

ADMINISTRATIVE PANEL DECISION

Big Bang v. Xiuzhen Lu
Case No. D2023-1010

1. The Parties

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

The Respondent is Xiuzhen Lu, China.

2. The Domain Name and Registrar

The disputed domain name <discount-petzl.com> (the “Domain Name”) is 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 Domain Name. On March 9, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 March 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 12, 2023.

The Center appointed Nicholas Smith as the sole panelist in this matter on April 26, 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 for almost 50 years has offered mountain and safety equipment (helmets, climbing equipment, headlamps, etc.) for sporting and professional activities, under the trademark PETZL (the "PETZL Mark"). The Complainant offers its products under the PETZL Mark in through retailers in over 55 countries and also through its website at the domain name <petzl.com>.

The Complainant is the owner of numerous trademark registrations for the PETZL Mark, including a French trademark registration registered on January 19, 1988, for goods in classes 6, 8, 9, 10, 11, 18, 22, 25, and 28 (Registration Number 1446969).

The Domain Name was registered on September 14, 2022. The Domain Name resolves to a website (the "Respondent's Website") that reproduces the PETZL Mark and the Complainant's PETZL FOUNDATION device mark and images of the Complainant's products. The Respondent's Website purports to offer a range of mountain and safety equipment products including products from the Complainant. The Respondent's Website does not contain any disclaimer that the Respondent is not associated with the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant makes the following contentions:

- (i) that the Domain Name is identical or confusingly similar to the Complainant's PETZL Mark;
- (ii) that the Respondent has no rights nor any legitimate interests in respect of the Domain Name; and
- (iii) that the Domain Name has been registered and is being used in bad faith.

The Complainant is the owner of the PETZL Mark, having registered the PETZL Mark in numerous jurisdictions, including the United States of America and France. The Domain Name reproduces the PETZL Mark along with the word "discount-" that does not distinguish the Domain Name from the PETZL Mark.

There are no rights or legitimate interests held by the Respondent in respect of the Domain Name. The Respondent is not commonly known as the Domain Name nor does the Respondent have any authorization from the Complainant to register the Domain Name. The Respondent is not making a legitimate noncommercial or fair use of the Domain Name. Rather the Respondent is using the Domain Name to create a website that diverts customers from the Complainant's official website, such use not being *bona fide*.

The Domain Name was registered and is being used in bad faith. By using the Domain Name for a website that trades off the goodwill of the Complainant and its PETZL Mark, the Respondent is clearly aware of the PETZL Mark and is using it to deceive consumers as to its affiliation with the Complainant. Indeed, the Respondent's Website reproduces the Complainant's PETZL FOUNDATION device mark and images from the Complainant's official website. Such conduct amounts to registration and use of the Domain Name in bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

To prove this element the Complainant must have trademark or service mark rights and the Domain Name must be identical or confusingly similar to the Complainant's trademark or service mark.

The Complainant is the owner of the PETZL Mark, having registrations for PETZL as a trademark in France as well as in various other jurisdictions. The Domain Name incorporates the PETZL Mark with the addition of the word "discount-" and the generic Top-Level Domain ("gTLD") ".com", which is generally disregarded under the first element confusing similarity test.

Other UDRP panels have repeatedly held that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms does not prevent a finding of confusing similarity under the first element; see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Panel finds that the Domain Name is confusingly similar to the Complainant's PETZL Mark. Consequently, the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

In general, to succeed on this element, a complainant must make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. If such a *prima facie* case is made out, then the burden of production shifts to the respondent to demonstrate rights or legitimate interests in the domain name.

Paragraph 4(c) of the Policy enumerates several ways in which a respondent may demonstrate rights or legitimate interests in a domain name:

"Any of the following circumstances, in particular but without limitation, if found by the panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

(i) before any notice to you of the dispute, your 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are 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 is not affiliated with the Complainant in any way. It has not been authorized by the Complainant to register or use the Domain Name or to seek the registration of any domain name incorporating the PETZL Mark or a mark similar to the PETZL Mark. There is no evidence that the Respondent is commonly known by the Domain Name or any similar name. There is no evidence that the Respondent has used or made demonstrable preparations to use the Domain Name in connection with a legitimate noncommercial use.

