

## **ADMINISTRATIVE PANEL DECISION**

Trent Limited v. Zudio Wholesale

Case No. D2024-0379

### **1. The Parties**

The Complainant is Trent Limited, India, represented by Fidus Law Chambers, India.

The Respondent is Zudio Wholesale, India.

### **2. The Domain Name and Registrar**

The disputed domain name <zudiowholesale.com> is registered with GoDaddy.com, LLC, United States (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 29, 2024. On January 31, 2024, the Center transmitted by email to the Registrar, a request for registrar verification in connection with the disputed domain name. On the same date, 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 (Registration Private) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 31, 2024, 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 February 1, 2024.

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 February 7, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 27, 2024. This Panel notes that the Center has complied with all of its obligations to serve a formal notice of the Complaint on the Respondent through all known means and modes of communication but however, the Respondent did not submit any response within the stipulated deadline. Accordingly, the Center notified the Respondent's default on February 29, 2024.

The Center appointed Saisunder Nedungal Vidhya Bhaskar as the sole panelist in this matter on March 13, 2024. 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, Trent Limited, states that it is part of the TATA group of companies ('TATA Group') which also includes service companies and companies selling TATA products to franchisees in certain markets.

The Complainant states that it was originally incorporated as Lakme Limited on December 5, 1952 and the name of the Complainant was changed to Trent Limited in 1998 owing to company acquisition and amalgamation. It is also claimed that, in 1998 the Complainant decided to pursue business in the field of apparel retailing, given the absence of established brands in most categories.

The Complainant claims to operate various famous brands which include WESTSIDE, ZUDIO and UTSA and further specifically the Complainant also claims to operate the famous fashion brand ZUDIO through its 460 brick and mortar stores spread across India.

The Complainant claims that it had adopted the inherently distinctive trademark "ZUDIO" in the year 2015 for its goods and services. Further the Complainant holds multiple trademark registrations for the word ZUDIO and/or its associated labels and logos in India as follows:

S. No.	Trade Marks	Registration No.	Class	Registration Date
1.	ZUDIO	3078072	24	13/10/2015
2.	ZUDIO	3078073	25	13/10/2015
3.		3091978	24	02/11/2015
4.		3091979	25	02/11/2015
5.	ZUDIO	3126271	35	14/12/2015
6.		3126272	35	14/12/2015

The Complainant also states that under its trademark "ZUDIO" the Complainant operates around 460 outlets covering number of cities across India which offer a range of products such as garments and fashion accessories, cosmetics and perfumes and household accessories. The Complainant also states that it operates a website "www.zudio.com" through which it provides the details of products its offers under its trademark ZUDIO. Further, the Complainant also claims to own the domain name <zudio.in> since 2015.

The Complainant also states that it maintains social media handles on Facebook, and Instagram, to display their registered trademark ZUDIO and provide up to date information and promotion of the products provided under the said trademark.

The disputed domain name was registered on December 19, 2023, and it resolves to an active website through which the Respondent is selling ready-made clothes using Complainant's trademark ZUDIO.

## 5. Parties' Contentions

### A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

1. As regards the first element of the policy the Complainant contends that:

The disputed domain name <zudiowholesale.com> completely subsumes the Complainant's trademark ZUDIO in which the Complainant has prior statutory and common law rights. Further it has been stated that the Respondent registered the disputed domain name on December 19, 2023, which is several years after the trademark registrations and common law rights acquired by the Complainant in its trademark ZUDIO.

Further, the Complainant claims that it has extensive goodwill and reputation associated with the ZUDIO trade mark owing to which it was able to restrain a third party who was using the trademark ZUDIO unauthorisedly and in this regard relies upon the panel decision in *Trent Limited v. South Store*, WIPO Case No. [D2023-2276](#), wherein the panel held that "The Complainant's Trademark ZUDIO has acquired significant uniqueness and repute due to its long and continuous usage by the Complainant".

The Complainant also claims that by virtue of such continuous and exclusive use since at least 2015, the general public and members of trade now recognize and associate the goods and services under the ZUDIO trademarks with the Complainant and none other.

Thus, to summarise the Complainant claims to have adopted and is continuously using the trademark "ZUDIO" since at least 2015 much prior to the date of registration of the disputed domain name in 2023.

