

ADMINISTRATIVE PANEL DECISION

ZO Skin Health, Inc. v. Digital Privacy Corporation / Mihail Kuzceplov
Case No. DME2022-0015

1. The Parties

The Complainant is ZO Skin Health, Inc., United States of America (“United States”), represented by ZwillGen PLLC, United States.

The Respondent is Digital Privacy Corporation, United States / Mihail Kuzceplov, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <zoskin.me> is registered with 101domain GRS Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 18, 2022. On July 19, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 20, 2022, 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 July 28, 2022, 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 July 29, 2022.

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 August 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 23, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 24, 2022.

The Center appointed Assen Alexiev as the sole panelist in this matter on August 31, 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 Complainant is a medical-grade skincare company. It was launched in 2006 and now sells its products in over one hundred countries.

The Complainant is the owner of the following trademark registrations ZO, ZO SKIN HEALTH and ZO SKIN CENTRE:

- the United States trademark ZO with registration No.4,688,942, registered on February 17, 2015 for services in International Class 44 (the “ZO trademark”);
- the European Union trademark ZO SKIN HEALTH with registration No.008708711, registered on May 27, 2010 for goods and services in International Classes 3, 5 and 44 (the “ZO SKIN HEALTH trademark”); and
- the United States trademark ZO SKIN CENTRE with registration No.4,786,332, registered on August 4, 2015 for services in International Class 44 (the “ZO SKIN CENTRE trademark”).

The disputed domain name was registered on September 30, 2021. At the time the complaint was filed, it resolved to a Russian language website that offered what appear to be products of the Complainant with prices in Russian rubles. At the time of this decision, it resolves to an inactive website.

5. Parties' Contentions

A. Complainant

The Complainant submits that the disputed domain name is confusingly similar to the ZO, ZO SKIN HEALTH and ZO SKIN CENTRE trademarks in which it has rights, because the disputed domain name incorporates the ZO trademark with the addition of the dictionary word “skin”, which is also used in the ZO SKIN CENTRE and the ZO SKIN HEALTH trademarks and does not differentiate the disputed domain name from the Complainant. Rather, given that the Complainant sells skincare products, the use of the word “skin” in the disputed domain name suggests that it is a skincare retail website, and this is reinforced by the website at the disputed domain name, which features images of real products of the Complainant in an image carousel similar to that found on the Complainant’s website. Other pages on the same website, which is all in the Russian language, purport to sell products of the Complainant. The website at the disputed domain name also includes a page which features images and information about the Complainant’s founder Dr. Zein Obagi. These images, texts and purported product offerings appear to have been taken from the official website of the Complainant and create confusion by suggesting that the disputed domain name is operated by the Complainant and is aimed at Russian consumers.

According to the Complainant, the Respondent has no rights or legitimate interests in the disputed domain name, as it has not used it in connection with a *bona fide* offering of goods or services, is not commonly known by the disputed domain name, and has made no legitimate noncommercial or fair use of the disputed domain name without intent to misleadingly divert consumers for commercial gain or to tarnish the Complainant’s trademarks. The Respondent has ripped images and text from the real website of the Complainant to make its website appear as an official website of the Complainant directed at Russian consumers although the Respondent is not an authorized Russian retailer of the Complainant. According to the Complainant, the Respondent’s website appears to be a scam, designed to trick Russian consumers into providing payment information, either in exchange for inferior products or for nothing at all.

The Complainant contends that the Respondent has registered and is using the disputed domain name in bad faith by intentionally attempting to profit off the success and good name of the Complainant to attract web traffic for commercial gain by creating a likelihood of confusion with the Complainant’s name and trademarks.

B. Respondent

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

6. Discussion and Findings

6.1. Some Procedural Considerations

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition.

The Respondent's physical mailing address is stated to be in Ukraine, and the indicated phone number of the Respondent includes the dialing code for Ukraine. Ukraine is currently subject to a military conflict with the Russian Federation and this may impact case notification. It is therefore appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

Having considered the circumstances of the case, the Panel decides that they do not justify a suspension or termination of the proceeding, and it is proper to conclude it with a decision on the substance of the dispute.

The Respondent's purported mailing address in Ukraine does not appear to exist, as a Google search of this address does not show that it corresponds to a genuine street name, and the courier used for delivering the written notice could not deliver it. The website hosted at the disputed domain name offers products with prices indicated in Russian rubles and contains the statement "*Zo Skin Health – buy original cosmeceuticals Zein Obagi in Russia*" (in Russian), which may further support an inference that the Respondent is not located in Ukraine, but in the Russian Federation. The Panel notes that the Center sent the Notification of Complaint by email to the Respondent at its email address as registered with the Registrar and to another email address of the Respondent, as well as through a web form on the same website. There is no evidence that the case notification email messages to these email addresses were not successfully delivered.

The Panel also notes that the disputed domain name resolves at the time of this decision to an inactive website whereas it was resolving to a Russian language website that offering what appeared to be products of the Complainant with prices in Russian rubles.

