

ADMINISTRATIVE PANEL DECISION

Zoox, Inc. v. lime

Case No. D2023-3601

1. The Parties

The Complainant is Zoox, Inc., United States of America, represented by Lee & Hayes, PC, United States of America.

The Respondent is lime, India.

2. The Domain Name and Registrar

The disputed domain name <zooxincard.com> is registered with Alibaba.com Singapore E-Commerce Private Limited (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 25, 2023. On August 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 29, 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 (zooxincard.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 4, 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 amendment to the Complaint on the same day.

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 September 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 25, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 9, 2023.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on October 19, 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

It results from the Complainant's undisputed allegations that the Complainant was founded in 2014, joined forces with Amazon in 2020 and is building a fleet of self-driving, symmetrical, battery-electric vehicles that will be used for its ride-hailing service.

The Complainant owns an international portfolio of trademarks for ZOOX, such as verbal European Union Trademark no. 018263002, registered on December 10, 2020 for goods and services in classes 9, 12, 39, 41, and 42.

The Respondent registered the disputed domain name on July 29, 2023. The language of the Registration Agreement is English.

Finally, the undisputed evidence before the Panel shows that the disputed domain name resolved to a web shop allegedly offering – amongst others – the Complainant's vehicles for purchase and using the ZOOX trademarks and original ZOOX-photos of ZOOX's vehicles. On August 24, 2023, one day before the Complaint was lodged, the website content was removed.

5. Parties' Contentions

A. Complainant

Firstly, the Complainant points out that the disputed domain name fully includes its prior trademarks ZOOX. The disputed domain name encompasses the entire portion of Complainant's trademark ZOOX which remains recognizable therein. The Panel should disregard the descriptive terms "in car" contained in the disputed domain name as they merely describe the goods and services offered on the website.

Secondly, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. In particular, the Complainant submits that it did not authorize the Respondent to register the disputed domain name. Additionally, prior to the notice of the dispute, there is no evidence the Respondent was using the disputed domain name, or a trademark corresponding to the disputed domain name, in connection with a *bona fide* offering of goods or services. Instead, the Respondent uses the disputed domain name, as well as images taken directly from the Complainant's own website, to unlawfully impersonate the Complainant in an attempt to deceive consumers into believing that they have reached a website that is operated or endorsed by or otherwise affiliated with the Complainant.

Thirdly, the Complainant argues that the Respondent registered and uses the disputed domain name in bad faith. The Complainant contends that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's 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. Additionally, the Respondent should have known about the Complainant's rights, as such knowledge is readily obtainable through a simple browser search. Finally, and although the disputed domain name is now passively held by the Respondent, panel decisions have previously found such passive holding to constitute bad faith where the domain name "was registered in bad faith and used for a period of time as the address of a website on which the Respondent posted infringing and misleading content.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to “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”.

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements in order to obtain an order that the disputed domain name should be transferred or cancelled:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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.

The Panel is satisfied that the registrant of record for the disputed domain name is the Respondent and will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must establish rights in a trademark or service mark and subsequently establish that the disputed domain name is identical or confusingly similar to said mark.

The Complainant is the registered owner – amongst others – of European Union Trademark no. 018263002 ZOOX (verbal), registered on December 10, 2020.

The disputed domain name entirely incorporates said trademark. As noted in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7, in cases where a domain name incorporates the entirety of a trademark, or at least where 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 the purposes of UDRP standing. The Panel finds the Complainant’s ZOOX mark to be fully included and readily recognizable within the disputed domain name.

The generic Top-Level Domain “.com” may be disregarded, as it is viewed as a standard registration requirement (see [WIPO Overview 3.0](#), section 1.11.1).

Hence, this Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademark ZOOX pursuant to the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent’s rights or legitimate interests in a disputed domain name. In the Panel’s view, based on the Complainant’s undisputed allegations, the Complainant has made a *prima facie* case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name.

(1) First, the Panel notes that there is no evidence in the record or Whois information showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

(2) At the time, the Complaint was filed, no content was displayed on the website to which the disputed domain name resolved. Such use can neither be considered a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name in the sense of paragraph 4(c)(i) and (iii) of the Policy (see, e.g. *CCA and B, LLC v. Domain Administrator, Fundacion Privacy Services LTD*, WIPO Case No. [D2021-1531](#)).

