

ADMINISTRATIVE PANEL DECISION

Jazzercise, Inc. v. William Whitaker
Case No. D2024-3250

1. The Parties

Complainant is Jazzercise, Inc., United States of America (“United States”), represented by Mosaic Legal Group, PLLC, United States.

Respondent is William Whitaker, United States.

2. The Domain Name and Registrar

The disputed domain name <jazzercise.com> (hereinafter the “Disputed Domain Name”) is registered with Wild West Domains, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 7, 2024. On August 8, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On August 8, 2024, the Registrar transmitted by email to the Center its verification response confirming that 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 Respondent of the Complaint, and the proceedings commenced on August 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 5, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on September 10, 2024.

The Center appointed Lawrence K. Nodine as the sole panelist in this matter on September 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

Complainant is a fitness franchise company headquartered in Carlsbad, California, United States. Complainant's name is a portmanteau of "jazz" and "exercise." Complainant's franchisees lead music driven exercise classes. Complainant has several thousand franchisees worldwide.

Complainant owns United States trademark registrations for JAZZERCISE (hereinafter the "Mark"), including Nos. 1,587,879 (Registered March 20, 1990); 1,587,896 (Registered March 20, 1990); and 1,589,011 (registered March 27, 1990).

Complainant operates a website under the domain name <jazzercise.com>.

Respondent reregistered the Disputed Domain Name on August 27, 2009. The site is inactive, but Respondent offers it for sale via GoDaddy as a "Premium Site" for UDS 5,500.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name.

B. Respondent

Respondent did not reply to 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 Complainant's Mark and the Disputed Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

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 Panel finds the mark is recognizable 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. The Disputed Domain Name is misspelling of Complainant's well-known Mark, substituting a "z" for "s" in Complainant's Mark. Panels have uniformly held that domain names that exploit such common misspellings are confusingly similar under the Policy. [WIPO Overview 3.0](#), section 1.9 ("typosquatting").

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 Respondent may demonstrate rights or legitimate interests in a Disputed Domain Name.

Although the overall burden of proof in UDRP proceedings is on 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 Respondent. As such, where a complainant makes out a prima facie case that Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on Complainant). If Respondent fails to come forward with such relevant evidence, Complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the Disputed Domain Name. Respondent has not rebutted 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.

Respondent is not using the Disputed Domain Name for any purpose, except to advertise its availability for sale.

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.

The Panel finds that Respondent registered the Disputed Domain Name in bad faith. Where, as here, the Disputed Domain Name is a misspelling of a well-known trademark, the Panel may infer that Respondent was aware of and targeted the misspelled Mark. “Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos [. . .]) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith.” [WIPO Overview 3.0](#), section 3.1.4.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or reputation of Complainant’s Mark, and the composition of the Disputed Domain Name, and finds that in the circumstances of this case the passive holding of the Disputed Domain Name does not prevent a finding of bad faith under the Policy.

The Panel also finds that Respondent registered the Disputed Domain Name for the purpose of selling it to Complainant (or a competitor) for a profit. Respondent has not offered any benign purpose to justify its registration of the Disputed Domain Name.

The Panel finds that 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 <jazzercize.com> be transferred to Complainant.

/Lawrence K. Nodine/

Lawrence K. Nodine

Sole Panelist

Date: September 27, 2024