

ADMINISTRATIVE PANEL DECISION

The Gym King Limited v. Zhang Qiang
Case No. D2024-2386

1. The Parties

The Complainant is The Gym King Limited, United Kingdom, represented by Appleyard Lees IP LLP, United Kingdom.

The Respondent is Zhang Qiang, China.

2. The Domain Name and Registrar

The disputed domain name <gymkingaustralia.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 June 11, 2024. On June 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 June 17, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 7, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 10, 2024.

The Center appointed Peter Kružliak as the sole panelist in this matter on July 17, 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 was established under the business name The Gym King Limited in 2015 and is operating an international business in respect of a variety of athleisure goods and services via its online website “www.thegymking.com”, and has significant social media followings and cooperates with worldwide known celebrities.

The Complainant is the owner of registered GYM KING and GYM KING trademarks, including

- International trademark GYM KING with registration number 1529027, registered on March 17, 2020, for goods and services in classes 5, 9, 18, 21, 25 and 35 designating, inter alia, Australia, Canada, China, European Union, Japan, New Zealand and Türkiye;
- United States of America trademark GYM KING with registration number 87512673, registered on August 27, 2019, for goods in class 18;
- United States of America trademark GYM KING with registration number 87977317, registered on May 11, 2021, for goods in classes 25 and 35; and
- United Kingdom trademark GYM KING; GYM KING with registration number 00003231146, registered on August 25, 2017, for goods and services in classes 5, 9, 18, 21, 25, and 35.

(the “GYM KING Mark”)

As indicated, the Complainant is the owner of a domain name incorporating the GYM KING Mark, e.g. <thegymking.com>, where it promotes its products and services and through which it operates its international business.

The disputed domain name was registered on June 27, 2023. As of the date of the Complaint, a website operated from the disputed domain name, where the GYM KING Mark was prominently displayed, and the Complainant’s products were purportedly offered for sale.

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.

Notably, the Complainant contends that the disputed domain name is identical to or confusingly similar to the Complainant’s rights in the GYM KING Mark. The subdomain “www.” and the extension “.com” are generic and will go unnoticed by visitors to the disputed domain name. “Australia” in the disputed domain name is merely descriptive or a geographical term. The addition of descriptive and/or geographical terms are not sufficient to prevent a finding of confusing similarity and as the single distinctive and therefore dominant element of the disputed domain name is “gymking” which is identical to the GYM KING Mark, the disputed domain name is identical or highly similar to the Complainant’s rights.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name, as the disputed domain name was registered later than Complainant’s GYM KING Mark. The disputed domain name does not correspond to the name of the Respondent who has no rightful connection with the term GYM KING or GYM KING or any legitimate reason to use that mark or incorporate it in a registered domain name. The Complainant further contends that the disputed domain name resolves to a website that is simply a copy of the Complainant’s legitimate website, also offending the Complainant’s rights in copyright. Bearing in mind the Complainant’s trademarks, and its use of GYM KING or GYM KING since as early as 2015, there is according to the Complainant no realistic and legitimate reason that the Respondent would have in owning the disputed domain name, thus the website is clearly intended to take illegitimate advantage of the Complainant’s reputation by confusing consumers as to the origin of the goods and services provided.

The Complainant asserts that the disputed domain name was registered in bad faith because it is intended to take advantage of the Complainant's reputation and try and deceive consumers into believing the website is legitimate, which is shown by listing that copyright is owned by GYMKINGAUSTRALIA, the "Terms of Service" page, stating that the intellectual property rights are owed by the Respondent, purporting to sell products in Australian dollars (which are well below their RRP) and intentionally misleading and diverting consumers by operating a phishing site. When consumers see the disputed domain name, they will believe that the Complainant owns the website and that the goods available for sale are legitimate, in particular the use of the GYM KING brand with the country "Australia" in the disputed domain name will lead consumers to believe that this is the Complainant's official e-commerce site for Australia, which has the effect of driving traffic to the site and gives the Respondent an unfair competitive advantage. There is no attempt by the Respondent to provide goods or services through the disputed domain name, as the website is primarily used for phishing of data, thus the disputed domain name is being used by the Respondent for illicit purposes to deceive third parties into shipping products to them and/or entering personal information, which is compelling evidence that the Respondent registered and has used the disputed domain name in bad faith. The disputed domain name is registered in order to disrupt the business of the Complainant, and the Respondent has intentionally created a likelihood of confusion between the Complainant's legitimate domain name and the disputed domain name and the Respondent is using this likelihood of confusion for financial or commercial gain. As the Respondent owns 2390 domain names and there is no plausible explanation for owning such a high volume of domain names other than the Respondent engaging in a clear pattern of bad faith domain name registrations, which is further confirmed by several examples of the Respondent engaging in a pattern of bad faith registrations as shown on WIPO Case No. [D2024-0732](#), *10Days Wholesale B.V. v. Zhang Qiang*, and WIPO Case No. [D2024-0824](#), *Kyburn Joya Retail AG v. Zhang Qiang*, in fact patterns highly similar to the present case whereby the Respondent adopts a brand name together with geographical name and registers the domain name via the existing Registrar in this Complaint, Paknic Private Limited.

B. Respondent

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

6. Discussion and Findings

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 a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

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

Although the addition of other terms, in this case of "australia" may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark 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 Complainant alleges that the disputed domain name indicates that the website and the goods available for sale are legitimate and that the website, to which the disputed domain name resolves, is the Complainant’s official e-commerce site for Australia, which is supported by the available record. Absent an explanation from the Respondent to the contrary, the Panel infers from the prominent use of the GYM KING Mark, the amount of information that has been copied from the Complainant’s own website, including the Complainant’s photographs and images of the Complainant’s products from the Complainant’s official website, the indicated purchase prices of the products on the Respondent’s website being well below the recommended retail prices, and the indication of “GYMKINGAUSTRALIA” as the copyright holder and the owner of all other intellectual property rights in the Terms and Conditions of the website, that it is indeed likely that the disputed domain name resolves to an impersonating web store designed to mislead Internet users into believing that said website is related to official or endorsed distributor of the Complainant.

