

ADMINISTRATIVE PANEL DECISION

Izipizi v. chunmei xu
Case No. D2023-2353

1. The Parties

The Complainant is Izipizi, France, represented by Plasseraud IP, France.

The Respondent is chunmei xu, China.

2. The Domain Name and Registrar

The disputed domain name <izipizishop-us.shop> is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 31, 2023. On June 1, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 4, 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 (Not disclosed) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 5, 2023, 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 June 6, 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 June 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 2, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 5, 2023.

The Center appointed Andrew Brown K.C. as the sole panelist in this matter on July 7, 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 Izipizi, a French simplified joint stock company (namely, a Société par Actions Simplifiée – SAS) registered in August 2010 in Paris. It is headquartered in Paris, France. It is an eyewear company that offers a diverse and extensive range of reading glasses and sunglasses for all ages and associated services.

The Complainant is the owner of the trademark IZIPIZI (the IZIPIZI Mark). The Complainant owns many registrations for its IZIPIZI Mark in classes 9, 35 and 44. These are registered as both a word mark and a logo mark as an international registration designating many European Union countries, United States of America (“United States” or “US”), Japan, Australia, New Zealand, Mexico and Viet Nam. The Complainant has both word and logo registrations in China in classes 9, 35 and 44 for its IZIPIZI Mark, such as registration no. 1314183, registered on June 9, 2016. The class 9 registration includes spectacles and sunglasses.

The Complainant claims a worldwide and multi-channel distribution of its eyewear products through 7,000 points of sale in 83 countries (opticians and fashion stores), an online store (“www.izipizi.com”) and official stores in Paris, Nice, Lyon, Brussels and London. It has an active presence in the United States.

The Complainant has been present on social media since 2012 with active accounts with Facebook, Instagram, YouTube and Pinterest. It claims to be well-known in the field of eyewear.

The disputed domain name was registered on June 29, 2022, and resolves to a website claiming to be an official online store of the Complainant.

5. Parties’ Contentions

A. Complainant

The Complainant asserts its rights in the IZIPIZI Mark. It states that the disputed domain name is confusingly similar to its IZIPIZI Mark given that:

- (i) the disputed domain name includes its IZIPIZI Mark in its entirety;
- (ii) the use of the generic term “shop” and the geographical element “us” aggravate a risk of confusion as they directly refer to a country where the Complainant is active in its business *i.e.*, the United States; and
- (iii) the content of the website to which the disputed domain name resolves consists of an online shop exclusively dedicated to the Complainant’s reading glasses and sunglasses and displaying the Complainant’s IZIPIZI trademark multiple times.

The Complainant also contends that the Respondent has no rights or legitimate interests in the disputed domain name. In this regard the Complainant asserts:

- (i) it has never granted the Respondent any license or rights or otherwise authorized it to use its IZIPIZI Mark or to register any domain names incorporating its IZIPIZI Mark;
- (ii) there is no evidence of any fair or noncommercial or *bona fide* use of the disputed domain name and indeed the disputed domain name resolves to an online shop that purports to offer for sale glasses and sunglasses branded IZIPIZI at abnormally low prices;
- (iii) the postal address provided by the Respondent on the Contact Us page of the website (to which the disputed domain name resolves) does not correspond to the address of any authorized IZIPIZI reseller in the United States; and

- (iv) the Respondent's website at the disputed domain name does not meet the cumulative requirements outlined in the OKI Data test (see *Okidata Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#); and section 2.8 of the WIPO Overview of Panel Views on Selected UDRP Questions Third Edition ("[WIPO Overview 3.0](#)") where a respondent uses a domain name to undertake sales of or repairs on the Complainant's goods or services. The Complainant makes the following claims:
- The abnormally low prices shown for the products on the Respondent's website make it more than doubtful that the Respondent is in a position to offer the advertised eyewear products for sale. Rather the website may be used for scams.
 - The website does not disclose its genuine lack of relationship with the Complainant as the registered trademark holder. Indeed, it pretends to be an official website.
 - The website "corners the market" as it appears to be the most obvious domain name for directing to the Complainant's website dedicated to the US market.