Various panels have found that the fact that a domain name wholly incorporates a complainant's registered trademark is sufficient to establish identity or confusing similarity for the purpose of the Policy and to further this argument the Complainant relies upon the following panel decisions- *Go Daddy.com, Inc. v. Shoneye's Enterprise*, WIPO Case No. [D2007-1090](#) [sic]; *Qalo, LLC v. Chen Jinjun and Magnum*, WIPO Case No. [D2018-2215](#) [sic]; *Piering Inc v. The Mudjackers*, WIPO Case No. [D2000-1525](#).

It is a settled principle 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. Accordingly it is argued that the term 'wholesale' in <zudiowholesale.com> does not make the disputed domain name dissimilar to the Complainant's trademark ZUDIO and relies upon the panel decisions in *LEGO Juris A/S v. Contact Privacy Inc. Customer 0163125175/ Daniel Perez, Lego and Jewelry Queen*, WIPO Case No. [D2022-3025](#) and further reliance is also placed on section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The term 'wholesale' in conjunction with the Complainant's ZUDIO trademark is likely to heighten confusion in the minds of Internet users, as those familiar with the Complainant's services would reasonably believe that the disputed domain name is associated with an online wholesale shop for the Complainant's ZUDIO Products. Also, it is asserted that the fact that such a term is closely linked and associated with the Complainant's services only serves to underscore and increase the confusing similarity between the disputed domain name and the Complainant's ZUDIO trademark.

It is a settled principle that the generic Top-Level Domain (gTLDs) have to be excluded from analyzing confusing similarity under the first element of the Policy (section 1.11.1, [WIPO Overview 3.0](#)). Hence, the gTLD ".com" in the disputed domain name should not prevent the finding that the same is confusingly similar to the Complainant's trademark ZUDIO.

Accordingly, for the aforesaid reasons the Complainant states that the disputed domain name is confusingly similar to the Complainant's mark for the purposes of paragraph 4(a)(i), being the first element of the UDRP.

2. As regards the second element of the policy, the Complainant contends that the Respondent lacks rights or legitimate interests in the disputed domain name for the below mentioned reasons:

The Complainant states that: (a) the Respondent has an active website (the disputed domain name) through which it is selling ready-made clothes using the Complainant's trademark ZUDIO; (b) the Respondent is offering identical goods/services to that of the Complainant's trademark ZUDIO, namely readymade clothes and sale of the same; and (c) the Respondent is using the Complainant's trademark ZUDIO which constitutes trademark infringement. In support of its submissions the Complainant relies upon the decision of the panel in *Dr. Martens International Trading GmbH, Dr. Maertens Marketing GmbH v. jlogabnkya jvnhyjnx*, WIPO Case No. [D2014-1108](#).

The Complainant argues that it has not authorized or licensed the Respondent to use any of its trademarks and that the Complainant offers its product under ZUDIO through its brick-and mortar stores alone and hence, the only plausible reason for the Respondent to register the disputed domain name and engaging in the business of ready-made clothes using the Complainant's trademark ZUDIO, is to dupe innocent Internet users looking the Complainant's products online. The Complainant further contends that no foreseeable use of the disputed domain name can be legitimate or bona fide.

The Complainant therefore contends that it has established a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name and thereby avers that the burden of proof shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the disputed domain name. In this regard the Complainant places reliance on *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#) and *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

Accordingly, it is contended by the Complainant that it has prima facie established that the Respondent lacks rights or legitimate interests in the Disputed Domain Name for the purposes of paragraph 4(a)(ii) of the Policy read with paragraph 3(b)(ix)(2) of the Rules.

3. As regards the third element of the policy, the Complainant contends that the disputed domain name was registered and is being used in bad faith for the below mentioned reasons:

It is asserted by the Complainant that the primary aim of the Respondent appears to be to dupe Internet users who may wish to purchase the Complainant's genuine and well-known goods available under the trademark ZUDIO and that the Respondent has registered the disputed domain name in bad faith to extract some commercial advantage by selling its products under the Complainant's trademark ZUDIO.

