

ADMINISTRATIVE PANEL DECISION

Trent Limited v. Tushar Nayak
Case No. D2024-1165

1. The Parties

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

The Respondent is Tushar Nayak, India.

2. The Domain Name and Registrar

The disputed domain name <zu-dio.com> is registered with PSI-USA, Inc. dba Domain Robot (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 18, 2024. On March 18, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 19, 2024, 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 22, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 11, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 16, 2024.

The Center appointed Harini Narayanswamy as the sole panelist in this matter on April 22, 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 runs a retail chain for fashion apparel and other products under the ZUDIO trademark, which is a registered trademark. The Complainant's Indian trademark registrations for the ZUDIO mark include, ZUDIO (word mark) with registration number 3078072 in class 24 in respect of textile and textile goods valid from October 13, 2015, ZUDIO (word mark) with registration number 3078073 in class 25 in respect of clothing, footwear and headgear valid from October 13, 2015 and ZUDIO (device mark) with registration number 3091979 in class 25 in respect of clothing, footwear and headgear valid from November 2, 2015.

The Complainant registered the domain name <zudio.com> on September 15, 2011, and operates its website "www.zudio.com" which provides information about its products. The Complainant's products are sold through its numerous brick and mortar stores. The Complainant additionally owns the domain name <zudio.in>, which was registered on October 20, 2015.

The Respondent registered the disputed domain name on November 27, 2023. The disputed domain name was used by the Respondent to sell T-shirts at the time of the Complaint was filed. The web pages of the Respondent's website, displays pictures of various T-shirts for sale along with the price of each T-shirt quoted in Indian rupees (INR). Each webpage of the Respondent's website displays the name "Think Ink Store", which is ostensibly the name of the Respondent's business. The webpages also has a logo which is displayed on the top of each page with "Think Ink" written across an icon of two T-shirts.

Some other details from the Respondent's website that demonstrate its commercial nature, are the heading "Shipping" that states "we are provide 7 to 10 business day delivery". Under the heading "Money Back" the website displays "money back under 15 days". Other headings include "Nontoxic Printmaking" "non-toxic and nature friendly t shirts". "Contact us" "posted by Tushar 1237". The Respondent's website on the last page displays a statement that states: "Based on Zu-dio theme Nayak Enterpriese".

The disputed domain name resolves to an inactive page without any content at the time of the Decision.

5. Parties' Contentions

A. Complainant

The Complainant states its trademark ZUDIO is inherently distinctive and has acquired goodwill and reputation due to extensive use throughout India. The Complainant states that the trademark was adopted and used extensively in commerce since 2015. The Complainant contends that it has about 460 retail stores in several cities across India which sell products such as garments and fashion accessories, cosmetics, perfumes and household accessories under the ZUDIO mark. The Complainant states that the reputation of its ZUDIO mark has been recognized in previous UDRP cases.

Notably, the Complainant contends that it is part of the reputed Tata group, a leading industrial conglomerate that has interests in numerous business sectors such as manufacture of vehicles, steel, hospitality, financial and electronic services. The Complainant states that it was originally incorporated as Lakme Limited on December 5, 1952, and has changed its name to Trent Limited in 1998.

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name. First that the disputed domain name is confusingly similar to a trademark in which it has rights. Second, the Respondent lacks rights or legitimate interests in the disputed domain name and third the disputed domain name has been registered and is being used in bad faith by the Respondent.

B. Respondent

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

6. Discussion and Findings

The Complainant in these proceedings is required to establish three elements under paragraph 4 (a) of the Policy to obtain transfer of the disputed domain name, these are:

- (i) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) The Respondent lacks rights or legitimate interests in the disputed domain name; and
- (iii) The disputed domain name was registered and is being used in bad faith by the Respondent.

A. Identical or Confusingly Similar

The first element requires the Complainant to establish the disputed domain name is confusingly similar to a trademark or a service mark in which it has rights. 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. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has provided evidence of its trademark rights in the ZUDIO mark and is found to have established its rights in respect of the trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. The Panel also concurs with other UDRP panels that have recognized the Complainant's established rights in the ZUDIO trademark, in *Trent Limited v. South Store*, WIPO Case No. [D2023-2276](#) (<zudioapparels.com>), *Trent Limited v. Ratan Manjhi, Zudio*, WIPO Case No. [D2023-3569](#) (<zudiofranchise.com>) and *Trent Limited v. Nilesh Kumar Pandey Pandey*, WIPO Case No. [D2023-3604](#) (<zudioshopping.online>).

