

## **ADMINISTRATIVE PANEL DECISION**

### **SAVE THE DUCK S.P.A. v. zheng zhou**

#### **Case No. D2024-4110**

#### **1. The Parties**

The Complainant is SAVE THE DUCK S.P.A., Italy, represented by Studio Legale de Vietro, Italy.

The Respondent is zheng zhou, China.

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

The disputed domain name <savetheduck-de.com> is registered with Cosmotown, Inc. (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 7, 2024. On October 7, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 9, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on October 11, 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 amended Complaint on October 14, 2024.

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 the Respondent of the Complaint, and the proceedings commenced on October 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 5, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 7, 2024.

The Center appointed Olga Zalomiy as the sole panelist in this matter on November 14, 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 an Italian clothing manufacturer that promotes a vegan or cruelty-free cause. The Complainant owns numerous SAVE THE DUCK trademark registrations around the world, such as:

- The European Union registration No. 015154181, for the SAVE THE DUCK (word and design) mark, registered on July 6, 2016.
- The International registration No. 1141758, for the SAVE THE DUCK (word and design) mark, registered on November 12, 2012.
- The International registration No. 1448950, for the SAVE THE DUCK (word and design) mark, registered on November 16, 2018.

The Respondent registered the disputed domain name <savetheduck-de.com> on September 18, 2024.

The disputed domain name directs to a website in German, which offers for sale clothing under the SAVE THE DUCK mark at significantly discounted prices. The website displays the word and design SAVE THE DUCK mark and contains no information about its owner other than a copyright notice with the words "SAVE THE DUCK Geschäft"<sup>1</sup>.

#### 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 confusingly similar to its SAVE THE DUCK trademark, as it incorporates the trademark in full. The Complainant further argues that the inclusion of the generic term "DE," commonly recognized as an abbreviation for Germany, does not mitigate the likelihood of confusion between the disputed domain name and its trademark. Additionally, the Complainant contends that the presence of the generic Top-Level Domain ("gTLD") ".com" does not eliminate the confusing similarity.

The Complainant submits that the Respondent has no rights or legitimate interests in the disputed domain name because (i) the Respondent's is neither affiliated or has been authorized by the Complainant to use its well-known SAVE THE DUCK trademark in the disputed domain name or in any other form; (ii) there is no evidence that the Respondent is commonly known by the disputed domain name; (iii) the Respondent is not using the disputed domain name for a bona fide offering of goods or services or for a legitimate, noncommercial purposes; (iv) the disputed domain name directs users to a website that offers for sale the Complainant's goods. The website under the disputed domain name does not accurately disclose the lack of relationship between the Respondent and the Complainant.

The Complainant asserts that the Respondent registered the disputed domain name in bad faith because it was registered with the Complainant's trademark in mind. The Complainant argues that its trademark is well-known throughout the world, so it is unlikely that the Respondent did not know about the Complainant's mark at the time of the disputed domain name's registration. The composition of the disputed domain name supports this conclusion because the disputed domain name consists of the Complainant's well-known mark and a geographically descriptive term "DE", which creates an impression of an affiliation between the website under the disputed domain name and the Complainant. The Complainant contends that the Respondent's use of the disputed domain name constitutes bad faith, since the Respondent is using the disputed domain

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<sup>1</sup> This translates to English as "SAVE THE DUCK business".

name to direct to a website that offers for sale the Complainant's goods at significantly discounted prices. The Complainant's word and design trademarks are also prominently displayed on the website under the disputed domain name. The Complainant argues that the disputed domain name was registered to confuse Internet users into believing that the website is associated with the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

Pursuant to paragraph 4(a) of the Policy, to succeed in this proceeding, the Complainant must prove each of the following elements with respect to the disputed domain name:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

### **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. The inclusion of the gTLD ".com" is typically disregarded in the context of the confusing similarity assessment, being a technical requirement of registration. [WIPO Overview 3.0](#), section 1.11.1.

Although the addition of other terms here, the country code "de" and a hyphen, 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 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 evidence on record shows that the Respondent is not commonly known by the disputed domain name. The Respondent has not been authorized by the Complainant to use the Complainant's trademark in a domain name. Nor is the Respondent making a legitimate noncommercial or fair use of the disputed domain name or uses it for bona fide offering of goods or services, because the disputed domain name directs to an online store purportedly selling the Complainant's goods.

Previous UDRP panels have recognized that resellers or distributors using domain names containing the complainant's trademark to undertake sales of the complainant's goods may be making a bona fide offering of goods and thus have rights or legitimate interests in such domain names in some situations.

Outlined in the *Oki Data* case<sup>2</sup>, the following cumulative requirements must be satisfied for the respondent to make a bona fide offering of goods and services:

- “(i) the respondent must actually be offering the goods or services at issue;
- (ii) the respondent must use the site to sell only the trademarked goods or services;
- (iii) the site must accurately and prominently disclose the registrant's relationship with the trademark holder;
- and
- (iv) the respondent must not try to corner the market in domain names that reflect the trademark.”

Here, the disputed domain name directs users to the online store that offers for sale the purported Complainant's goods at significantly discounted prices. The website provided no information about the Respondent or its lack of affiliation with the Complainant other than stating that it is “SAVE THE DUCK business”. Therefore, the Respondent failed to satisfy the *Oki Data* test.

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 the Respondent registered the disputed domain name incorporating the Complainant's SAVE THE DUCK trademark and the country code for Germany many years after the Complainant's first trademark registration. The Respondent's lack of rights or legitimate interests in the disputed domain name, the absence of a credible explanation for choosing the disputed domain name, and the Respondent's use of the Complainant's word and design trademarks on its website, which creates an affiliation with the Complainant indicate that the disputed domain name was registered in bad faith.

The UDRP establishes that, for purposes of paragraph 4(a)(iii), “bad faith” registration and use of a domain name can be established by a showing of circumstances indicating that the respondent is using the domain name to intentionally attempt 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 source,

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<sup>2</sup> See WIPO Overview 3.0, section 2.8.1; and *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

sponsorship, affiliation or endorsement of the respondent's website or location, or of a product or service on the respondent's website or location. See Policy, paragraph 4(b)(iv).

Prior UDRP panels have found "the following types of evidence to support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark: (i) actual confusion, (ii) seeking to cause confusion (including by technical means beyond the domain name itself) for the respondent's commercial benefit, even if unsuccessful, (iii) the lack of a respondent's own rights to or legitimate interests in a domain name, (vi) absence of any conceivable good faith use." [WIPO Overview 3.0](#), section 3.1.4.

Here, the Respondent who has no rights to or legitimate interests in the disputed domain name, registered the disputed domain name that incorporates the Complainant's trademark along with a country code for Germany to direct Internet users to a website in German that offers for sale the purported Complainant's goods at a significantly discounted price. The only information about the owner of the website is that it is "SAVE THE DUCK business". Such use creates an impression of a regional website of the Complainant. Therefore, the Panel concludes that the Respondent registered and is using the disputed domain name to intentionally attempt to attract, for commercial gain, the 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 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 <savetheduck-de.com> be transferred to the Complainant.

*/Olga Zalomiy/*

**Olga Zalomiy**

Sole Panelist

Date: November 27, 2024