The Complainant argues that the ZUDIO trademarks of the Complainant have assumed immense goodwill and reputation prior to the registration of the disputed domain name and that the Respondent has registered the disputed domain name in full knowledge of the Complainant's trademarks and to take advantage of such rights. The Complainant further claims that the Respondent is selling counterfeit or unauthorised products under the Complainant's trademark and this fact alone is sufficient for a finding of bad faith against the Respondent under the third element of the Policy. It further asserts that by using the Complainant's trademark in the disputed domain name and on the website, the Respondent is trying to portray they are an official ZUDIO website or associated with the Complainant and this clearly demonstrates bad faith. In this regard the Complainant relies on the decision of the earlier panels in *Balenciaga v. liu zhixian*, WIPO Case No. [D2010-1831](#), and *Hermes International, SCA v. cui zhenhua*, WIPO Case No. [D2010-1743](#), wherein it was held that the sale of counterfeit goods under the complainant's trademark amounts to bad faith.

The Complainant asserts that the fact that the products on the Respondent's website are priced in Indian Rupees (INR) and offer 'Free Delivery to India', is evidence that the Respondent is targeting Indian customers and is based in India. As aforementioned, the Complainant's trademark ZUDIO is tremendously

popular amongst the Indian public and hence argues that the registration and use of the disputed domain name is in bad faith. In this regard, the Complainant relies on section 3.2.2 of the [WIPO Overview 3.0](#) and contends that the Respondent knew or should have known of the Complainant's well-known trademark ZUDIO.

The Complainant avers that, paragraph 2 of the Policy implicitly requires a registrant to make some good faith effort to avoid registering and using domain names corresponding to trademarks in violation of the Policy and further states that UDRP panels have found that respondents who (deliberately) fail to search and/or screen registrations against available online databases would be responsible for any resulting abusive registrations under the concept of wilful blindness (Section 3.2.3, [WIPO Overview 3.0](#)) and that this principle squarely applies to the present dispute where if the Respondent had taken even a cursory search, it would have revealed the Complainant's prior trademark rights in ZUDIO. In this regard, the Complainant relies on the panel decision in *City Views Limited v. Moniker Privacy Services/Xander, Jeduyu, ALGEBRALIVE*, WIPO Case No. [D2009-0643](#).

Accordingly, for the aforesaid reasons the Complainant states that the disputed domain name has been registered and used in bad faith by the Respondent.

## **B. Respondent**

The Respondent did not furnish its response to the Complaint herein and bearing this in mind and in this background, the Panel shall draw such adverse inferences from the absence of the Respondent's reply as it considers appropriate in the circumstances.

## **6. Discussion and Findings**

Under paragraph 4(a) of the Policy, to succeed in the administrative proceeding the Complainant must prove that:

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

As expressly stated in the Policy, the Complainant must establish the existence of each of these three elements in any administrative proceeding.

Further, as is the case in all UDRP proceedings, while this Panel notes that the burden of proof is on the complainant, a respondent's default (i.e., failure to submit a formal response) would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true. Further to paragraph 14(b) of the UDRP Rules however, panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case e.g., where a particular conclusion is prima facie obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent.

### **A. Identical or Confusingly Similar**

This Panel is satisfied that the Complainant proved that it has both statutory and common law rights over the word "ZUDIO", by virtue of both its trademark registrations in India and also owing to its extensive usage of the trademark and trade name "ZUDIO" in relation to its business.

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. See [WIPO Overview 3.0](#), section 1.7.

Accordingly, on a mere visual comparison of the trademark “ZUDIO” vis-à-vis the disputed domain name it is ex facie evident that it is confusingly similar to the Complainant’s ZUDIO trademarks. This Panel notes that the entirety of the mark of the Complainant is reproduced within the disputed domain name.

The disputed domain name plainly contains the Complainant’s ZUDIO trademark, in addition to the word “wholesale” and this addition (and the gTLD extension “.com”) does nothing to preclude a finding of confusing similarity. In support of these findings the Panel relies on *LEGO Juris A/S v. Contact Privacy Inc. Customer 0163125175/ Daniel Perez, Lego and Jewelry Queen*, WIPO Case No. [D2022-3025](#).

The Panel is therefore satisfied that the Complainant has established that the disputed domain name is confusingly similar to the Complainant’s trademark.

