

## ADMINISTRATIVE PANEL DECISION

Swedish Match North Europe AB, Philip Morris International, Inc. v. 李吉瑞 (li ji rui)

Case No. D2024-4325

### 1. The Parties

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

The Respondent is 李吉瑞 (li ji rui), China.

### 2. The Domain Names and Registrar

The disputed domain names <dailyzyn.com> and <zyn-shop.com> are 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 October 21, 2024. On October 21, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 22, 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 (Private Registrations) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 23, 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 in English on October 24, 2024.

On October 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 October 24, 2024, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s 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 the Respondent in Chinese and English of the Complaint, and the proceedings commenced on October 29, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 18, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 19, 2024.

The Center appointed Tao Sun as the sole panelist in this matter on November 21, 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 first Complainant is a Swedish company and the second Complainant is a United States company. Both Complainants are within the same group and more specifically the first Complainant is the subsidiary of the second Complainant.

The first Complainant primarily engages in the business of manufacturing, marketing, and selling smoke free tobacco products, such as snus and nicotine pouches, which are sold in the Nordics and in the United States. One of these smoke-free products manufactured and sold by the first Complainant are nicotine pouches under the ZYN brand. First launched in the United States in 2016, the ZYN nicotine products are now available in key cities in around 15 markets across the world.

The Complainants own, among others, the following registered trademarks:

- (i) The International registration No. 1421212 ZYN in class 34, registered on April 18, 2018; and
- (ii) The International registration No. 1456681 ZYN & device in class 34, registered on December 27, 2018.

The Respondent is reportedly a Chinese individual.

The disputed domain names <dailyzyn.com> was registered on September 5, 2024 and <zyn-shop.com> was registered on July 17, 2024. According to the evidence submitted by the Complainants, the disputed domain names <dailyzyn.com> and <zyn-shop.com> are linked to online shops at “www.dailyzyn.com” and “www.zyn-shop.com” respectively allegedly selling and offering ZYN nicotine products. At the top of these websites, “Daily ZYN” and “ZYN® SHOP” are prominently displayed. In the website of <dailyzyn.com>, there are “Buy ZYN Flavors Online – DailyZYN Store” at the top. In the website of <zyn-shop.com>, there are notices of “Welcome to the official ZYN online shop” at the top and “ZYN® Official Shop” at the bottom. This online store offers not only ZYN nicotine products but also third party tobacco products.

#### **5. Parties’ Contentions**

##### **A. Complainants**

The Complainants contend that each of the elements required under the Policy for a transfer of the disputed domain names has been satisfied.

Notably, the Complainants contend that:

- (i) The disputed domain names reproduce the Complainants’ ZYN trademark in its entirety, in addition to the nondistinctive and descriptive word “daily” (in respect of the disputed domain name <dailyzyn.com>) and

the word “shop” (in respect of the disputed domain name <zynshop.com>.) Any Internet user when visiting a website provided under the disputed domain names will reasonably expect to find a website commercially linked to the owner of the ZYN trademarks. Therefore, the first element of the UDRP is met.

(ii) The Complainants have not licensed or otherwise permitted the Respondent to use any of its trademarks or to register the disputed domain names incorporating its ZYN trademark. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain names. Neither can the uses of the disputed domain names be considered a bona fide offering of goods so as to establish a legitimate interest on behalf of the Respondent.

(iii) It is evident from the Respondent’s use of the disputed domain names that the Respondent knew of the Complainants’ ZYN trademark when registering the disputed domain names. It is also evident from the Respondent’s use of the disputed domain names that the Respondent registered and used the disputed domain names with the intention to attract, for commercial gain, Internet users to the websites by creating a likelihood of confusion with the Complainants’ registered ZYN trademark as to the source, sponsorship, affiliation, or endorsement of its website(s) or location or of a product or service on its website(s) or location(s), which constitutes registration and use in bad faith

## **B. Respondent**

The Respondent did not reply to the Complainants’ contentions.

## **6. Discussion and Findings**

### **6.1. Preliminary Issues: 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. The Complainants requested that the language of the proceeding be English for several reasons, including the fact that:

(i) there is plenty of evidence showing that the Respondent is capable of communicating in English in this case, including the disputed domain names are in Latin scripts, and the websites under the disputed domain names are both in English; and

(ii) to require the Complainants to translate the Complaint and all supporting documents into the language of the registration agreement (e.g. Chinese) would cause an unnecessary burden to the Complainants and unnecessarily delay the proceeding.

The Respondent did not make any specific submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the 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).

Having considered all the matters above, and although the Center sent the emails in Chinese and English regarding the language of the proceeding and notification of the Complaint, the Respondent did not make any comments on the language of the proceeding, and did not file any response, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

## **6.2. Substantive Issues**

### **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 3.0](#), section 1.7.

The Complainants have 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 disputed domain names incorporate the Complainants' ZYN trademarks in their entirety and therefore should be considered confusingly similar with the Complainants' trademarks for purpose of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other generic terms "daily" and "-shop" 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 names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Therefore, 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 Complainants have established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Respondent has not rebutted the Complainants' prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

The Complainants have asserted that they have not licensed or otherwise permitted the Respondent to use any of its trademarks or to register a domain name incorporating its ZYN trademark. The disputed domain names resolved to the websites purportedly offering for sale nicotine products with ZYN trademarks prominently displayed in the websites. There are notices of "Buy ZYN Flavors Online – DailyZYN Store", "Welcome to the official ZYN online shop", and "ZYN® Official Shop" in such websites. There are also third party nicotine products offered in the website of the disputed domain name <zyn-shop.com>. As the Complainants correctly maintain, no matter the ZYN products offered for sale on the Respondent's websites are genuine ZYN products or not, such use fails to pass the Okidata test as the sites do not accurately and prominently disclose the Respondent's relationship with the Complainants. [WIPO Overview 3.0](#), section 2.8. Moreover, the composition of the disputed domain name carries a risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

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 Complainants' ZYN trademark is inherently distinctive and has acquired certain reputation through use especially in the United States. The disputed domain names contain ZYN trademark in its entirety with the addition of "daily" or "shop", which can easily be understood to represent daily products or the online shop selling ZYN brand products. Therefore, the composition of the disputed domain names may mislead Internet users into thinking they relate to the Complainants. In addition, considering the use of the Complainants' ZYN trademark widely in the webpages at the disputed domain names, the Panel finds that the Respondent knew of the Complainants and registered the disputed domain names in bad faith.

Furthermore, the disputed domain names are resolved to the websites in English where the ZYN products nicotine products are offered for sale, and there are prominent notices of "Buy ZYN Flavors Online – DailyZYN Store", "Welcome to the official ZYN online shop", and "ZYN® Official Shop" in such websites, suggesting that the websites are online daily or official stores of the Complainants' ZYN branded products. Considering all these facts, the Panel is convinced that the Respondent was aware of the Complainants' ZYN trademark and intentionally attempted to attract, for commercial gain, Internet users to the Respondent's websites, by creating a likelihood of confusion with the Complainants' mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's websites and therefore is using the disputed domain names in bad faith.

The Respondent's failure to file any formal response also supports a finding of bad faith.

The Panel finds that the Complainants have 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 names <dailyzyn.com> and <zyn-shop.com> be transferred to the Complainants.

*/Tao Sun/*

**Tao Sun**

Sole Panelist

Date: December 6, 2024