

ADMINISTRATIVE PANEL DECISION

Zero Proof International Limited v. Tom Tom, Tom Tom S. DE R.L. DE C.V
Case No. D2022-1024

1. The Parties

Complainant is Zero Proof International Limited, United Kingdom, represented by Brown Rudnick LLP, United Kingdom.

Respondent is Tom Tom, Tom Tom S. DE R.L. DE C.V, Mexico.

2. The Domain Names and Registrar

The disputed domain names <lyresgin.com> <lyresrum.com> and <lyresvodka.com> are registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 24, 2022. On March 24, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On March 24, 2022, 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 and contact information in the Complaint. The Center sent an email communication to Complainant on April 5, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on April 7, 2022.

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 Respondent of the Complaint, and the proceedings commenced on April 13, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 1, 2022. Respondent did not submit any response. Accordingly, the Center notified the Parties of Respondent’s default on May 19, 2022.

The Center appointed Kariņa-Bērziņa, Ingrida, as the sole panelist in this matter on May 25, 2022. 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

Complainant is a British company manufacturing and selling non-alcoholic spirits around the world. It is the proprietor of several registrations for its LYRE'S marks, including the following:

- European Union Trade Mark No. 018057780 for LYRE'S (figurative mark), registered on September 25, 2019, for goods in Class 32.
- International Trademark No. 1516110 for LYRE'S (word mark), registered on January 15, 2020, for goods in Class 32;
- United States Trademark No. 5970468 for LYRE'S (device mark), registered on December 18, 2020, for goods in Class 32.

The disputed domain names were registered on June 5, 2021, and resolve as follows:

- <lyresgin.com> resolves to a website stating that it offers "Lyre's Gin Alcohol Free Spirits" for sale;
- <lyresvodka.com> resolves to a website stating that it offers "Lyre's Vodka Alcohol Free Spirits" for sale;
- <lyresrum.com> resolves to a website stating that it offers "Lyre's Rum Alcohol Free Spirits" for sale.

Each website features a "shop now" button, which takes the visitor to a third-party website at "www.arkaybeverages.com" which displays a disclaimer stating that the website operator is not affiliated with Complainant.

5. Parties' Contentions

A. Complainant

Complainant's contentions may be summarized as follows:

Under the first element, Complainant states that it was founded in 2018 and is now valued at AUD 500 million, making it the most valuable brand in the no/low alcohol market. Complainant's products are available in 60 countries under the LYRE'S mark. The disputed domain names incorporate Complainant's mark together with descriptive terms. Respondent is using the disputed domain names to advertise products identical to those for which Complainant has registered its LYRE'S mark.

Under the second element, Complainant states that Respondent is using the disputed domain names to divert Internet users to a third-party website offering products identical to Complainant's. There is clear intent to mislead consumers for commercial gain. Complainant also believes that Respondent was the named registrant of <lyres.com.mx>, which resolved to a similar website and redirected users in the same way. This domain name was transferred to Complainant following a UDRP proceeding. See *ZERO PROOF INTERNATIONAL LIMITED C. TOM TOM*, WIPO Case No. [DMX2021-0030](#).

Under the third element, Complainant states that Respondent has registered domain names incorporating Complainant's marks. Respondent is intentionally attempting to attract, for commercial gain, Internet users to websites through which they are redirected to a third-party site. Respondent is using Complainant's LYRE'S mark on these websites to create a likelihood of confusion as to the source of the websites.

Complainant requests transfer of the disputed domain names.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 4(a) of the UDRP requires Complainant to make out all three of the following:

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

Under paragraph 15(a) of the Rules, "[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

A. Identical or Confusingly Similar

Complainant has provided evidence establishing that it has trademark rights in the LYRE'S mark through registrations in several jurisdictions. Complainant thereby satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2.

In comparing Complainant's marks with the disputed domain names, the Panel finds that the disputed domain names are confusingly similar to the LYRE'S mark as the trademark is clearly recognizable within the disputed domain names. It is the consensus view of UDRP panels that 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. See [WIPO Overview 3.0](#), section 1.8.

It is the well-established view of UDRP panels that a generic Top-Level Domain ("gTLD"), such as ".com", is viewed as a standard registration requirement and as such may be disregarded under the first element confusing similarity test (see [WIPO Overview 3.0](#), section 1.11.1, and cases cited thereunder).

Accordingly, the Panel finds that Complainant has established the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

The circumstances stated in the Complaint and evidence in support set forth in the annexes thereto indicate that Respondent has no rights or legitimate interests in the disputed domain names.

The Panel finds that the evidence submitted by Complainant establishes a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain names. Respondent is not authorized by Complainant and has no rights in the LYRE'S mark. All three disputed domain names contain Complainant's mark along with terms connected to Complainant's business, thereby suggesting sponsorship or endorsement by the trademark owner. Such composition cannot confer rights or legitimate interests. See, for example, [WIPO Overview 3.0](#), section 2.5.1.

Pursuant to [WIPO Overview 3.0](#), section 2.1, and cases thereunder, where Complainant makes out a *prima facie* case that Respondent lacks rights or legitimate interests, the burden of production on this element

shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain names.

Respondent has not provided evidence of rights or legitimate interests. There is no evidence that Respondent is commonly known by the disputed domain names, nor that there are any circumstances or activities that would establish Respondent's rights therein. The disputed domain names resolve to websites displaying Complainant's LYRE's mark and featuring a layout and images reminiscent of Complainant's website. Respondent purports to offer "Lyre's" products for sale, but even if it was to be considered that Respondent was really offering Complainant's products (which has not been proven in this case), the Panel notes that the composition of the disputed domain names carries a risk of implied affiliation. There is no evidence that the disputed domain names have been registered or are being used for legitimate noncommercial purposes. See [WIPO Overview 3.0](#), section 2.1, and cases cited thereunder.

Accordingly, the Panel finds that Complainant has established the second element under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Pursuant to paragraph 4(b) of the Policy, the Panel finds that Complainant has demonstrated Respondent's bad faith registration and use of the disputed domain names. Complainant's rights in its LYRE'S mark predate the registration of all three disputed domain names. The three disputed domain names reflect Complainant's LYRE'S mark in its entirety.

Turning to use of the disputed domain names, the Panel finds that Complainant has demonstrated Respondent's bad faith in use of the disputed domain names. The websites demonstrate Respondent's attempt to impersonate Complainant or create an association with Complainant for commercial gain. Such conduct clearly demonstrates Respondent's bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

The "shop now" buttons redirect users to a third-party website that disclaims an association with Complainant, but the Panel finds that such a disclaimer cannot cure Respondent's bad faith. See [WIPO Overview 3.0](#), section 3.7.

Respondent has failed to provide any evidence of a connection to a legitimate business related to the LYRE'S mark. The Panel finds that Respondent has registered three domain names targeting Complainant's mark and has failed to provide any evidence of actual or contemplated good-faith use of any of the disputed domain names. Under the circumstances, the Panel does not find any such use plausible.

The Panel therefore finds that Complainant has established the third element under paragraph 4(a) 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 <lyresgin.com>, <lyresrum.com> and <lyresvodka.com> be transferred to Complainant.

/Ingrīda Kariņa-Bērziņa/

Ingrīda Kariņa-Bērziņa

Sole Panelist

Date: June 8, 2022