

## **ADMINISTRATIVE PANEL DECISION**

Tenways Technovation Limited, 深圳市十方运动科技有限公司 (Shenzhen Shifang Technovation Limited) v. termistotle mobile  
Case No. D2024-1421

### **1. The Parties**

The Complainants are Tenways Technovation Limited, Hong Kong, China, and 深圳市十方运动科技有限公司 (Shenzhen Shifang Technovation Limited), China, internally represented.

The Respondent is termistotle mobile, United States of America.

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

The disputed domain name <tenwaybikes.com> is registered with NameSilo, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 3, 2024. On April 4, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 4, 2024, 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 Complainants on April 5, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amendment to the Complaint on April 10, 2024.

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 April 11, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 1, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 4, 2024.

The Center appointed Anna Carabelli as the sole panelist in this matter on May 8, 2024. 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**

Founded in 2019, the Complainant Tenways Technovation Limited (the First Complainant) is a wholly-owned subsidiary of Shenzhen Shifang Technovation Limited (the Second Complainant). The Complainants are engaged in the design, research and development, sales, and services of e-bikes under the brand name TENWAYS.

The Complainants have a brand design and sales headquarters in the Netherlands (Kingdom of the), and research and development, operation and supply chain centers in Hong Kong, China and Chinese Mainland.

The First Complainant is the owner of numerous trademark registrations for TENWAYS in various jurisdictions, including the following:

- United Kingdom trademark registration No. UK00003625563 registered on August 20, 2021 in class 12;
- United Kingdom trademark registration No. UK00003651838 registered on October 15, 2021 in class 12;
- European Union trademark registration No. 018452264 registered on September 10, 2021 in class 12;
- European Union trademark registration No. 018486039 registered on November 3, 2021 in class 12; and
- Switzerland trademark registration No. 788856 registered on November 4, 2022 in class 12

The disputed domain name was registered on February 2, 2024. The evidence in the Complaint is that the disputed domain name resolves to an active website which seemingly offers TENWAYS trademarked e-bikes, prominently features a TENWAYS logo identical to the Complainants' mark, and mimics the layout of the Complainants' official website ("www.tenways.com") in terms of colors, design and product images.

The First and the Second Complainants are hereinafter collectively referred to as the "Complainant".

#### **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 Complainant's trademark TENWAYS enjoys a high market popularity and recognition in Europe, Asia, and the United States of America, as reported by the industry media.
- The disputed domain name is confusingly similar to the Complainant's TENWAYS trademark since it entirely incorporates the TENWAYS mark. The addition of the term "bikes" does not prevent a finding of confusing similarity.
- The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent (i) is not affiliated with the Complainant; (ii) has not been authorized or somehow given consent by the Complainant to register any domain name incorporating the Complainant's TENWAYS trademark or to use such trademark in any manner.
- The Respondent is not using the disputed domain name in connection with a bona fide offering of goods and services. Indeed, the disputed domain name resolves to an active website seemingly offering the Complainant's products, featuring the Complainant's TENWAYS logo, and mimicking the Complainant's official website available at the domain name <tenways.com>.
- The disputed domain name was registered and is being used in bad faith, as demonstrated by the fact that the Respondent's website copies and plagiarizes the pictures and logo of the Complainant's e-bike products and uses the Complainant's trademark without authorization. The Complainant was informed that the website does not engage in real sales and trades, but attempts to obtain consumers' credit card information.

Based on the above the Complainant requests the disputed domain name be transferred to the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1 Preliminary Issue – Consolidation - Multiple Complainants**

Paragraph 10(e) of the UDRP Rules grants a panel the power to consolidate multiple domain name disputes. In assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look at whether (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation. (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.1).

In the present case, the First Complainant holding rights in the relevant trademark registrations, is a wholly-owned subsidiary of the Second Complainant. Both companies are using "Tenways" as a business name and have a common interest in the corresponding trademark. The Panel finds that there is sufficient nexus to allow them to bring this Complaint as joint Complainants. In these circumstances consolidation would be equitable and procedurally efficient.

### **6.2 Substantive Issues**

Paragraph 15(a) of the Rules instructs the panel to decide the complaint based on the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Under paragraph 4(a) of the Policy, the complainant must prove each of the following:

- (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 is being used in bad faith.

Paragraph 4(b) of the Policy sets out four illustrative circumstances, which for the purposes of paragraph 4(a)(iii) of the Policy, shall be evidence of registration and use of a domain name in bad faith.

Paragraph 4(c) of the Policy sets out three illustrative circumstances any one of which, if proved by the respondent, shall be evidence of the respondent's rights to or legitimate interests in a disputed domain name for the purpose of paragraph 4(a)(ii) of the Policy above.

## **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 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 entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. The

addition of the generic Top-Level Domain such as “.com” is viewed as a standard registration requirement and as such is typically disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1.

Although the addition of other terms, here “bikes”, may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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.

Moreover, as noted in Section 6.2A above, the disputed domain name is confusingly similar to the Complainant’s TENWAYS mark and carries a risk of implied affiliation with the Complainant. Indeed, as per the uncontested evidence submitted with the Complaint, the Respondent has used the disputed domain name to deliberately cause consumer confusion through operating a website which prominently displays the Complainant’s mark TENWAYS and offers allegedly TENWAYS branded e-bikes products. There is not any disclaimer on the website disclosing the (lack of) relationship between the Parties. This cannot constitute fair use. [WIPO Overview 3.0](#), section 2.5.1.

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, in the Panel’s view it is difficult to believe that the Respondent did not have in mind the Complainant’s TENWAYS trademark when registering the disputed domain name. The fact that the Respondent has used the disputed domain name following registration, to resolve to a website which prominently features the Complainant’s TENWAYS trademark, and is highly similar - if not even identical - in terms of color, design, and product images, to the Complainant’s official website, and allegedly offers TENWAYS branded e-bikes, establishes both the Respondent’s actual knowledge of the Complainant’s rights as at the date of registration of the disputed domain name and the Respondent’s intention to take unfair advantage of those rights. Indeed, the Respondent has used the disputed domain name to capitalize on the goodwill of the Complainant’s TENWAYS trademark, and has intentionally attempted to attract, for

commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

The above conduct constitutes bad faith registration and use of the disputed domain name under the Policy.

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 <tenwaybikes.com> be transferred to the Complainant.

*/Anna Carabelli/*

**Anna Carabelli**

Sole Panelist

Date: May 22, 2024