

ADMINISTRATIVE PANEL DECISION

Big Bang v. Gvgsi Ubcd, Tbdkf Tbdkf and Jinfu He
Case No. D2023-1014

1. The Parties

The Complainant is Big Bang, France, represented by Cabinet Hoffman, France.

The Respondents are Gvgsi Ubcd, Hong Kong, China, Tbdkf Tbdkf, Hong Kong, China and Jinfu He, China.

2. The Domain Names and Registrar

The disputed domain names <discountpetzl.com>, <outdoorpetzl.com> and <petzloutdoor.com> are registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 7, 2023. On March 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On March 9, 2023, 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 (Whois Agent, Domain Protection Services, Inc) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 10, 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 March 15, 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 Respondents of the Complaint, and the proceedings commenced on March 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 12, 2023. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on April 19, 2023.

The Center appointed Taras Kyslyy as the sole panelist in this matter on May 1, 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 a French company that has been specializing for almost 50 years in the development of mountain and safety equipment for both sporting and professional activities. The Complainant operates under the trademark PETZL which has been the subject of numerous trademark registrations in many jurisdictions around the world, including for instance International Trademark Registration No. 439777, registered on July 28, 1978.

The Complainant markets its products under the trademark through numerous retailers, both online and through physical outlets, all over the world. The Complainant's products are available in more than 55 countries worldwide.

The disputed domain name <discountpetzl.com> was registered on September 8, 2022. The disputed domain name <outdoorpetzl.com> was registered on September 27, 2022. The disputed domain name <petzlloutdoor.com> was registered on November 25, 2022. The disputed domain names resolve to websites prominently featuring the Complainant's trademark, containing the graphic elements of the Complainant's original websites and offering for sale goods under the Complainant's trademark.

5. Parties' Contentions

A. Complainant

The disputed domain names are identical or confusingly similar to the Complainant's trademark. These domain names are commonly composed of two terms: a generic term "discount/outdoor" referring to common terms in the case of online sales or a generic term referring to Petzl's activity and the Complainant's trademark. The Complainant received several complaints from customers who mistakenly believed that they were browsing the Complainant's official website and who in some cases placed orders for products that were never delivered. The content of the websites at the disputed domain names is intended to mislead the consumer into believing that these are official Complainant's websites and that the products presented and offered for sale therein are therefore genuine Complainant's products.

The Respondents have no rights or legitimate interests in the disputed domain names. The Respondents have no connection whatsoever with the Complainant, or its trademark. The Respondents are furthermore not recognized by the public through the disputed domain names. The Complainant did not grant any license or distribution rights to the Respondents. The Respondents have never requested or obtained permission from the Complainant to use the disputed domain names incorporating the Complainant's trademark. The Respondents are seeking to create confusion among the public not only by reproducing the Complainant's trademark without any authorization (i) within the disputed domain names, (ii) on all the pages of the websites linked to the disputed domain names, (iii) on products that are identical (and infringing) to those of the Complainant in order to make people believe that the products are original, but also by using the Complainant's graphic elements and homepages in order to persuade the consumer that he or she is on an official Complainant's website. This illegitimate and unfair approach tarnishes the Complainant's trademark because of the registration of the disputed domain names, insofar as the latter are used to market counterfeit products of poor quality, which may not comply with the particular standards applicable to this type of product and may therefore be dangerous in terms of safety.

The disputed domain names were registered and are being used in bad faith. By using the disputed domain names the Respondents are attempting to attract, for profit, Internet users to websites on which infringing goods, identical to those developed by the Complainant, are marketed under the Complainant's trademark

without any authorization. The Respondents create a likelihood of confusion in the mind of the average consumer by including in the disputed domain names the Complainant's trademark with generic terms and by marketing identical products via the websites, in order to falsely imply the authentic and authorized nature of the products sold. The Respondents are attempting to entice consumers to buy goods on the websites linked to the disputed domain names, in order to unduly and unlawfully profit from the counterfeit goods that are marketed there. The Respondents use the graphic elements of the Complainant's official websites, or even elements identical to those on the home pages of the official websites. This approach reinforces the confusion sought to be created by leading consumers and users to believe that the disputed domain names are official.

B. Respondents

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

6. Discussion and Findings

6.1 Consolidation of Respondents

Section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") summarizes the consensus view of UDRP panels on the consolidation of multiple respondents, in part, as follows: "Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario."

The Complainant asserts, among other things, that the Respondents should be treated as one respondent in this proceeding, as the Respondents appear to be the same person controlling connected websites, since all these were created in the same period of time (between September and November 2022), share the same registrar, were registered in a similar naming pattern with very similar design containing copyright notice referring to the same company, and have identical "about us", "FAQ", "returns & exchanges", "delivery", "privacy policy", "payment method", "shipping & returns" and "term and conditions" sections. The Panel accepts these arguments in favor of consolidation and grants the request to consolidate.

