

ADMINISTRATIVE PANEL DECISION

Trent Limited v. Ratan Manjhi, Zudio
Case No. D2023-3569

1. The Parties

The Complainant is Trent Limited, India, represented by Fidus Law Chambers, India.

The Respondent is Ratan Manjhi, Zudio, India.

2. The Domain Name and Registrar

The disputed domain name <zudiofranchise.com> is registered with Hostinger, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 24, 2023. On August 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 25, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on the same date 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 August 28, 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 August 29, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 18, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 19, 2023.

The Center appointed Vinod K. Agarwal, Ex Law Secretary to Government of India as the sole panelist in this matter on September 22, 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

According to the Complaint, the Complainant Trent Limited is a company duly incorporated under the laws of India having its registered office at Mumbai. The Complainant is a part of TATA group of companies. (TATA Group) which also includes service companies selling TATA products

The TATA Group is engaged in various kinds of business which includes companies providing consultancy services, selling and manufacturing vehicles, steel products, chemicals products, consumer products, watches, electricity, hospitality services, communications, financial and electronics.

The Complainant was originally incorporated as Lakme Limited on December 5, 1952. The Complainant came to be known as Trent Limited in 1998 owing to company acquisition and amalgamation. Extracts from records of the Ministry of Corporate Affairs, Government of India in support of this are enclosed as Annexure C to the Complaint. An extract of the website of the TATA Group with reference to the Complainant's incorporation is enclosed as Annexure D. In 1998, the Complainant decided to pursue business in the field of apparel retailing, given the absence of established brands in most categories.

The Complainant operates various famous brands which include WESTSIDE, ZUDIO and UTSA. The Complainant operates famous fashion brand ZUDIO through its 328 brick and mortar stores spread across India.

The Complainant owns the following trademark registrations for its ZUDIO mark:

- Indian Trademark Registration No. 3078072 in class 24, registered on October 13, 2015.
- Indian Trademark Registration No. 3078073 in class 25, registered on October 13, 2015.
- Indian Trademark registration No. 3126271 in class 35, registered on December 14, 2015.

The disputed domain name was registered on July 29, 2023, and is currently inactive.

5. Parties' Contentions

A. Complainant

The Complainant contends that each of the three elements specified in paragraph 4(a) of the Policy are applicable to this dispute.

In relation to element (i), the Complainant contends that the trademark ZUDIO was adopted as early as 2016 by the Complainant. The trademark ZUDIO is inherently distinctive and is a strong identifier of source for the Complainant's goods and services.

Under its trademark ZUDIO the Complainant has around 396 outlets covering number of cities across India which offer a range of products such as garments and fashion accessories, cosmetics and perfumes and household accessories. The Complainant also operates a website through the domain name <zudio.com> through which it provides the details of products and its offers under its trademark ZUDIO. The Complainant owns the domain name registered since September 15, 2011. The Complainant also owns the domain name <zudio.in> which was registered on October 20, 2015.

The Complainant's trademark ZUDIO is also a registered trademark in India under the Trade Marks Act 1999.

The registration of the disputed domain name <zudiofranchise.com> by the Respondent is confusingly similar to the Complainant's trademark ZUDIO. It causes the public to believe that the Respondent is associated with the Complainant and also violates the Complainant's trademark rights in the ZUDIO trademark. Thus, according to the complainant, the intention of the Respondent is to create confusion in the market.

In relation to element (ii), the Complainant contends that its trademark ZUDIO has become highly distinctive of the goods and services of the Complainant on account of extensive use, viewership and promotion. Further that, the Respondent is in no way related to the Complainant. The Complainant has not licensed or otherwise permitted or granted to the Respondent an authorization or a right to use its trademark or to apply for or use a domain name incorporating the mark and that nobody would use the word ZUDIO unless seeking to create an impression of an association with the Complainant. The Complainant also asserts that the disputed domain name is merely parked and that the Respondent has not demonstrated any preparations to use the disputed domain name for any *bona fide* offering of goods and services. Therefore and according to the Complainant, the disputed domain name <zudiofranchise.com> incorporates the well-known trademark ZUDIO with the sole purpose of association with the Complainant.

According to the Complainant, the Respondent's conduct constitutes infringement/passing off as the Complainant. The Respondent registered the disputed domain name for the sole purpose of creating confusion and misleading the general public and the customers of the Complainant. Thus, it is contended that there were no rights or legitimate interests of the Respondent in the disputed domain name.