The Complainant further states that the Respondent has registered and is using the disputed domain name in bad faith.

As to registration in bad faith, the grounds relied on are that:

- (i) the Respondent had constructive knowledge of the Complainant's IZIPIZI Mark and that the Respondent could not be unaware of the existence of the Complainant's trademark at the time of registration;
- (ii) the alleged online shop (to which the disputed domain name resolves) presents itself as an official IZIPIZI online store; and
- (iii) the source code for the website available at the disputed domain name directly refers to the Complainant's IZIPIZI Mark with 338 matches. This use shows that the Respondent was willingly and knowingly targeting the Complainant and its IZIPIZI trademark.

As to use in bad faith, the Complainant relies on the principle that registration of a domain name that is confusingly similar to a well-known trademark by an entity with no relationship to the owner of that trademark amounts to bad faith registration.

The Complainant also relies on the fact that the website at the disputed domain name misleadingly pretends to be an official website for the IZIPIZI brand and amounts to an attempt to impersonate the Complainant. The Complainant considers that the unreasonably low prices offered on the website mean that the goods are fake and will never be delivered to "clients" visiting the website.

The Complainant further says that confusion is reinforced by the lack of clear information as to the operator of the website and a high number of references to the IZIPIZI Mark. In addition, the website at the disputed domain name is represented as the or at least as one official website trading off the reputation of the Complainant's well-known trademark and diverting business. The Complainant asserts that this is a clear case of cybersquatting.

Finally, the Complainant asserts that the Respondent has been respondent in another UDRP proceeding which led to the Respondent being ordered to transfer the disputed domain name to the concerned complainant. The Complainant relies on this to show that the Respondent has engaged in a pattern of bad faith conduct.

B. Respondent

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

6. Discussion and Findings

Pursuant to paragraph 4(a) of the Policy, the Complainant must prove each of the following elements with respect to the disputed domain name in order to succeed in this proceeding:

- (i) that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights; and
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has provided evidence of its rights to the IZIPIZI Mark in multiple jurisdictions. It has also provided evidence of use of its IZIPIZI Mark internationally starting in 2012 and its presence on key social media under the IZIPIZI Mark since 2012 in respect of eyewear, the sale of eyewear and associated services.

It is the Panel's view that the Complainant has clearly and sufficiently demonstrated its rights to the IZIPIZI Marks. The Panel is satisfied that the Complainant is well-known internationally by its IZIPIZI Mark in relation to eyewear and to retail and associated services relating to eyewear.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's IZIPIZI Mark. This trademark is immediately recognizable in the disputed domain name.

The Panel therefore finds in favor of the Complainant in respect of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish that it has rights or legitimate interests in the disputed domain name, among other circumstances, by showing any one of the following elements:

- (i) that before notice of the dispute, the Respondent used or made demonstrable preparations to use the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) that the Respondent has been commonly known by the disputed domain name, even if it had acquired no trademark or service mark rights; or
- (iii) that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The overall burden of proof for establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name lies with the Complainant.

There is no evidence of the existence of any rights or legitimate interests on the part of the Respondent in the IZIPIZI trademark pursuant to paragraph 4(c) of the Policy. The Complainant unquestionably has prior rights in this trademark, which precede the Respondent's registration of the disputed domain name by some 10 years. The Panel is satisfied that the Complainant has never licensed or permitted the Respondent to use its IZIPIZI trademark. The Panel is further satisfied that the Respondent has never been commonly known by the disputed domain name and that the Respondent has not made a legitimate noncommercial or fair use of the disputed domain name.

The Panel has carefully looked at the OKI Data test as referred to in the [WIPO Overview 3.0](#), section 2.8. In this regard:

- (i) the Panel is not satisfied that the Respondent is actually offering the goods in issue from the website to which the disputed domain name resolves;
- (ii) the website does not accurately and prominently disclose the Respondent's relationship with the Complainant as holder of the IZIPIZI Mark; and
- (iii) the Respondent arguably seeks to corner the market with the disputed domain name - this being an obvious domain name for directing US customers seeking the Complainant's eyewear and associated services.