Panels have held that the use of a domain name for illegal activity here, claimed impersonation/passing off can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Panel further adds that even if the disputed domain name would be used for sale of the Complainant’s products, the Respondent’s use of the disputed domain name, based on the available record, is certainly not justified by the principle that a mark may be used legitimately without its owner’s consent to promote a bona fide offering of goods put on the market by its owner, as discussed in the Oki Data test and [WIPO Overview 3.0](#), section 2.8, which would require cumulative satisfaction of all of the following requirements:

- (i) The respondent must actually be offering the goods or services at issue;
- (ii) The respondent must use the website to sell only genuine trademarked goods or services;
- (iii) The website must accurately and prominently disclose the respondent’s relationship with the trademark owner; and
- (iv) The respondent must not try to corner the market in all domain names and thus deprive the trademark owner of reflecting its own mark in a domain name.

When considering the use of the disputed domain name and the website, to which the disputed domain resolved, the Respondent would not be able to claim the benefit of the Oki Data “safe harbor”; to the contrary - the composition of the disputed domain name consisting of the GYM KING Mark and additional geographic term “Australia”, the unauthorized use of the GYM KING Mark, as well as the website under the disputed domain name, which implies being the Complainant’s official e-commerce site for Australia indicates Respondent’s awareness of the Complainant and its GYM KING Mark and all of the aforementioned factors would create a risk of implied affiliation with the Complainant, even if Complainant’s products would be sold at the Respondent’s website. This further supports the finding of lack of any rights or legitimate interests of the Respondent in this case. [WIPO Overview 3.0](#), section 2.5.1.

The Panel 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 firstly notes that the Respondent has been a party to previous cases of abuse domain name registrations, specifically:

- *10Days Wholesale B.V. v. Zhang Qiang*, WIPO Case No. [D2024-0732](#); and *Kybun Joya Retail AG v. Zhang Qiang*, WIPO Case No. [D2024-0824](#), which related to the domain names <chaussuresjoya.com>, <joyaamsterdam.com>, <joyaargentina.com>, <joyaaustralia.com>, <joyabordeaux.com>, <joyaboty.com>, <joya-brussels.com>, <joyachaussuressuisse.com>, <joyacipo.com>, <joyacolombia.com>, <joyadebrasil.com>, <joyadubaimall.com>, <joyadublin.com>, <joyafootwearuk.com>, <joyahrvatska.com>, <joyajapan.com>, <joyaleón.com>, <joyamagyarország.com>, <joyanorge.com>, <joyaportugal.com>, <joyariga.com>, <joyaromania.com>, <joyaschoenenbelgië.com>, <joyaschoenen.com>, <joyaschuhedeutschland.com>, <joyaschuhewien.com>, <joyashoescanada.com>, <joyashoesgreece.com>, <joyashoesjapan.com>, <joyashoeskuwait.com>, <joyashoesonlinesale.com>, <joyashoesale.com>, <joyashoesuksale.com>, <joyaskodanmark.com>, <joyaskohelsingør.com>, <joyaskonorge.com>, <joyaskorstockholm.com>, <joyaslovenia.com>, <joyasrbija.com>, <joyasuomi.com>, <joyatoronto.com>, <joyatürkiye.com>, <joyauruguay.com>, <joywarszawa.com>, <scarpejoya.com>, <zapatosjobaratos.com>, <zapatosjoya.com>.

The circumstances of the aforementioned domain name cases are similar to the present one, including the Registrar.

Panels have held that establishing a pattern of bad faith conduct requires more than one, but as few as two instances of abusive domain name registrations. A pattern of abuse has also been found where the respondent registers, simultaneously or otherwise, multiple trademark abusive domain names corresponding to the distinct marks of individual brand owners. [WIPO Overview 3.0](#), section 3.1.2.

The Respondent has been involved in at least 17 UDRP cases, involving numerous domain name registrations of different individual brand owners' trademarks. This pattern of conduct is sufficient to establish bad faith on the part of the Respondent as it demonstrates an intent to prevent trademark holders from reflecting their marks in domain names.

Furthermore, in the present case, the Panel notes that the Respondent has established a web shop under the disputed domain name using the GYM KING Mark with general and descriptive geographical term "Australia", thereby impersonating the Complainant. The disputed domain name was used to resolve to a web shop displaying the GYM KING Mark purportedly offering for sale the Complainant's products and impersonating Complainant's official e-commerce site for Australia without any disclaimer of the lack of relationship between the Complainant and the Respondent, from which the Panel infers that it is likely that the Respondent targeted the GYM KING Mark when it registered the disputed domain name. In this Panel's view, the Respondent is, by using GYM KING Mark in the disputed domain name, as well as presenting the GYM KING Mark prominently on the website published under the disputed domain name and impersonating as official Complainant's website intentionally attempting to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant and its GYM KING Mark, which establishes bad faith.

Finally, requiring visitors to create an account and provide personal details without disclosing who processes this data, indicated by the Complainant and not rebutted by the Respondent, constitutes potential phishing, which is another act of 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 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.

Panels have held that the use of a domain name for illegal activity here, claimed impersonation/passing off, as well as potential phishing constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

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 <gymkingaustralia.com> be transferred to the Complainant.

/Peter Kružliak/

Peter Kružliak

Sole Panelist

Date: July 31, 2024