

ADMINISTRATIVE PANEL DECISION

Taojing International Limited, and Zenni Optical, Inc v. Jurgen Neeme Case No. DCO2022-0064

1. The Parties

The Complainants are Taojing International Limited, China, and Zenni Optical, Inc, United States of America (“United States”), represented by Green & Green Law Offices, United States.

The Respondent is Jurgen Neeme, Estonia.

2. The Domain Names and Registrar

The disputed domain names <zennieoptical.co>, and <zeni.me> are registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 17, 2022. On August 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On August 20, 2022, 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 for the disputed domain names.

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 August 25, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 14, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 16, 2022.

The Center appointed Knud Wallberg as the sole panelist in this matter on September 22, 2022. 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, Taojing International Ltd., is the owner of a range of trademark registrations that consists of the element ZENNI in numerous jurisdictions since 2002, including United States Registration No. 3389855 for ZENNI, registered on February 26, 2008, in class 9; United States Registration No. 3597735 for ZENNI OPTICAL, registered on March 31, 2009, in classes 9 and 35; and United States Registration No. 6438164 for ZENNI.COM, registered on August 3, 2021, in class 9.

The Second Complainant, Zenni Optical, Inc., is the exclusive licensee of the Complainant, Taojing International Ltd., and is the operator of the online retail shops at the domain names <zennioptical.com>, and <zenni.com>.

The Respondent registered the disputed domain name <zeni.me> on December 25, 2021, and the disputed domain name <zennieoptical.co> on March 14, 2022. The disputed domain names resolve to websites with pay-per-click (“PPC”) links to various third-party websites some of which appear to offer goods and services that are in competition with the goods and services of the Complainants.

5. Parties’ Contentions

A. Complainant

The Complainants assert that the disputed domain name <zennieoptical.co> is confusingly similar to the Complainants’ ZENNI OPTICAL mark, and that the disputed domain name <zeni.me> is confusingly similar to the Complainants’ ZENNI mark. Both disputed domain names are thus calculated misspellings of the Complainants’ marks.

The Complainants further assert that the Respondent does not have any trademark or service mark or any other rights to any ZENNI marks. Furthermore, the Respondent’s use of the disputed domain names to host parked pages comprising pay-per-click links does not represent a *bona fide* offering of goods or services where such links compete with or capitalize on the reputation and goodwill of the Complainants’ mark or otherwise mislead Internet users, nor does this use constitute legitimate noncommercial or fair use of the disputed domain names.

The Complainants finally assert that that the Respondent has registered and are using the disputed domain names in bad faith since it is obvious that by registering and using the disputed domain names, the Respondent is intentionally attempting to attract for commercial gain, Internet users to the Respondent’s website or other online location, by creating a likelihood of confusion with the Complainants’ 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.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following:

- (i) that the domain name registered by the respondent is identical or confusingly similar to a trademark or service mark in which the complainant has rights;

- (ii) that the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) that the domain name has been registered and is being used in bad faith.

Paragraph 4(a) of the Policy states that the burden of proving that all these elements are present lies with the Complainants. At the same time, in accordance with paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules, or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

A. Identical or Confusingly Similar

The Panel finds that the disputed domain name <zennieoptical.co> is confusingly similar (in the sense of the Policy) to the Complainants' registered trademark ZENNI OPTICAL because it contains the Complainants' mark in its entirety with the addition of the letter "e" in the middle. The Panel further finds that that the disputed domain name <zeni.me> is confusingly similar (in the sense of the Policy) to the Complainants' registered trademark ZENNI, since it only differs from this mark, by the omission of the letter "n". The country code Top-Level Domains ("ccTLD") ".co" and ".me" respectively are standard registration requirements and as such are disregarded under the first element confusing similarity test. See Section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Panel finds that the conditions in paragraph 4(a)(i) of the Policy are therefore fulfilled in relation to the disputed domain names.

B. Rights or Legitimate Interests

It follows from the information that is included in the Complaint, that the Complainants have not licensed or otherwise permitted the Respondent to use its trademark in any way.

Further, given the circumstances of this case, the Panel is of the opinion that the Complainants have established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain names. The Respondent has not rebutted this, and the way the Respondent has been and are using the disputed domain names (see below in Section 6.C) does not support a finding of rights or legitimate interests.

Consequently, the Panel finds that the conditions in paragraph 4(a)(ii) of the Policy are also fulfilled.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires the Complainants to prove both registration and use of the disputed domain names in bad faith. Paragraph 4(b) of the Policy provides examples of circumstances, which shall be evidence of registration and use in bad faith:

- (i) circumstances indicating that the holder has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the holder's documented out-of-pocket costs directly related to the domain name; or
- (ii) the holder has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the holder has engaged in a pattern of such conduct; or

(iii) the holder has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the holder has intentionally attempted to attract, for commercial gain, Internet users to the holder'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 holder's website or location or of a product or service on the holder's website or location.

Accordingly, for the Complainants to succeed, the Panel must be satisfied that the disputed domain names have been registered and are being used in bad faith.

In view of the Complainants' widely used and distinctive trademarks ZENNI and ZENNI OPTICAL, it is inconceivable to the Panel that the Respondent registered the disputed domain names without prior knowledge of the Complainants and the Complainants' marks. Further, the Panel finds that the Respondent could not have been unaware of the fact that the disputed domain names it chose could attract Internet users in a manner that is likely to create confusion for such users.

The Panel thus finds that the disputed domain names were registered in bad faith.

The Respondent is using the disputed domain names actively for PPC pages that contain links to websites of third parties, some of which appear to offer goods and services of competitors of the Complainants. It is thus obvious to the Panel that the Respondent uses the disputed domain names in bad faith by intentionally attempting to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainants' mark as to the source, sponsorship, affiliation, or endorsement of its websites. See section 3.5 of the [WIPO Overview 3.0](#).

Noting that no response has been filed, that there appears to be no conceivable good faith use that could be made by the Respondent of the disputed domain names, and considering all the facts and evidence, the Panel finds that the requirements of paragraph 4(a)(iii) of the Policy are also fulfilled in this case.

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, <zennieoptical.co> and <zeni.me>, be transferred to the Complainants.

/Knud Wallberg/

Knud Wallberg

Sole Panelist

Date: October 12, 2022