

## **ADMINISTRATIVE PANEL DECISION**

10days Wholesale B.V. v. Scott Clarke / Zhang Qiang  
Case No. D2024-1896

### **1. The Parties**

The Complainant is 10days Wholesale B.V., Netherlands (Kingdom of the), represented by Leeway Advocaten, Netherlands (Kingdom of the).

The Respondent is Scott Clarke, Italy / Zhang Qiang, China.

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

The disputed domain name <10daysfashioncanada.com> is registered with Paknic (Private) Limited (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 6, 2024. On May 6, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 9, 2024, the Registrar transmitted by email to the Center its verification response disclosing that Scott Clarke is listed as the "Registrant Name" and zhangqiang as the "Registrant Organization", while identifying Zhang Qian as the reseller for the disputed domain name.

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 May 13, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 2, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 3, 2024.

The Center appointed Assen Alexiev as the sole panelist in this matter on June 10, 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 is a Dutch company, founded in 2007. It sells fashion clothing and accessories, and homeware. Its online shop at the domain name <10dayslifestyle.com> offers shipping to Austria, Belgium, Denmark, Finland, France, Germany, Italy, Luxembourg, Netherlands (Kingdom of the), Poland, Portugal, Spain, and Sweden.

The Complainant is the owner of a number of trademark registrations for “10DAYS” (the “10DAYS trademark”), including the following:

- the European Union trademark 10DAYS with registration No. 009213166, registered on January 17, 2011 for goods and services in International Classes 14, 18, 25, 26, and 35; and
- the Canadian trademark 10DAYS with registration No. TMA881554, registered on July 8, 2014 for goods and services in International Classes 9, 14, 18, 25, 26, 28, and 35.

The disputed domain name was registered on July 7, 2023. It resolves to a website with the header “*Effortless Style on 10DAYS Fashion Canada*”, which features the 10DAYS trademark and offers for sale various clothing items and accessories branded with the 10DAYS trademark with discounted prices in Canadian Dollars. The website includes the copyright notice “*Copyright © 2024 10daysfashioncanada*” and does not indicate the name and the contact details of the provider of the goods offered on it.

#### 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.

The Complainant states that the disputed domain name is confusingly similar to its 10DAYS trademark, because it incorporates the entirety of the trademark, and the addition of the geographical term “Canada” and of the dictionary word “fashion”, which refers to the goods offered under the 10DAYS trademark, does not prevent a finding of confusing similarity between the disputed domain name and the 10DAYS trademark. Rather, the combination of the 10DAYS trademark with these two elements suggests that the disputed domain name resolves to the Complainant’s official website for Canada.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it is not related to the Complainant’s business, is not authorized by the Complainant to use the 10DAYS trademark and is not commonly known under the disputed domain name and has no registered trademarks related to it.

The Complainant submits that the disputed domain name suggests sponsorship or endorsement by the Complainant and resolves to a false “10DAYS” web shop, which offers unauthorized 10DAYS products and uses copyright-protected images from the Complainant’s website, without disclosing that it is not operated by the Complainant. According to the Complainant, the Respondent thus competes with it and capitalizes on the reputation and goodwill of its 10DAYS trademark. The Complainant also submits that the Respondent uses the disputed domain name for fraudulent purposes, because when it ordered a product on this website, the payment could not be processed, and the Complainant’s credit card company confirmed that it had blocked all payments to the disputed domain name due to fraudulent activities.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. It notes that the Respondent registered the disputed domain name 12 years after the Complainant registered the 10DAYS trademark, on the same date as the date on which it registered the domain name <10daysschweiz.com> where it activated an identical false web shop. The Complainant refers in this regard to the decision in *10Days Wholesale B.V. v. Zhang Qiang*, WIPO Case No. [D2024-0732](#). According to the

Complainant, the Respondent must have registered the disputed domain name in an attempt to attract, for commercial gain, Internet users to the associated website by creating a likelihood of confusion with the 10DAYS trademark, and to use it for the sale of counterfeit goods or other fraudulent activities.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1. Procedural issue – Identity of the Respondent**

According to the Registrar's verification response, Scott Clarke is listed as the "Registrant Name" of the disputed domain name, "zhangqiang" as the "Registrant Organization", and Zhang Qiang is listed as reseller for the disputed domain name. The Complainant submits a copy of an email communication from the Registrar, where the Registrar confirms that Zhang Qiang is the registrant of the disputed domain name.