In relation to element (iii), the Complainant contends that the disputed domain name was registered and is being used in bad faith and with an ill-motive to gain unfair commercial advantage, at the expense of the Complainant. The primary aim of the Respondent appears to be to dupe Internet users looking for franchise/business opportunities of the Complainant's trademark ZUDIO.

The Respondent has hosted no content on the disputed domain name or used it for any *bona fide* offering of goods/services. This demonstrates that the Respondent has registered the disputed domain name in bad faith to extract some commercial advantage from the Complainant and/or from Complainant's prospective franchisees/distributors.

The Respondent's intentions of subsuming the trademark ZUDIO appears to be to attract Internet traffic, dupe Internet users looking for franchise opportunities with the Complainant or to commit the fraud of phishing. The Complainant reiterates that its trademark ZUDIO has immense goodwill and reputation and is well-known and established prior to the registration of the disputed domain name. The Respondent registered the disputed domain name in full knowledge of the Complainant's trademark rights and, on balance, with the intention of taking advantage of such rights. Even constructive knowledge of a famous trademark like ZUDIO is sufficient to establish registration in bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel as to the principles the Panel is to use in rendering its decision. It establishes that, "A panelist shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

According to paragraph 4(a) of the Policy, the Complainant must prove that:

- (i) The domain name is 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 domain name; and
- (iii) The domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

According to the information submitted by the Complainant, the Complainant is the owner of trademark registrations for ZUDIO. The trademark ZUDIO is registered in certain countries for many years.

The disputed domain name is <zudiofranchise.com>. The disputed domain name is very much similar to other domain names and the trademark of the Complainant.

Therefore, I hold that the disputed domain name <zudiofranchise.com> is confusingly similar to the trademarks of the Complainant.

B. Rights or Legitimate Interests

According to paragraph 4(c) of the Policy, the Respondent may demonstrate its rights to or legitimate interest in the disputed domain name by proving any of the following circumstances:

- (i) before any notice to the Respondent of the dispute, the Respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the Respondent (as an individual, business or other organization) has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) The Respondent is making a 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 Respondent has not filed any response in this case. There is no evidence to suggest that the Respondent has become known by the disputed domain name anywhere in the World. The Respondent's name is different to the disputed domain name, and it is unclear to the Panel the reason why the Respondent provided "Zudio" as the registrant organization, except due to the fame of the Complainant's trademark ZUDIO. The Complainant has not authorized the Respondent to use the name and their trademark ZUDIO. Further no information is available whether the Respondent has filed any application for the registration of the trademark ZUDIO anywhere in the world.

Further, in view of the fact that the Complainant has not licensed or otherwise permitted the Respondent to use its trademark or to apply for or use a domain name incorporating the trademark, based on the default of the Respondent and the evidence in the Complaint, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) Circumstances indicating that the Respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name; or
- (ii) The Respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that it has engaged in a pattern of such conduct; or
- (iii) The Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

- (iv) By using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on its website or location.

The Respondent has not filed a response in this case. The Complainant contends that the disputed domain name was registered or acquired by the Respondent and is being used with the intent to deceive Internet users deliberately and intentionally, with a view to trade upon and profit off the name, fame, reputation, image and goodwill acquired by the Complainant and to potentially commit fraud.

The disputed domain name reproduces the Complainant's trademark ZUDIO in its entirety, with the addition of the term "franchise". Previous panels have held that the reproduction of a famous or widely-known trademark by an unaffiliated entity contributes for a finding of bad faith. In the present case, this is further supported by the fact that the Respondent is located in India, where the Complainant's trademark ZUDIO has been in use for years, thus, indicating that the Respondent most likely had prior knowledge of the Complainant. The addition of the term "franchise" further supports a finding of bad faith of the Respondent, as it indicates the Respondent's intention to associate with the Complainant. WIPO Overview 3.2.1 and 3.2.2.

Lastly, it should be noted that the non-use of the disputed domain name does not prevent a finding of bad faith. [WIPO Overview 3.0](#), section 3.3.

Therefore, the Panel agrees with the Complainant and concludes the disputed domain name <zudiofranchise.com> was registered and used in bad faith. Paragraph 4(a)(iii) of the Policy is satisfied.

7. Decision

For the foregoing reasons, namely, that the disputed domain name is confusingly similar to a mark in which the Complainant has rights, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name was registered in bad faith and is being used in bad faith, in accordance with paragraphs 4(i) of the Policy and Rule 15 of the Rules, the Panel orders that the disputed domain name <zudiofranchise.com> be transferred to the Complainant.

/Vinod K. Agarwal/

Vinod K. Agarwal

Sole Panelist

Date: October 6, 2023