

## ADMINISTRATIVE PANEL DECISION

Swedish Match North Europe and Philip Morris International, Inc. v. 陈常清  
(chen chang qing)

Case No. D2024-3844

### 1. The Parties

Complainants are Swedish Match North Europe, Sweden; and Philip Morris International, Inc., United States of America (the “USA”), represented by D.M. Kisch Inc., South Africa.

Respondent is 陈常清 (chen chang qing), China.

### 2. The Domain Name and Registrar

The disputed domain name <zyn-online.com> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on September 20, 2024. On September 20, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 23, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to Complainants on September 23, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainants to submit an amendment to the Complaint. Complainants filed an amended Complaint in English on September 25, 2024.

On September 23, 2024, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the disputed domain name is Chinese. On September 25, 2024, Complainants confirmed its request that English be the language of the proceeding. Respondent did not submit any comment on Complainants’ submission.

The Center verified that the Complaint together with the amended 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 in English and Chinese of the Complaint, and the proceedings commenced on October 1, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 21, 2024. Respondent sent an email communication to the Center on September 26, 2024. In response thereto, the Complainant requested the suspension of the proceeding on October 1, 2024, pursuant to paragraph 17(a)(i) of the Rules. At the request of the Complainant, the proceeding was reinstated on October 11, 2024, and the Response due date was recalculated to October 31, 2024. Pursuant to paragraph 6 of the Rules, the Center informed the Parties that it would proceed with the panel appointment process on November 1, 2024.

The Center appointed Yijun Tian as the sole panelist in this matter on November 6, 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**

### **A. Complainant**

Complainant, Swedish Match North Europe AB, is a company incorporated in Sweden. Complainant, Philip Morris International, Inc., is a company incorporated in the USA. In May 2022, Complainant Swedish Match North Europe AB was acquired by Complainant Philip Morris International, Inc. (jointly referred to as “Swedish Match” or “Complainant”). Founded in 1992, Swedish Match specialises in smoke-free tobacco products, including ZYN nicotine pouches, launched in the USA in 2016. Complainant’s ZYN brand holds a 76% market share in the USA and is sold in key cities across 15 global markets.

Complainant has exclusive rights in the ZYN and ZYN-related marks. Complainant is the exclusive owner of numerous ZYN trademarks worldwide, including the USA trademark registered on October 11, 2016 (the USA Trademark registration number 5061008), and the International trademark registered on April 18, 2018 (the International Trademark registration number 1421212), covering destination jurisdictions including China.

### **B. Respondent**

Respondent is 陈常清 (chen chang qing), China.

The disputed domain name was registered on July 29, 2024. According to the Complaint and the evidence provided by Complainant, the disputed domain name resolved to a website purporting to be an authorised online store for Complainant’s ZYN nicotine products alongside competing third-party products of other commercial origins. The website also includes a copyright notice that specifically states: “© 2024 zyn-online”.

## **5. Parties’ Contentions**

### **A. Complainant**

Complainant contends that the disputed domain name is confusingly similar to Complainant’s ZYN trademark. The disputed domain name incorporates the ZYN trademark in its entirety. The mere addition of non-distinctive and descriptive word “online” does not provide adequate distinction to negate the conclusion that the disputed domain name is confusingly similar to the trademark ZYN.

Complainant contends that Respondent has no rights or legitimate interests in the disputed domain name.

Complainant contends that the disputed domain name was registered and is being used in bad faith.

Complainant requests that the disputed domain name be transferred to it.

## **B. Respondent**

Respondent did not formally reply to Complainant's contentions. However, Respondent informally responded in an email in English on September 26, 2024, seeking clarification on the next steps of the proceeding.

## **6. Discussion and Findings**

### **6.1 Procedural Issue: Language of the Proceeding**

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. Complainant requested that the language of the proceeding be English for several reasons, including the fact that:

- (a) the disputed domain name uses Latin script, indicating it targets at least an English-speaking audience;
- (b) the associated website ("www.zyn-online.com") is entirely in English, further demonstrating Respondent's understanding of the language;
- (c) Complainant, as a Swiss entity, lacks knowledge of Chinese;
- (d) filing the Complaint in English, a common global business language, is logical given Respondent's apparent use of English; and
- (e) Respondent's privacy registration service operates in English, as shown by its website ("https://wanwang.aliyun.com/"), which includes an English-language option.

