy between the email address used for the said filing and the email address for the Respondent which had been provided to the Registrar. The Respondent replied on June 6, 2025, from the email address provided to the Registrar, and the Panel is satisfied that the named Respondent is the correct respondent in the proceeding.

5. Respondent's Unsolicited Supplemental Filing

On June 6, 2025, the Respondent made application to submit a supplemental filing in the proceeding, stating that "certain crucial details and their full import were not as comprehensively detailed as they could have been" in the Response filed on May 30, 2025.

Supplemental filings are generally discouraged under the UDRP unless specifically requested by the panel. As a general rule, unsolicited supplemental filings are likely only to be accepted in circumstances where new information or evidence of substantial importance has come to light that could not reasonably have been included or anticipated in the original submission, or where there is some other exceptional reason why it would be in the interests of fairness for the supplemental filing to be allowed.

The Panel finds no such circumstances to be present in this case. The Panel declines accordingly to admit the Respondent's unsolicited supplemental filing on June 6, 2025.

On June 27, 2025, the Respondent sent a second unsolicited supplemental filing to the Center. The communication claimed that the Respondent had received an email communication from the Complainant's Representatives, intended for the Complainant, claiming (among other matters) that the present proceeding had already been resolved in the Complainant's favour and that a successful outcome was guaranteed. The Respondent submitted that this email evidenced possible impropriety within the UDRP process and required further investigation.

The remit of the Panel is to determine the case in accordance with the Policy and Rules. The Panel does not consider the contents of the Respondent's unsolicited supplemental submission to be material to any of the matters for consideration in that regard, and therefore declines admitting the unsolicited supplemental filing on June 27, 2025, in the proceeding.

6. Factual Background

The Complainant is a corporation located in Florida, United States. The Complainant offers an artificial intelligence platform named UPSTRIMA, aimed at professionals in the oil and gas industry.

The Complainant claims to have used the name and mark UPSTRIMA in commerce since early 2024.

Both of the disputed domain names were registered on September 14, 2024.

Both of the disputed domain names have resolved to websites alleging "fraudulent operations" on the part of the Complainant and its founder.

On April 23, 2025, the Complainant filed an application for a United States trademark for the word mark UPSTRIMA. The said application remains pending at the date of this Decision.

7. Parties' Contentions

Complainant

In addition to relying on its United States trademark application, the Complainant claims common law (or unregistered) trademark rights in the mark UPSTRIMA. In this regard, it claims to have made sustained public commercial use of that mark since early 2024, with prominent promotion of the mark at international conferences and exhibitions. It also claims to have entered into strategic partnerships with stakeholders including Nvidia. The Complainant exhibits in this regard various LinkedIn postings and other promotional images, although the dates of these are unclear.

The Complainant submits that both of the disputed domain names are identical to its UPSTRIMA trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain names. It states that it has no relationship with the Respondent and has never authorized it to use its UPSTRIMA trademark, that the Respondent has not commonly been known by the disputed domain names, and that the Respondent is making neither bona fide commercial use nor legitimate noncommercial or fair use of the disputed domain names. Instead, the Complainant contends that the Respondent's use of the disputed domain names, for websites attacking the Complainant and its founder, cannot be legitimate in circumstances where the disputed domain names are identical to the Complainant's trademark and therefore misleading.

The Complainant submits that the disputed domain names have been registered and are being used in bad faith. It states that it is obvious from the content of the Respondent's websites that the Respondent was aware of the Complainant and its trademark at the date it registered the disputed domain names, which are identical to that trademark. The Complainant contends that the disputed domain names fail to include any additional words, qualifiers or derogatory terms that would indicate that the relevant websites are critical of the Complainant and independent of it. It submits that the disputed domain names are deceptive, designed to draw Internet traffic based on a false impression of legitimacy, and will cause "initial interest confusion" to Internet users by falsely implying an affiliation with the Complainant. The Complainant adds that the contents of the Respondent's websites are untrue, and represent hostile and defamatory allegations aimed at damaging the Complainant's reputation.

The Complainant requests the transfer of the disputed domain names.

B. Respondent

The Respondent submits that the Complainant cannot succeed in the Complaint, since the date of registration of the disputed domain names, September 14, 2024, predates any demonstrable trademark rights on the part of the Complainant. It observes in particular that the Complainant's trademark application was only filed on April 23, 2025, and has not as yet been accepted, and that the Complainant did not therefore possess any registered trademark rights at any material time.

The Respondent contends that it has rights or legitimate interests in respect of the disputed domain names because it is making legitimate noncommercial use of them, for the purposes of criticism and commentary in the public interest. It states that the purpose of its websites is to warn potential investors, business partners and others about the Complainant, and that it is not seeking to divert business or otherwise profit from the disputed domain names.

The Respondent denies, for similar reasons, that the disputed domain names were either registered or have been used in bad faith.

The Respondent requests the denial of the Complaint. It also seeks a finding of Reverse Domain Name Hijacking against the Complainant, contending that the Complainant should have known its claim could not succeed given its lack of trademark rights at the date of registration of the disputed domain names. It adds that the Complainant is using the proceeding improperly, to censor the Respondent and to retaliate against it for exposing its wrongdoing.

8. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

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

A. Identical or Confusingly Similar

The Respondent is correct in its submission that the Complainant's trademark application dated April 23, 2025, is immaterial to the matters under consideration in this proceeding. That application neither provides the Complainant with registered trademark rights for the purposes of the first element under the Policy, nor does it provide evidence that the Respondent was aware of the Complainant's UPSTRIMA trademark at the date it registered the disputed domain names.

However, the Complainant also claims common law (or unregistered) trademark rights in the mark UPSTRIMA.

As observed in section 1.3 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)):

"To establish unregistered or common law trademark rights for purposes of the UDRP, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant's goods and/or services."

Section 3.1 of [WIPO Overview 3.0](#) also states:

"The fact that a respondent is shown to have been targeting the complainant's mark (e.g., based on the manner in which the related website is used) may support the complainant's assertion that its mark has achieved significance as a source identifier."

Bearing both these factors in mind, the Panel finds on balance that the Complainant has established unregistered trademark rights in the mark UPSTRIMA for the purposes of the Policy. First, while the dates of the materials exhibited by the Complainant are unclear, the Panel has established by way of publicly-available searches¹ that the mark UPSTRIMA was being publicly referenced by both the Complainant and third parties in commerce by at least April 2024. Secondly, there can be no doubt that the Respondent registered the disputed domain names for the purposing of targeting the Complainant's UPSTRIMA mark, thereby supporting the contention that it had achieved significance as an identifier of the Complainant's product.

¹ As discussed in paragraph 4.8 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision.

Ignoring the generic Top-Level Domain “.com” and the Country Code-Level Domain “.ai”, which may typically be disregarded for the purposes of comparison, both of the disputed domain names are identical to the Complainant’s UPSTRIMA trademark. The Panel therefore finds that the first element under the Policy is established.

B. Rights or Legitimate Interests

The Respondent has used the disputed domain names for the purpose of criticism websites, containing allegations of impropriety against the Complainant and its founder.

The use of a complainant’s trademark in connection with a criticism website has been the subject of numerous prior decisions under the UDRP, the conclusions of which are summarized in section 2.6 of [WIPO Overview 3.0](#): “2.6 Does a criticism site support respondent rights or legitimate interests?”

In summary, to support fair use under paragraph 4(c)(iii) of the Policy, the respondent’s criticism must be genuine and noncommercial, e.g. the relevant website must not merely be a pretext for commercial activity. Furthermore, panels have found that even a general right to legitimate criticism does not necessarily extend to registering or using a domain name identical to a trademark, since this creates an impermissible risk of user confusion through impersonation.

Where the domain name is not identical to the complainant’s trademark but comprises the mark plus a derogatory term (e.g., “sucks”), panels tend to find that the respondent has a legitimate interest in using the trademark as part of the domain name of a criticism site, if such use is prima facie noncommercial, genuinely fair, and not misleading or false.

In this case, the Panel accepts that criticism appears to be the genuine purpose of the Respondent’s websites, as opposed to it being merely a pretext for some ulterior purpose such as commercial activity. However, the Panel expresses no view on the veracity or otherwise of the Respondent’s criticisms, which are matters beyond the scope of this proceeding and not relevant to its outcome.

The disputed domain names are, however, identical to the Complainant’s UPSTRIMA trademark, and do not include any additional term (e.g. “sucks”) that would indicate a lack of affiliation between the Complainant and the relevant website operator. The Panel therefore finds the disputed domain names to be inherently misleading, as inevitably suggesting to Internet users that they must be owned or operated by, or otherwise legitimately affiliated with, the Complainant. The Panel finds there to be no reason in this case to depart from the established view that a domain name which effectively impersonates a trademark owner is impermissible for the purpose of a criticism site, and the second element under the policy is therefore established.

C. Registered and Used in Bad Faith

For similar reasons as outlined in connection with the second element under the Policy, above, the Panel finds that the disputed domain names have been registered and are being used in bad faith.

The disputed domain names are identical to the Complainant’s trademark UPSTRIMA and therefore represent to Internet users that they must be owned or operated by, or otherwise legitimately affiliated with, the Complainant. That represents a deceptive use of the disputed domain names and therefore constitutes bad faith. Indeed, the Panel infers that it is precisely for this reason that the Respondent selected the disputed domain names: even if on visiting the Respondent’s websites it becomes clear that they are criticism sites, the Internet user has only been attracted to the websites in the first place because of the deceptive nature of the disputed domain names (what the Complainant refers to as “initial interest confusion”).

While the Respondent is operating what appear to be a genuine criticism websites, and may well be motivated by what it believes to be in the public interest, that does not alter the fact that the disputed domain names create an impermissible risk of user confusion through impersonation. The Panel finds also that, while the Respondent may not be seeking any financial gain from its websites as contemplated by paragraph 4(b)(iv) of the Policy, its websites are calculated to cause reputational harm to the Complainant, which is no less a circumstance which may be indicative of bad faith.

The Panel therefore finds that the third element under the Policy is established.

9. 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 names <upstrima.ai> and <upstrima.com> be transferred to the Complainant.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: June 27, 2025