The Panel finds the Complainant's mark is reproduced within the disputed domain name. The disputed domain name is confusingly similar to the Complainant's mark as the Complainant's mark is recognizable within the disputed domain name. The hyphen inserted after the first two letters of the mark does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark.

Where the mark is recognizable within the disputed domain name, additional terms, letters or punctuation marks such as a hyphen, will not prevent finding of confusing similarity. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

For the reasons discussed, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out 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 the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

The Complainant on its part, has argued that the Respondent lacks rights or legitimate interests in the disputed domain name as the Respondent has not used the disputed domain name for legitimate activity but is using it for misleading people. The Complainant has further argued that the Respondent seeks to derive commercial benefit by exploiting the reputation and goodwill associated with the Complainant's ZUDIO mark.

The Complainant has also alleged that no authorization or license has been given to the Respondent to use its mark.

The Complainant has asserted that its unique trademark predates the disputed domain name registration and that the Respondent has not used the disputed domain name for any bona fide purposes but has used it with the intention of deceiving Internet users looking for the Complainant's products online. Misleading and diverting Internet users to the Respondent's online location based on reputation of the Complainant's mark, does not indicate of rights or legitimate interests in the disputed domain name, argues the Complainant.

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name. The Respondent did not respond and has not provided any explanation for choosing the disputed domain name. Having reviewed the available record, the Panel finds the Respondent is not known by the disputed domain name or demonstrated any legitimate reason for registration and use of the disputed domain name. The Panel notes that the Respondent does not have any authorization or license to use the Complainant's mark or any variants of the mark, and it is clear that the Respondent has made unauthorized use of the Complainant's registered trademark in the disputed domain name.

Evidence of screenshots of the Respondent's website filed by the Complainant shows that the Respondent's business is called "Think Ink Store" and that it offers T-shirts for sale. The use of the ZUDIO mark in the disputed domain name baits unsuspecting Internet users and then diverts them to the Respondent's online location "Think Ink Store" that sells T-shirts. Using the Complainant's mark in the disputed domain name that is a reputed and known mark in the area of retailing apparel and redirecting users to the Respondent's online store amounts to "bait and switch".

The Respondent has registered and used the disputed domain name for purposes of redirecting users with the intention of deriving unfair monetary gains. Panels have constantly held that the use of a complainant's mark in a domain name to sell competing products as bait and switch, would not support a claim to rights or legitimate interests. [WIPO Overview 3.0](#), section 2.5.3.

Based on the available record, and for the reasons discussed, 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.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The third element under paragraph 4(a)(iii) of the Policy requires the Complainant to establish the disputed domain name has been registered and used in bad faith by the Respondent. The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy specifies 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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may also be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.1.

(i) Circumstances indicate that the respondent has registered or acquired the domain name primarily for 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 that complainant, for valuable consideration in excess of respondent's 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 disputed domain name, 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.

The Panel notes that the Complainant's mark is not a word with a specific meaning, it is only an identifier of the Complainant's products. Given that the ZUDIO mark is unique and well known especially in India where the Respondent is located, the use of the mark in a domain name by an entity or person not connected with the Complainant to promote competing products itself creates a presumption of bad faith.

[WIPO Overview 3.0](#), section 3.1.4.

Panels have held that the use of a disputed domain name with a 'bait and switch' tactic where customers are diverted to a respondent's website which is selling or promoting products that are not associated with the complainant constitutes bad faith under paragraph 4(b)(iv) of the Policy. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name here constitutes bad faith under the Policy for the reasons discussed.

Based on the material before the Panel, it is found that there is sufficient evidence to conclude that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its online location by using the disputed domain name that creates a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the disputed domain name. The Panel finds that the Respondent has targeted the Complainant's mark in bad faith, which is likely to confuse and mislead the Complainant's customers and Internet users in a manner described as bad faith registration and use of the disputed domain name under paragraph 4(b)(iv) of the Policy.

The Panel finds for the reasons discussed, that the Complainant has established the third element of the Policy that the disputed domain name has been registered in bad faith and is being used in bad faith.

The Complainant has satisfied all three of the elements required under the Policy for a transfer of the disputed domain name.

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 <zu-dio.com> be transferred to the Complainant.

/Harini Narayanswamy/

Harini Narayanswamy

Sole Panelist

Date: May 6, 2024