A. Identical or Confusingly Similar

According to section 1.11.1 of the [WIPO Overview 3.0](#) the applicable generic Top-Level Domain ("gTLD") in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. Thus, the Panel disregards gTLD ".com" for the purposes of the confusing similarity test.

According to section 1.7 of the [WIPO Overview 3.0](#) in cases where a domain name incorporates the entirety of a trademark the domain name will normally be considered identical or confusingly similar to that mark for purposes of UDRP standing. The Panel finds that in the present case the disputed domain names incorporate the entirety of the Complainant's trademark.

According to section 1.8 of the [WIPO Overview 3.0](#) where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The Panel finds that in the present case the addition of words "discount" and "outdoor" to the disputed domain names does not prevent finding them confusingly similar to the Complainant's trademark.

Considering the above, the Panel finds the disputed domain names are confusingly similar to the Complainant's trademark, therefore, the Complainant has established its case under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant has established *prima facie* that the Respondent has no rights or legitimate interests in the disputed domain names.

Furthermore, the Respondent provided no evidence that it holds rights or legitimate interests in the disputed domain names.

The available evidence do not confirm that the Respondent is commonly known by the disputed domain name, which could demonstrate its rights or legitimate interests (see, e.g., *World Natural Bodybuilding Federation, Inc. v. Daniel Jones, TheDotCafe*, WIPO Case No. [D2008-0642](#)).

The Complainant did not license or otherwise agree for use of its prior registered trademark by the Respondent, thus no actual or contemplated *bona fide* or legitimate use of the disputed domain names could be reasonably claimed (see, e.g., *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#)).

According to section 2.8.1 of the [WIPO Overview 3.0](#) resellers, distributors using a domain name containing complainant's trademark to undertake sales related to the complainant's goods may be making a *bona fide* offering of goods and thus have a legitimate interest in such domain name. Outlined in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) (the "Oki Data Test"), the following cumulative requirements will be applied in the specific conditions of a UDRP case:

- (i) the respondent must actually be offering the goods at issue;
- (ii) the respondent must use the site to sell only the trademarked goods;
- (iii) the site must accurately and prominently disclose the registrant's relationship with trademark holder; and
- (iv) the respondent must not try to "corner the market" in domain names reflecting trademark.

The Panel finds that the Respondent failed to satisfy at least the third above requirement and did not in any way disclose its actual relationship with the Complainant, and thus failed to pass the *Oki Data Test*. The Respondent's use of the disputed domain names misleads consumers into thinking that the websites are operated by or affiliated with the Complainant. As such, the Respondent's use of the disputed domain names cannot be considered *bona fide*.

The disputed domain names incorporate the PETZL trademark of the Complainant in its entirety and it is its distinctive element. Since PETZL is a well-known trademark, and the disputed domain names are associated with the website offering PETZL products, the Panel finds that the Respondent must have been aware of the PETZL trademark when it registered the disputed domain names, and that it chose to target the PETZL trademark because of the likelihood that it will attract traffic to the Respondent's website. In the Panel's view, such conduct cannot be regarded as giving rise to rights or legitimate interests on the part of the Respondent to register and use the disputed domain names (see, e.g., *LEGO Juris A/S v. Andrei Novakovich*, WIPO Case No. [D2016-1513](#)).

According to section 2.13.1 of the [WIPO Overview 3.0](#) Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. According to section 2.13.2 of the [WIPO Overview 3.0](#) Panels are generally not prepared however to accept merely conclusory or wholly unsupported allegations of illegal activity, including counterfeiting, even when the respondent is in default. On the other hand, panels have found that circumstantial evidence can support a complainant's otherwise credible claim of illegal respondent activity. In the present case the Panel finds that the provided customers' complaints addressed to the Complainant due to fraudulent activities at the disputed domain names prove these were used for illegal activity and thus cannot confer rights or legitimate interests on the Respondent.

Considering the above the Panel finds the Respondent does not have rights or legitimate interests in the disputed domain names. Therefore, the Complainant has established its case under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Respondent's use of the disputed domain names to purport to sell the Complainant's products shows that at the time of the registration of the disputed domain names the Respondent clearly knew and targeted Complainant's prior registered and famous trademark, which confirms the bad faith (see, e.g., *The Gap, Inc. v. Deng Youqian*, WIPO Case No. [D2009-0113](#)).

According to paragraph 4(b)(iv) of the Policy the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith: by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location. In this case, the disputed domain names are resolving to websites featuring the Complainant's trademark and falsely pretending to be official Complainant's website to intentionally attract Internet users by creating likelihood of confusion with the Complainant's trademark as to the source of the websites and its products. The Panel finds the above confirms the disputed domain names were registered and used in bad faith.

Considering the above, the Panel finds the disputed domain names were registered and are being used in bad faith. Therefore, the Complainant has established its case under paragraph 4(a)(iii) 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 names, <discountpetzl.com>, <outdoorpetzl.com>, <petzloutdoor.com>, be transferred to the Complainant.

/Taras Kyslyy/

Taras Kyslyy

Sole Panelist

Date: May 15, 2023