

ADMINISTRATIVE PANEL DECISION

Akzo Nobel N.V. v. Domain Administrator, See PrivacyGuardian.org / jiali shang, jiali shang
Case No. D2022-2257

1. The Parties

The Complainant is Akzo Nobel N.V., Netherlands, internally represented.

The Respondent is Domain Administrator, See PrivacyGuardian.org, United States of America / jiali shang, jiali shang, China.

2. The Domain Name and Registrar

The disputed domain name is <aqkzonobel.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 June 21, 2022. On June 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 22, 2022, 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 June 23, 2022, 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 amendment to the Complaint on July 1, 2022.

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 July 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 24, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 9, 2022.

The Center appointed Gareth Dickson as the sole panelist in this matter on August 16, 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

The Complainant is a multinational company incorporated in 1911, which creates paints and performance coatings and is based in the Netherlands.

The Complainant is the owner of a number of trade mark registrations for AKZONOBEL (the “Mark”), the earliest of which to be cited by the Complainant is Benelux trade mark registration number 849141, which was applied for on August 19, 2008.

The disputed domain name was registered on September 4, 2020. At the time of filing the Complaint, the disputed domain name resolved to a webpage featuring, amongst other things, betting links and pornographic content (the “Website”).

5. Parties’ Contentions

A. Complainant

The Complainant argues that it has rights in the Mark by virtue of its ownership of various trade mark registrations for the Mark around the world. It contends that the disputed domain name is confusingly similar to the Mark since it incorporates the entirety of the Mark (which is recognisable within the disputed domain name) with the addition of the letter “q” before the letter “k”, under the generic Top-Level Domain (“gTLD”) “.com”.

The Complainant alleges that because it has historic and consistent use of the Mark the Respondent did not have a *bona fide* rationale or fair intention when registering the disputed domain name.

The Complainant submits that the Respondent must have known of the Complainant and the Mark when it registered the disputed domain name. The Mark, according to the Complainant, has been used exclusively by it, and the Complainant has acquired reputation and goodwill in it, in the more than one hundred years since the Complainant was founded.

The Complainant contends that the Respondent’s own use of the disputed domain name to provide betting and pornographic content via the Website, for commercial and financial gain, is evidence of its bad faith registration and use of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant bears the burden of proving that:

- a) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- b) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

c) the disputed domain name has been registered and is being used in bad faith.

These criteria are cumulative. The failure of the Complainant to prove any one of these elements means the Complaint must be denied.

A. Identical or Confusingly Similar

The Panel accepts that the Complainant is the owner of, and therefore has rights in, the Mark.

Section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)) provides that: "[I]n cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing."

Section 1.9 of the [WIPO Overview 3.0](#) provides that "[a] domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element".

The Panel therefore finds that the disputed domain name is confusingly similar to the Mark, since the Mark is recognisable within the disputed domain name, with a common, obvious or intentional misspelling of the Mark, comprising the addition of the letter "q" before the "k" in the domain name, which is a minor difference to the Mark and does not prevent a finding of confusing similarity, nor does the addition of the gTLD ".com". Although the Complainant merely alleges (rather than demonstrates by providing official excerpts from the relevant Intellectual Property Offices) that it has rights in the Mark, the Panel is prepared, in this Complaint, to accept that that allegation is accurate.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to a trade mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Although a complainant is required to demonstrate that a respondent has no rights or legitimate interests in respect of the domain name, as explained in section 2.1 of the [WIPO Overview 3.0](#), the consensus view of previous UDRP panels is that where a complainant establishes 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 respect of the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

In the current proceeding, the content of the Website establishes the Complainant's *prima facie* case.

There is no evidence that the Respondent has acquired any common law rights to use the Mark, is commonly known by the Mark or has chosen to use the Mark in the disputed domain name in any descriptive manner or is making any use of the disputed domain name that would establish rights or legitimate interests as a result of a noncommercial or fair use of it. The evidence provided by the Complainant that the Respondent is using the Mark in the disputed domain name to take users to the Website and its assortment of pornographic and betting content is strong evidence that the Respondent lacks any form of rights or legitimate interests in respect of the disputed domain name.

By not participating in these proceedings, the Respondent has failed to refute the Complainant's *prima facie* case that it has met its burden under the second UDRP element.

As clearly stated in section 2.1 of the [WIPO Overview 3.0](#), "a panel's assessment will normally be made on the basis of the evidence presented in the complaint and any filed response. The panel may draw inferences from the absence of a response as it considers appropriate, but will weigh all available evidence

irrespective of whether a response is filed". Having reviewed and weighed the available evidence, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The Panel notes that the disputed domain name was registered over one hundred years after the Complainant was founded and more than ten years after the Mark was registered, and accepts that the disputed domain name was chosen by reference to the Mark.

The disputed domain name is a clear example of a typo-squatting domain name, that is, one which was chosen with a trade mark owner in mind, usually after the relevant trade marks have been registered, and for the purpose of diverting traffic away from that trade mark owner by capitalising on Internet users' typographical mistakes. This conclusion is inevitable from the fact that the disputed domain name has no meaning other than as a reference to the Marks.

As a result, and in the absence of evidence from the Respondent that the similarity of the disputed domain name to the Mark is coincidental, the Panel must conclude that the Respondent knew of the Complainant's rights in the Mark when it registered the disputed domain name.

The Panel therefore finds that the Respondent's registration of the disputed domain name was in bad faith since it attempted to appropriate for the Respondent, without the consent or authorisation of the Complainant, rights in the Complainant's Mark.

The disputed domain name is also being used in bad faith.

It is being used for a commercial purpose that involves resolving Internet users (in particular those seeking the Complainant) to a website including commercial links to online gambling and pornography, which is not an acceptable use of the Complainant's trade marks and potentially tarnishing the reputation of the Complainant's trade marks.

The Respondent has not sought to explain its registration and use of the disputed domain name, has attempted to conceal its identity, and has not participated in these proceedings. There is also no conceivable use of the disputed domain name by the Respondent that would not be illegitimate and therefore there is no basis for the Panel to conclude that the Respondent's use of the disputed domain name is justified.

Therefore, and on the basis of the information available to it, the Panel finds that the Respondent's use of the disputed domain name is without justification and is inconsistent with the Complainant's exclusive rights in the Mark. Consideration of these and other factors militates in favour of a finding of bad faith.

The Panel finds that the Respondent has registered and is using the disputed domain name in bad faith.

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 <aqkzonobel.com> be transferred to the Complainant.

/Gareth Dickson/

Gareth Dickson

Sole Panelist

Date: September 2, 2022