In addition, it results from the Complainant's uncontested evidence that the disputed domain name originally resolved to a web shop allegedly offering – amongst others – the Complainant's vehicles for purchase and using the ZOOX trademarks and original ZOOX photos of ZOOX's vehicles. Only one day before this Complaint was lodged, the content was removed from this website. However, as the Complainant undisputedly brought forward, it has no relationship whatsoever with the Respondent and has never licensed or otherwise authorized the Respondent to use the ZOOX trademark or photos on the website or in the disputed domain name. In this Panel's view, it is therefore evident that the Respondent selected the disputed domain name with the intention to take unfair advantage of, abuse, or otherwise engage in behavior detrimental to the Complainant's registered trademark ZOOX by registering a domain name containing that trademark and resolving to a website that mimics the Complainant's original website, brand, and products.

The composition of the disputed domain name carries a risk of implied affiliation with the Complainant ([WIPO Overview 3.0](#), section 2.5.1). Noting the absence of any disclaimer, the disputed domain name's content exacerbates the confusion caused by the incorporation of the Complainant's distinctive trademark in the disputed domain name by further impersonating the Complainant. Accordingly, further to section 2.8 of the [WIPO Overview 3.0](#), the Respondent's previous use of the disputed domain name to host an impersonating webstore excludes any *bona fide* offering, noncommercial, or fair use of the disputed domain name from the outset.

(3) It is acknowledged that once the panel finds a *prima facie* case has been established, the burden of production shifts to the respondent to come forward with relevant and concrete evidence demonstrating rights or legitimate interests in the disputed domain name. Since the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant has therefore satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must thirdly establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith.

(1) One of these circumstances that the Panel finds applicable is that the Respondent, by using the inherently misleading disputed domain name, 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 website or location or of a product or service on the website (paragraph 4(b)(iv) of the Policy).

It results from the documented and undisputed evidence provided by the Complainant that the disputed domain name has previously been used to resolve to a web shop allegedly offering – amongst others – the Complainant's vehicles for purchase and using the ZOOX trademarks and original ZOOX photos of ZOOX's vehicles. However, the Complainant has not given any authorization for such use and is not linked to the Respondent. For the Panel, it is therefore evident that the Respondent positively knew the Complainant's trademarks and products. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent also knew that the disputed domain name included the Complainant's trademark ZOOX entirely when it registered the disputed domain name. Registration of a domain name which contains a third party's trademark, in awareness of said trademark and in the absence of rights or legitimate interests is suggestive of registration in bad faith (see e.g. *Vorwerk International AG v. ayoub*

lagnadi, Lagnadi LTD, WIPO Case No. [D2022-1592](#) with further references). While the ability to purchase the goods is not known to the Panel, the alleged commercial offering and impersonation of the Complainant is sufficient to establish the Respondent's bad faith intent to mislead Internet users.

(2) The Panel further notes that on August 24, 2023, one day before the Complaint was filed, the website content was removed. However, with comparative reference to the circumstances set out in paragraph 4(b) of the UDRP deemed to establish bad faith registration and use, prior UDRP panels have found that the apparent lack of active use of the domain name does not as such prevent a finding of bad faith under the doctrine of passive holding (see, e.g., *CCA and B, LLC v. Domain Administrator, Fundacion Privacy Services LTD*, WIPO Case No. [D2021-1531](#)). The Panel must therefore examine all the circumstances of the case to determine whether the Respondent is acting in bad faith. Factors that have been considered relevant in applying the passive holding doctrine include:

- (i) the degree of distinctiveness or reputation of the complainant's mark;
- (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good faith use;
- (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement); and
- (iv) the implausibility of any good faith use to which the domain name may be put (see [WIPO Overview 3.0](#), section 3.3).

Beyond the circumstances exposed and discussed above under Section 6.C(1) of this decision, the Panel considers the following circumstances surrounding the registration of the disputed domain name, as suggesting that the Respondent was aware that it has no rights or legitimate interests in the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith:

- (i) the distinctiveness of the trademark ZOOX, which is fully and identically incorporated in the disputed domain name;
- (ii) the Respondent's failure to submit a formal response;
- (iii) the Respondent's failure to provide any evidence of actual or contemplated good faith use;
- (iv) the implausibility of any good faith use to which the disputed domain name may be put and
- (v) the fact that the Respondent provided incomplete contact details when registering the disputed domain name.

In the light of the above the Panel finds that the disputed domain name has been registered and is being used in bad faith pursuant to 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 disputed domain name <zooxincard.com> be transferred to the Complainant.

/Tobias Malte Müller/

Tobias Malte Müller

Sole Panelist

Date: November 2, 2023