## **B. Rights or Legitimate Interests**

This Panel agrees with the contentions of the Complainant that: (a) the Respondent has an active website through which it is selling ready-made clothes using the Complainant’s trademark ZUDIO; (b) the Respondent is offering identical goods/services to that of the Complainant under the trademark ZUDIO, namely readymade clothes and sale of the same; and (c) the Respondent is using the Complainant’s trademark ZUDIO which constitutes trademark infringement. It is apparent from the above that the Respondent has deliberately used the Complainant’s trademarks in order to ride upon the substantial goodwill garnered by the Complainant’s trademark ZUDIO in order to attract Internet traffic and thus a natural presumption has to be drawn in favour of the Complainant that the Respondent lacks any rights or legitimate interests in the disputed domain name, more so in the absence of any specific response by the Respondent in the matter. In support of these findings the Panel relies on *Dr. Martens International Trading GmbH, Dr. Maertens Marketing GmbH v. jlogabnkya jvnhyjnx*, WIPO Case No. [D2014-1108](#).

On a perusal and careful analysis of the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise and hence the complainant is deemed to have satisfied the second element. See [WIPO Overview 3.0](#), section 2.1. The Panel also refers with approval to the decision in *Exelgyn v. Agyemang Richard*, WIPO Case No. [D2024-0304](#). Similar to that case, the so-called Oki Data criteria are not met here either. See, *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

Accordingly, the Panel finds that the Complainant has established that the Respondent does not have any rights or legitimate interests in the disputed domain name as specified in paragraph 4(a)(ii) of the Policy.

## **C. Registered and Used in Bad Faith**

The Panel notes that the registration of the disputed domain name and its use of the same is evidently in bad faith for the various reasons as stated hereinbelow:

Firstly, the trademark registrations of the Complainant pre-date the creation date of the disputed domain name and that the trademark ZUDIO of the Complainant has acquired substantial recognition through the various publicity and marketing efforts of the Complainant. The Panel agrees with the Complainant’s submissions that it ought to be presumed that the Respondent had constructive notice of the Complainant’s trademark owing to the fact that the trademark ‘ZUDIO’ is well established and such knowledge of the Respondent is an indicator of bad faith on its part in having registered the disputed domain name.

Secondly, the Panel is of the view that the registration and usage of the disputed domain name is ex facie in bad faith as stipulated under paragraph 4(b)(iv) of the Policy as all the evidence placed on record only seem to indicate that the Respondent has intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant’s ZUDIO mark. In this regard, reliance is also placed upon [WIPO Overview 3.0](#), section 3.1.4, wherein “Panels have consistently found that the mere registration

of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith". In support of these findings the Panel relies on decision in *The Gap, Inc. v. Deng Youqian*, WIPO Case No. [D2009-0113](#).

Thirdly, the Panel accepts the submissions of the Complainant that the Respondent is selling counterfeit or unauthorised products under the Complainant's trademark and this fact alone is sufficient for a finding of bad faith against the Respondent under the third element of the Policy. In support of these findings the Panel relies on the decision of *Balenciaga v. liu zhixian*, WIPO Case No. [D2010-1831](#) and *Hermes International, SCA v. cui zhenhua*, WIPO Case No. [D2010-1743](#), wherein it was held that the sale of counterfeited goods under the Complainant's trademark amounts to bad faith.

This Panel also takes specific note and also concurs with the panel's decision in *Trent Limited v. South Store*, WIPO Case No. [D2023-2276](#), wherein the panel held that "The Complainant's Trademark ZUDIO has acquired significant uniqueness and repute due to its long and continuous usage by the Complainant". This Panel also notes that the "ZUDIO" trademark of the Complainant has acquired a reputation in India and hence it is stated that a moral duty has been cast on panels such as this, to protect the bonafide and genuine proprietary rights of such complainants in reputed trademarks against blatant cases of cybersquatting indulged in by the third parties as in this instant dispute.

The Panel agrees with the submissions of the Complainant that the registrant ought to make some good faith effort to avoid registering and using domain names corresponding to trademarks in violation of the Policy and it can be only concluded that the Respondent has deliberately failed to search and/or screen registrations against available online databases thereby evidencing bad faith registration and usage of the disputed domain name.

Hence, it has to be concluded that the Respondent's aim in registering the disputed domain name was to impersonate the Complainant and profit from or exploit the Complainant's trademark, which clearly establishes bad faith.

Accordingly, the Panel finds that the Complainant has established the third element of the Policy and that the Respondent has registered and used 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 <zudiowholesale.com> be transferred to the Complainant.

*/Saisunder Nedungal Vidhya Bhaskar/*

**Saisunder Nedungal Vidhya Bhaskar**

Sole Panelist

Date: March 27, 2024