

## **ADMINISTRATIVE PANEL DECISION**

### **Hyzon Motors USA Inc. v. Undeveloped Escrow, Undeveloped Escrow Case No. D2024-0536**

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

The Complainant is Hyzon Motors USA Inc., United States of America (“United States”), represented by Ward Law Office, LLC, United States.

The Respondent is Undeveloped Escrow, Undeveloped Escrow, Netherlands.

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

The disputed domain name <hyzon.com> is registered with Metaregistrar BV (the “Registrar”).

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

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 6, 2024. On February 6, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (Owner of <hyzon.com>) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 7, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant did not file any amendment to the Complaint or amended Complaint.

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 February 28, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 19, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 20, 2024.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on March 25, 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 a corporation formed under the laws of the State of Delaware, United States. The only information provided in the Complaint regarding the Complainant's business activities is the unsupported submissions that its HYZON trademark has been in continuous use since 2021, and that said mark has become well known and identified exclusively with the Complainant's lorries, trucks, fuel cell, and fuel cell integration.

The Complainant supplied a list of ten numbered registered trademarks but did not provide any certificates or prints from official websites featuring the marks concerned. The Panel has done its best to look each of said trademark numbers up on the relevant official online resources.<sup>1</sup> It appears from this research that on or about July 16, 2021, a company named "DCRB Merger Sub Inc." merged with "Hyzon Motors Inc." and took on the new name of "Hyzon Motors USA Inc."<sup>2</sup> Based upon that information, the Panel assumes that the merged entity is the Complainant. This is of relevance because two of the trademarks on the Complainant's list appear to be registered under its former name, Hyzon Motors Inc. For present purposes, the Panel will treat these along with the other eight trademarks as being owned by the Complainant.

The earliest registered trademark owned by the Complainant for the HYZON mark appears to be the European Union Registered Trademark Number 18228824 for the word mark HYZON, registered on September 12, 2020 in Class 12 (motor vehicles). Said trademark was filed on April 23, 2020. The earliest filing of any HYZON trademark on the Complainant's list is the Australian Registered Trademark Number 2057626 for the word mark HYZON, registered on September 21, 2020 in Classes 9 and 12. Said trademark was filed on January 7, 2020.

According to Whois records, the disputed domain name was registered on December 16, 2018. The Complainant states that it was "purchased in 2016" but does not explain that discrepancy. In any event, the registration of the disputed domain name appears to predate both the filing and registration dates of any of the trademarks cited by the Complainant. Nothing is known of the Respondent, which has not participated in the administrative proceeding. The website associated with the disputed domain name is not configured and presents an "Origin is unreachable" message provided by the nameserver host.

#### **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 identical or confusingly similar to the Complainant's trademarks, that the disputed domain name has never been used and its website has never been live, and that there appears to be no intent to use the disputed domain name.

---

<sup>1</sup>On the topic of a panel conducting such independent research of publicly available sources, see section 4.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

<sup>2</sup>This information was obtained from the United States Patent and Trademark Office website in respect of an assignment of United States Registered Trademark Number 6598726 following said merger and change of name.

The Complainant also contends that the Respondent has no rights or legitimate interests in the disputed domain name, has no corresponding trademark registrations or applications, has made no showing or intent to use such mark or the disputed domain name in commerce, is not commonly known by the disputed domain name, is not making a legitimate noncommercial or fair use of the disputed domain name, and is not using it in connection with a bona fide offering of goods or services.

Finally, the Complainant asserts that the Respondent has registered and is using the disputed domain name in bad faith, that it has never been used, and is renewed yearly. The Complainant also adds, but does not evidence, that the Complainant was formed in 2017 with the company name of “Hyzon Motors” and states that its name has been used consistently since its foundation. It concludes that its name is unique and that no one would be interested in using the disputed domain name apart from the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **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 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 identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The fact that a domain name may have been registered before a complainant has acquired trademark rights does not by itself preclude a complainant’s standing to file a UDRP case, nor a panel’s finding of identity or confusing similarity under the first element. [WIPO Overview 3.0](#), section 1.1.3.

The Panel finds the first element of the Policy has been established.

### **B. Rights or Legitimate Interests**

The requirements of paragraph 4(a) of the Policy are conjunctive. A consequence of this is that failure on the part of a complainant to demonstrate one element of the Policy will result in failure of the complaint in its entirety. Accordingly, in light of the Panel’s findings in connection with the third element under the Policy, no good purpose would be served by addressing the issue of the Respondent’s rights or legitimate interests in the disputed domain name.

### **C. Registered and Used in Bad Faith**

The evidence in the case file as presented does not indicate that the Respondent’s aim in registering the disputed domain name was to profit from or exploit the Complainant’s trademark.

The Panel finds that there is no evidence that the Respondent registered the disputed domain name in bad faith targeting of the Complainant or its trademark rights because the Complainant had no trademark rights at the time that the Respondent registered the disputed domain name – or (noting that it was formed in the year prior to the registration of the disputed domain name) if it did have such rights there is no evidence of their scope or prominence. [WIPO Overview 3.0](#), section 3.8.1.

No circumstances disclosing an exception to the general rule in the [WIPO Overview 3.0](#), section 3.8.1 have been put forward by the Complainant (see, for example, [WIPO Overview 3.0](#), section 3.8.2 dealing with domain names registered in anticipation of trademark rights). The fact that the Complainant may have been trading since the year before the disputed domain name was registered (itself, an unevicenced assertion) is insufficient on its own. The fact that the disputed domain name has been renewed yearly by the same registrant also would not support a finding of registration and use in bad faith. [WIPO Overview 3.0](#), section 3.9.

The Panel adds for completeness that it has not overlooked the Complainant's submission that its name is unique. No evidence was produced in support of the uniqueness or notoriety of the Complainant's name or mark in what is an exceptionally brief Complaint. In particular, no information has been provided regarding the Complainant's activities under the name "Hyzon" in the period between the alleged founding of the Complainant's company in 2017 and the registration of the disputed domain name in 2018 that might have been sufficient to establish unregistered trademark rights pre-dating the registration of the disputed domain name. [WIPO Overview 3.0](#), section 1.3.

The Panel finds the third element of the Policy has not been established.

## 7. Decision

For the foregoing reasons, the Complaint is denied.

*/Andrew D. S. Lothian/*

**Andrew D. S. Lothian**

Sole Panelist

Date: April 8, 2024