The Complainant regards Zhang Qiang as the Respondent, and the Center has notified both Scott Clarke and Zhang Qiang of the proceeding and has sent them the Complaint and the other case correspondence. Neither Scott Clarke, nor Zhang Qiang have submitted a Response or sent any other communication to the Center, and neither of them has objected to being regarded as the registrant of the disputed domain name and as the Respondent in this proceeding.

In these circumstances, the Panel finds it justified to treat Scott Clarke and Zhang Qiang as being under common control or as alter egos of the same person, and will refer to them jointly in this decision as the "Respondent".

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

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 shown rights in respect of the 10DAYS trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the 10DAYS trademark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the 10DAYS trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, "fashion" and "Canada") may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the 10DAYS trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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

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

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.

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.

Having reviewed 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.

The disputed domain name was registered over 10 years after the registration of the Complainant’s 10DAYS trademark, and its composition creates an impression that it resolves to an official website of the Complainant for Canada. This impression is further supported by the fact that the disputed domain name resolves to an online shop displaying the 10DAYS trademark and offering for sale goods branded with it displaying discounted prices in Canadian Dollars, without disclosing the name and contact details of the provider of the goods and the lack of relationship between it and the Complainant. The Complainant submits that the goods offered on the Respondent’s website are counterfeit, that the website contains copyright-protected images of the Complainant without authorization, and that the disputed domain name is used for fraudulent activities, and the Respondent does not deny this or provide any evidence or even allegation to the contrary. If the goods that the Respondent offers on its website are indeed counterfeit or the Respondent carries out fraudulent activities through the disputed domain name, this could not give rise to rights or legitimate interests of the Respondent in it. [WIPO Overview 3.0](#), section 2.13.1.

Even if the goods offered by the Respondent through its website are genuine, its website still does not disclose the lack of relationship with the Complainant and illegitimately claims copyright in the images displayed on it, which creates the false appearance that the website belongs to or is authorized by the Complainant. The Respondent’s use of the disputed domain name thus does not comply with the cumulative requirements of the Oki Data test, and his conduct still does not give rise to rights or legitimate interests in the disputed domain name. See section 2.8 of the [WIPO Overview 3.0](#).

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

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

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent registered the disputed domain name twelve years after the Complainant first registered its 10DAYS trademark and resolves to a website that features the same trademark and offers goods branded with it using copyright-protected images of the Complainant, without disclosing the lack of relationship with the same. In the lack of any allegation and evidence to the contrary, this supports a finding that the Respondent is well aware of the Complainant’s 10DAYS trademark and its business, and that it has registered the disputed domain name and activated the associated website targeting the 10DAYS trademark in an intentional attempt to attract, for commercial gain, Internet users by creating a likelihood of confusion with the 10DAYS trademark as to the affiliation of the disputed domain name and of the associated website.

Panels have held that the use of a domain name for illegal activity (here, claimed sale of counterfeit goods or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. If, as claimed by the Complainant, the goods offered on the Respondent's website are indeed counterfeit or the Respondent uses the disputed domain name for other fraudulent activities, that would be an additional argument for a finding of bad faith.

The Complainant also points out that the Respondent has already been found to have registered and used in bad faith another domain name that was confusingly similar to the 10DAYS trademark for an identical website selling counterfeit goods bearing the same trademark. The findings made by the Panel in *10Days Wholesale B.V. v. Zhang Qiang*, WIPO Case No. [D2024-0732](#), combined with the circumstances of the present case, support a conclusion that the Respondent registered and used the disputed domain name in bad faith.

Taking all the above into account, the Panel finds that the Complainant has established the third element 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 <10daysfashioncanada.com> be transferred to the Complainant.

*/Assen Alexiev/*

**Assen Alexiev**

Sole Panelist

Date: June 20, 2024