It is moreover noted that, for the reasons which are set out later in this Decision, the Panel has no serious doubt (albeit in the absence of any Response) that the Respondent registered and has used the disputed domain name in bad faith and with the intention of unfairly targeting the Complainant's goodwill in its trademark.

On the basis of the above, the Panel is satisfied that each of the Parties has been given a proper notice of the proceeding and a fair opportunity to present its case, and proceeds to issue the present Decision.

6.2. Substantive issues

Pursuant to the Policy, paragraph 4(a), the Complainant must prove each of the following to justify the transfer of 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 Respondent has registered and is using the disputed domain name in bad faith.

In this case, the Center has employed the required measures to achieve actual notice of the Complaint to the Respondent, in compliance with the Rules, paragraph 2(a), and the Respondent was given a fair opportunity to present its case.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: “[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name [...]”.

The Respondent has however not submitted a Response.

A. Identical or Confusingly Similar

The Complainant has provided evidence that it is the owner of the ZO, ZO SKIN HEALTH and ZO SKIN CENTRE trademarks and thus established its standing to file the Complaint.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the Top-Level Domain section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). 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 sees no reason not to follow the same approach here, so it will disregard the “.me” country-code Top-Level Domain (“ccTLD”) of the disputed domain name.

The relevant part of the disputed domain name for purposes of the first element analysis is therefore the sequence “zoskin”, which reproduces the ZO trademark entirely with the addition of the dictionary word “skin”. As discussed in section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The relevant part of the disputed domain name also reproduces the dominant “zo” and “skin” elements of the ZO SKIN HEALTH and ZO SKIN CENTRE trademarks, which makes these trademarks recognizable in the disputed domain name. As discussed in section 1.7 of the [WIPO Overview 3.0](#), in cases where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.

In view of the above, the Panel finds that the disputed domain name is confusing similar to the ZO, ZO SKIN HEALTH and ZO SKIN CENTRE trademarks in which the Complainant has rights.

B. Rights or Legitimate Interests

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP panels have recognized 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. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, because it has not used it in connection with a *bona fide* offering of goods or services, is not commonly known by the disputed domain name, is not an authorized Russian retailer of the Complainant, and has made no legitimate noncommercial or fair use of the disputed domain name. Rather, the Respondent has used images and text from the official website of the Complainant to create a website that appears as an official website of the Complainant directed at Russian consumers in an attempt to trick such consumers into providing payment information, either in exchange for inferior products or for nothing at all.

The Complainant has thus established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent does not dispute the contentions of the Complainant and does not allege having rights or legitimate interests in the disputed domain name. It has not provided any plausible explanation for the registration and use of the disputed domain name.

The disputed domain name is confusingly similar to the ZO, ZO SKIN HEALTH and ZO SKIN CENTRE trademarks and to the Complainant's company name, and the evidence in the case file shows that it resolves to a Russian-language website that offers what appear to be products of the Complainant with prices set in Russian rubles. There is no information whether the offered products indeed originate from the Complainant or not. The website contains the statements "Zo Skin Centre by Zein Obagi MD" (in English), "Exclusive cosmeceuticals of Doctor Zein Obagi directly from the USA" (in Russian), and "Zo Skin Health – buy original cosmeceuticals Zein Obagi in Russia" (in Russian). There is no disclaimer for the lack of relationship with the Complainant and the actual provider of the goods offered on the Respondent's website is not specified.

As discussed in section 2.8.1 of the [WIPO Overview 3.0](#), Panels acting under the Policy have recognized that resellers, distributors, or service providers using a domain name containing the complainant's trademark to undertake sales or repairs related to the complainant's goods or services may be making a *bona fide* offering of goods and services and thus have a legitimate interest in such domain name. Outlined in the "Oki Data test", the following cumulative requirements will be applied in the specific conditions of a UDRP case:

- (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.

The Panel finds that the Respondent's conduct does not meet the Oki Data test, because the website at the disputed domain name does not disclose the lack of relationship between the Parties. Rather, its content suggests that the website is maintained by the Complainant itself for its customers in the Russian Federation. The Panel does not regard this conduct of the Respondent as legitimate and giving rise to rights or legitimate interests of the Respondent in the disputed domain name.

Therefore, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

- "(i) circumstances indicating that you have registered or you have 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 your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have 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 you have engaged in a pattern of such conduct; or

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

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location."

As discussed in the previous sections, the disputed domain name is confusingly similar to the Complainant's ZO, ZO SKIN HEALTH and ZO SKIN CENTRE trademarks and to the Complainant's company name. It is being used for a website whose content suggests that it is an official website of the Complainant and which offers what appear to be the Complainant's products without disclosing the lack of relationship between the Parties and the identity of the provider of the offered goods. It is unclear whether the products offered on the website are original.

In view of the above, the Panel accepts as more likely than not that the Respondent has registered the disputed domain name targeting the ZO, ZO SKIN HEALTH and ZO SKIN CENTRE trademarks, and by using it, it has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainants and its trademarks as to the affiliation of the Respondent's website and of the origin of the goods offered on it. Therefore, the Panel finds that the disputed domain name was registered and is being used in bad faith.

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 <zoskin.me> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: September 7, 2022