The Respondent had the opportunity to demonstrate its rights or legitimate interests in the disputed domain name but it has not replied to the Complaint.

The Panel therefore finds that the Complainant has satisfied the burden of establishing a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name and accordingly finds that paragraph 4(a)(ii) of the Policy is satisfied in favor of the Complainant.

C. Registered and Used in Bad Faith

The Panel is also satisfied that the disputed domain name has been registered in bad faith for the following reasons:

- (i) The Panel has already found that the Complainant's IZIPIZI Mark is well-known for eyewear and associated services. It is inconceivable that in registering the disputed domain name (where the predominant and prominent element is the IZIPIZI Mark), that the Respondent was unaware of the Complainant's well-known trademark. The fact that the website, to which the disputed domain name resolves, prominently features the IZIPIZI Mark with several references to that Mark on the main page satisfies the Panel that the Respondent was aware of the Complainant's IZIPIZI Mark at the time of registration; and
- (ii) Paragraph 2 of the UDRP, puts a burden on registrants where it states "by applying to register a domain name, or by asking us to maintain or renew a domain name registration, you hereby represent and bond to us that [...] to your knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of a third party [...]. It is your responsibility to determine whether your domain name infringes or violates someone else's rights". Even the most cursory trademark or other online search or any online search of existing domain names prior to the Respondent registering the disputed domain name would instantly have revealed the Complainant and its IZIPIZI Mark. See in this regard section 3.2.3 of the [WIPO Overview 3.0](#).

The Panel is also satisfied that the Respondent is using the disputed domain name in bad faith for the following reasons:

- (i) The registration of the disputed domain name which prominently features the Complainant's IZIPIZI Mark plus the word "shop" and the geographical indicator "us" has been found earlier in this decision to be confusingly similar to the Complainant's IZIPIZI Mark. This creates a presumption of bad faith. This presumption is confirmed by the fact that the website (to which the disputed domain name resolves) amounts to an attempt to impersonate the Complainant. The Panel finds that the disputed domain name and its use creates a serious likelihood of confusion with the Complainant and its IZIPIZI trademark. The fact that the prices of the goods offered at the website are described as "unreasonably low" leads to a serious concern that these are fake or may never be delivered to Internet users;

- (ii) The fact that the website at the disputed domain name contains no clear information about the operator of the website and provides an address in Seattle, which does not match any known authorized user or reseller of the Complainant's IZIPIZI branded goods, compounds the likelihood of consumer confusion. Members of the public are very likely to be confused into thinking the disputed domain name and the website to which it resolves are connected with or belong to the Complainant or are the Complainant;
- (iii) The Respondent had the opportunity to respond to the Complaint but has not done so. The Panel is therefore entitled to draw adverse inferences from that failure or omission; and
- (iv) Finally, the Panel finds that the Respondent has engaged in a pattern of conduct of preventing a trademark holder from reflecting its mark in a domain name. Section 3.1 of the [WIPO Overview 3.0](#) states that UDRP panels have held that establishing a pattern of bad faith conduct requires more than one, but as few as two instances of abuse of domain name registration. The Panel is satisfied that the Respondent has previously been ordered to transfer a disputed domain name to a concerned complainant in *Ferm Living Absolutely AbS v Chunmei Xu*, WIPO Case No. [D2023-0515](#). In that case, the panel found that there was an intention on the part of the respondent to confuse Internet users into thinking that the domain name was connected to the complainant. This was reinforced by the fact that the domain name resolved to a website displaying the complainant's trademarks and purportedly offering for sale the complainant's product at discounted prices. There was no information on the non-existent relationship of the respondent with the complaint. The panel found that this created a false impression and affiliation with the complainant. There is a close similarity with the facts of this complaint.

The Panel therefore finds that the disputed domain name has been registered and is being used in bad faith and that the third element of paragraph 4(a)(iii) of the Policy is fulfilled.

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, <izipizishop-us.shop>, be transferred to the Complainant.

/Andrew Brown K.C./

Andrew Brown K.C.

Sole Panelist

Date: July 13, 2023