

## **ADMINISTRATIVE PANEL DECISION**

### **Cresset Administrative Services Corporation, Cresset Partners LLC v. 俊张 Case No. D2023-2637**

#### **1. The Parties**

The Complainant is Cresset Administrative Services Corporation, United States of America (“United States”), and Cresset Partners LLC, United States, represented by Fuksa Khorshid, LLC, United States.

The Respondent is 俊张, China.

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

The disputed domain name <cressetindialive.com> (the “Domain Name”) is registered with Global Domain Group LLC (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 19, 2023. On June 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On July 11, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Global Domain Privacy Service) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 12, 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 July 17, 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 July 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 8, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 10, 2023.

The Center appointed Willem J. H. Leppink as the sole panelist in this matter on August 16, 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 following facts are undisputed.

The Complainant is owner of several trademark registrations in the United States, including but not limited to:

- The word mark CRESSET with registration no. 5531975 and registration date July 31, 2018 (the “Word Mark”);
- The device mark consisting of the Complainant’s logo with registration no. 5826446 and with registration date August 6, 2019 (the “Device Mark”);

These trademarks will hereinafter be referred to together as the “Trademarks”. The Trademarks are registered for various financial services in class 36 in connection with a variety of financial advisory and wealth management services.

The Domain Name was registered in May 6, 2023. The Domain Name redirected to a website with a livestream featuring wealth management services and featuring the Device Mark (the “Website”).

#### **5. Parties’ Contentions**

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

To the extent relevant, the Complainant contends the following.

The Complainant has prominently and extensively used, promoted, and advertised the Trademarks which has led to the Trademarks becoming well-recognized by consumers as the source of financial services.

The Domain Name is confusingly similar to the Word Mark, as it contain the Word Mark in its entirety. The addition of the word “live” does not distinguish the Domain Name from the Word Mark. Further, the addition of the geographic term “india” enhances the likelihood of confusion as consumers are misled to believe that the Complainant is operating in India.

The Respondent is using the Domain Name to distribute financial information of the same type that the Complainant provides and under the guise of a false affiliation with the Complainant. The Respondent has created a login screen which it appears to be using to purloin login and password information of the Complainant’s customers. Therefore, the Respondent knowingly registered the Domain Name to impersonate the Complainant, to capitalize on consumer recognition of the Trademarks, and to defraud the Complainant’s consumers.

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

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

#### **6. Discussion and Findings**

Pursuant to paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements:

- (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 are being used in bad faith

#### **A. Identical or Confusingly Similar**

The Complainant has sufficiently proven to have rights in the Word Mark.

The Word Mark is fully integrated in the Domain Name. The element “cresset” stands out in the Domain Name. Only the elements “live” and “india” were added.

As set out in the Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.8, the addition of other terms would not prevent a finding that a domain name is confusingly similar to the relevant mark for purposes of the first element. The Trademark is clearly recognizable in the Domain Name. The addition of the two terms does not prevent a finding of confusing similarity between the Domain Name and the Word Mark.

The Panel, therefore, finds that the first element has been satisfied.

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

The Panel has carefully considered the factual allegations that have been made by the Complainant and are supported by the submitted evidence.

In particular, the Respondent has failed to offer the Panel any of the types of evidence set forth in paragraph 4(c) of the Policy from which the Panel might conclude that the Respondent has rights or legitimate interests in the Domain Names, such as:

- (i) use or preparation to use the Domain Names or a name corresponding to the Domain Names in connection with a *bona fide* offering of goods or services prior to notice of the dispute; or
- (ii) being commonly known by the Domain Names (as an individual, business or other organization) even if the Respondent has not acquired any trademark or service mark rights; or
- (iii) making 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.

The *prima facie* case presented by the Complainant is enough to shift the burden of production to the Respondent in order to demonstrate that it has rights or legitimate interests in the Domain Name. However, the Respondent has not presented evidence of any such rights or legitimate interests it may have in regard to the Domain Name, and the Panel is unable to establish any such rights or legitimate interests on the basis of the evidence in front of it.

In addition to this, the Respondent is not making use of the Domain Name in connection with a *bona fide* offering of goods and services or for noncommercial or fair use purposes. To the contrary, the Complainant put forward clear evidence that the Respondent is using the Domain Name for a scam website impersonating the Complainant by using the Device Mark. In accordance with section 2.13.1 of the [WIPO Overview 3.0](#), the use of a domain name for illegitimate activity, such as fraud or the impersonation of a complainant, can never confer rights or legitimate interests on a respondent. Hence, the Respondent's use cannot be considered a legitimate noncommercial or fair use of the Domain Names either.

The Panel, therefore, finds that the second element has been satisfied

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

The Panel finds that the Domain Name is registered and being used in bad faith.

The Panel refers to its considerations under section 6.B and adds the following.

In light of the evidence filed by the Complainant, the Panel finds that the Respondent must have been aware of the existence of the Complainant's activities and rights at the time that the Respondent registered the Domain Name. This is supported by the fact that the Website to which the Domain Name resolves clearly displays not only the Word Mark, but also the Device Mark.

As such, the Respondent has registered and is using the Domain Name to intentionally attract Internet users for commercial gain to its website by creating a likelihood of confusion with the Trademarks as to the source, sponsorship, affiliation or endorsement of the Website.

In the present case, the Panel notes that the Respondent is using the Domain Name as part of a impersonation scam. Considering the fact that impersonation and/or fraud is considered a *per se* illegitimate activity, such behaviour is, in accordance with section 3.1.4 of the [WIPO Overview 3.0](#), manifestly considered evidence of bad faith.

Lastly, the Panel considers the fact that the Respondent has been hiding behind a privacy shield. In accordance with section 3.6 of the [WIPO Overview 3.0](#), this further supports a finding of bad faith.

Finally, although the lack of a formal or substantive response by the Respondent as such cannot by itself lead to the conclusion that there is registration and use in bad faith, the cumulative circumstances as outlined in the Decision are sufficient for the Panel to find that the registration and use of the Domain Name by the Respondent is in bad faith.

In light of the above circumstances, the Panel is satisfied that the third element of the Policy is met.

### **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 Domain Name, <cressetindialive.com>, be transferred to the Complainant.

*/Willem J.H. Leppink/*

**Willem J. H. Leppink**

Sole Panelist

Date: August 28, 2023