

## **ADMINISTRATIVE PANEL DECISION**

Trent Limited v. Abdul Rahim  
Case No. D2024-1166

### **1. The Parties**

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

The Respondent is Abdul Rahim, India.

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

The disputed domain name <zudiofranchising.com> is registered with Hostinger Operations, UAB (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 18, 2024. On the same day, 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 disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Domain Admin, Privacy Protect LLC) and contact information in the Complaint.

The Center sent an email communication to the Complainant on March 19, 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 also on March 19, 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 April 3, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 23, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 24, 2024.

The Center appointed Harini Narayanswamy as the sole panelist in this matter on April 26, 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 registered trademark ZUDIO. 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, registered on October 13, 2015, ZUDIO (word mark) with registration number 3078073 in class 25 in respect of clothing, footwear and headgear registered on October 13, 2015; and ZUDIO (device mark) with registration number 3078069 in class 25 in respect of clothing, footwear and headgear registered on October 13, 2015.

The Complainant registered the domain name <zudio.com> on September 15, 2011 and operates its website from "www.zudio.com" which provides information about its products. The website is not used for selling its products, but 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 <zudiofranchising.com> on January 30, 2024. The record shows that the disputed domain name was not being used by the Respondent at the time of filing the Complaint. The Complainant claimed that the disputed domain name previously resolved to an active website which was engaged in selling fake franchises of the Complainant's brand ZUDIO.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant states its ZUDIO trademark is an inherently distinctive mark that has acquired goodwill and reputation due to extensive use throughout India. The Complainant states that the trademark was adopted in 2015 and is being widely used in commerce. The Complainant contends that it has about 460 retail stores in several cities across India that 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 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, that the Respondent lacks rights or legitimate interests in the disputed domain name and third, that 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 for 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, such as 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.com>).

The Panel finds the mark is reproduced within the disputed domain name. The disputed domain name includes the Complainant's trademark in its entirety with the additional word "franchising". [WIPO Overview 3.0](#), section 1.8. Where the mark is recognizable within the disputed domain name, additional terms or words 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 1.7.

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 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. The Complainant has further argued that the Respondent seeks to derive commercial benefit by exploiting the reputation and goodwill associated with its ZUDIO mark.

The Complainant has asserted that its unique trademark predates the disputed domain name registration and the Respondent ought to have known of its mark. The Complainant also alleges that no authorization or license has been given to the Respondent to use its mark.

Paragraph 4(c) of the Policy lists non-exhaustive examples by which the Respondent may demonstrate or establish rights or legitimate interests in the disputed domain name. The Respondent did not avail the opportunity to respond in these proceedings 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 the registration of the disputed domain name. The disputed domain name is not being used, therefore the question of it being used for bona fide purposes or for noncommercial fair use purposes does not arise. The Panel notes that the Respondent has made unauthorized use of the Complainant's registered trademark in the disputed domain name, as no permission authorization or license to use the mark or variants of the mark has been given to the Respondent.

Based on the available record, the composition of the disputed domain name carries an implied affiliation to the Complainant's mark ([WIPO Overview 3.0](#), section 2.5.1). The disputed domain name is therefore likely to confuse and mislead Internet users regarding its sponsorship or affiliation. Trying to impersonate the Complainant or show false association by the unauthorized use of the Complainant's mark is not indicative of the Respondent rights or legitimate interests in the disputed domain name.

For the reasons discussed above, 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 3.2.1.

- (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 Complainant has argued that the registration and use of the disputed domain name shows the Respondent's intent to benefit from the reputation associated with its distinctive mark. In the present case, the record shows that the Respondent has not used the disputed domain name. Furthermore, the current non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. This is particularly the case where the trademark in question is well known and the facts and circumstances show that the respondent has shown no legitimate use for the disputed domain name.

The Panel finds that the Complainant's ZUDIO mark enjoys distinctiveness and reputation in its area of business. With over four hundred stores, the Complainant has a significant presence across India. On the other hand, as the Respondent is located in India there is a high degree of probability that the Respondent was aware of the Complainant's prior rights in the trademark. The Respondent has not submitted a response and the case material does not indicate legitimate use of the disputed domain name or evidence that refutes the Complainant's submissions. The disputed domain name is not connected to an active website, and under the circumstances described, it is reasonable to infer that the disputed domain name has been registered to attract Internet users based on the widely known nature of the Complainant's ZUDIO mark.

The Complainant has also alleged that the disputed domain name was being used in the past by the Respondent to target interested parties for franchising or business opportunities. The fact that disputed domain name has the ZUDIO mark along with the word "franchising" suggests that the Respondent is likely to have such intentions to improperly use the disputed domain name in the manner stated by the Complainant. However, in the absence of supporting evidence, the Panel refrains from making a finding of such improper use of the disputed domain name by the Respondent. Nevertheless, passive holding of the disputed domain name by the Respondent under the discussed facts and circumstances here, does not prevent a finding of bad faith under the Policy.

Having reviewed the available record, the Panel finds the entire set of circumstances described here squarely comes under the passive holding doctrine showing bad faith registration and use as envisaged under paragraph 4 (iii) of the Policy. Although panelists will look at the totality of the circumstances in each case, factors that are 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, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3.

Furthermore, it has been consistently found by UDRP panels that registration of a confusingly similar domain name to a widely known or reputed trademark by someone who is not affiliated with the owner of the trademark, and has not shown good reason for registration of the disputed domain name or its legitimate use, can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4. 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 <zudiofranchising.com> be transferred to the Complainant.

*/Harini Narayanswamy/*

**Harini Narayanswamy**

Sole Panelist

Date: May 10, 2024