Respondent did not provide specific submissions regarding the language of the proceeding. Instead, Respondent informally replied in an email in English on September 26, 2024, seeking clarification on the next steps of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, a panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

On the record, Respondent appears to be located in China and is thus presumably not a native English speaker, but considering the following aspects, the Panel has decided that the language of the proceeding shall be English: (a) the disputed domain name is registered in Latin characters, particularly in English (e.g., English word "online"), rather than Chinese script; (b) the generic Top-Level Domain ("gTLD") of the disputed domain name is ".com", so the disputed domain name seems to be prepared for users worldwide, particularly for English-speaking countries; (c) Respondent responded in English to the Center's email on September 26, 2024, seeking clarification on the next steps of the proceeding; (d) the Center has notified Respondent of the language of the proceeding in both Chinese and English, and Respondent has indicated no objection to Complainant's request that English be the language of the proceeding; and (e) the Center also notified Respondent in both Chinese and English of the Complaint, and informed Respondent that it

would accept a response in either English or Chinese, but Respondent chose not to file any substantive response.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

## **6.2 Substantive Issues: Three Elements**

### **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 trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds 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 Complainant's ZYN mark is recognisable 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.

While the addition of other characters or terms, "-" and "online", may bear on the assessment of the second and third elements, the Panel finds the addition of such characters or terms 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.

Based on the available record, 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.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognised that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible 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. 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 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.

More specifically:

(i) there has been no evidence adduced to show that Respondent used the disputed domain name in connection with a bona fide offering of goods or services. Respondent has not provided evidence of reasons to justify the choice of the term "zyn", the distinctive part of Complainant's ZYN trademark, in the disputed domain name. There has been no evidence to show that Complainant has licensed or otherwise permitted Respondent to use the ZYN trademark or to apply for or use any domain name incorporating the ZYN marks;

(ii) there has been no evidence adduced to show that Respondent has been commonly known by the disputed domain name. There has been no evidence adduced to show that Respondent has any registered trademark rights with respect to the disputed domain name. Respondent registered the disputed domain name on July 29, 2024, after the ZYN mark was registered internationally, covering destination jurisdictions including China (since 2018). The disputed domain name is confusingly similar to Complainant's ZYN marks; and

(iii) there has been no evidence adduced to show that Respondent was making a legitimate noncommercial or fair use of the disputed domain name. By contrast, the disputed domain name resolved to a website purporting to be an authorised online store for Complainant's products and third-party competing products, which does not qualify as fair use under the "Ok! Data test" found in section 2.8.1 of the [WIPO Overview 3.0](#). The website contained content copied from Complainant's official website and purported to offer Complainant's goods for sale. Additionally, the website featured a copyright notice stating: "© 2024 zyn-online", further increasing the likelihood of consumer confusion. It seems likely that Respondent was making profits through the Internet traffic attracted to the website under the disputed domain name. (See *BKS Bank AG v. Jianwei Guo*, WIPO Case No. [D2017-1041](#); and *Pet Plan Ltd. v. 权中俊 and 李金梁 (Li Jin Liang)*, WIPO Case No. [D2020-3358](#)).

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

Based on the available record, 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 notes that Respondent has registered and used the disputed 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 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.

Based on the information provided by Complainant, the Panel finds that Complainant has a reputation in the ZYN marks with regard to its products and services. It is not conceivable that Respondent would not have had Complainant's trademark in mind at the time of the registration of the disputed domain name (in 2024). This has been reinforced by the fact that the disputed domain name incorporates the distinctive part of Complainant's ZYN trademark, "zyn", entirely, and the use of Complainant's trademark on the website of the disputed domain name.

Respondent has used the website resolved by the disputed domain name for displaying the contents copied from the original website of Complainant, purporting to offer Complainant's goods for sale, and prominently displaying Complainant's ZYN mark. Moreover, the website contained a copyright notice stating: "© 2024 zyn-online".

Thus, the Panel concludes that Respondent is using a confusingly similar disputed domain name with the intention to attract, for commercial gain, Internet users to Respondent's website by creating a likelihood of confusion with Complainant. Such use constitutes bad faith pursuant to paragraph 4(b)(iv) of the Policy.

UDRP panels have held that the use of a domain name for illegal activity (i.e., impersonation/passing off) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Based on the available record, the Panel finds the third element of the Policy has been established.

## **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 <zyn-online.com> be transferred to Complainant.

*/Yijun Tian/*

**Yijun Tian**

Sole Panelist

Date: December 6, 2024