The Respondent is using the Domain Name to operate a website that purports to offer climbing and safety equipment for sale at discount prices. It is unclear on the evidence before the Panel whether the products sold from the Respondent's Website under the PETZL Mark are legitimate PETZL products, though the Complaint strongly suggests they are not. If the products sold on the Respondent's Website are not genuine

products produced by the Complainant, the Respondent's use of the Domain Name does not grant it rights or legitimate interests since it is using the Complainant's PETZL Mark for a site selling counterfeit products (see [WIPO Overview 3.0](#), section 2.13.1).

Even if the Respondent is offering genuine PETZL products from the Respondent's Website, such use does not automatically grant it rights or legitimate interests. The principles that govern whether a reseller of genuine goods has rights or legitimate interests have been set out in a variety of UDRP decisions, starting with the case of *Okidata Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

The [WIPO Overview 3.0](#), section 2.8 summarizes the consensus views of UDRP panels in assessing claims of nominative (fair) use by resellers or distributors in the following manner:

"[...] Panels have recognized that resellers, distributors, or service providers using a domain name containing the complainant's trademark to undertake sales or repairs related to the complainant's goods or services may be making a *bona fide* offering of goods and services and thus have a legitimate interest in such domain name. Outlined in the 'Okidata 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 or services at issue;
- (ii) the respondent must use the site to sell only the trademarked goods or services;
- (iii) the site must accurately and prominently disclose the registrant's relationship with the trademark holder; and
- (iv) the respondent must not try to 'corner the market' in domain names that reflect the trademark.

The 'Okidata test' does not apply where any prior agreement, express or otherwise, between the parties expressly prohibits (or allows) the registration or use of domain names incorporating the complainant's trademark."

In this case, the Respondent's Website does not accurately or prominently disclose the Respondent's relationship with the Complainant, in particular that it is not an authorized dealer or has any particular connection with the Complainant. Rather, through the reproduction of the PETZL FOUNDATION device mark and material from the Complainant's official website, the Respondent is actively and incorrectly asserting that it is connected to the Complainant. Even in the event that the Respondent is reselling genuine PETZL products from the Respondent's Website, its use of the Domain Name for the Respondent's Website does not grant it rights or legitimate interests in the Domain Name.

The Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has had the opportunity to put forward evidence of its rights or legitimate interests, including submissions as to why its conduct amounts to a right or legitimate interest in the Domain Name under the Policy. In the absence of such a response, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

For the purposes of paragraph 4(a)(iii), 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:

- (i) circumstances indicating that the respondent has registered or has 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 the complainant, for valuable consideration in excess of its 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 the respondent 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 online 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 the respondent's website or location (Policy, paragraph 4(b)).

The Panel finds that the Respondent was aware of the Complainant and its reputation in the PETZL Mark at the time the Domain Name was registered. The Respondent's Website contains numerous references to the Complainant, including purporting to offer the Complainant's products for sale and reproducing images of the Complainant's products. The registration of the Domain Name in awareness of the PETZL Mark and in the absence of rights or legitimate interests amounts under these circumstances to registration in bad faith.

The Respondent registered the Domain Name for the purposes of operating a website specifically to sell either the Complainant's products and/or products that are not genuine. The Respondent is using the Domain Name that is confusingly similar to the PETZL Mark to sell products, be they genuine or otherwise, without the Complainant's approval and without meeting the Oki Data test. Moreover, an individual viewing the Domain Name may be confused into thinking that the Domain Name refers to a website in some way connected to the Complainant.

Consequently, the Panel finds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant and the Complainant's PETZL Mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's Website.

Accordingly, the Panel finds that the Respondent has registered and used the Domain Name in bad faith 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 Domain Name <discount-petzl.com> be transferred to the Complainant.

/Nicholas Smith/

Nicholas Smith

Sole Panelist

Date: May 2, 2023