

## **ADMINISTRATIVE PANEL DECISION**

Taojing International Limited, Zenni Optical, Inc. v. Registration Private, Domains By Proxy, LLC / Betty Landis  
Case No. D2022-3218

### **1. The Parties**

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

The Respondent is Registration Private, Domains By Proxy, LLC, United States / Betty Landis, United States.

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

The disputed domain names <zenisbetter.com> and <zeniscool.com> are registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 31, 2022. On August 31, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On August 31, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on September 1, 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 the first amended Complaint on September 15, 2022. In response to a notification by the Center that the Complaint was administratively deficient, the Complainant filed the second amended Complaint on September 16, 2022.<sup>1</sup>

The Center verified that the Complaint together with the second amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for

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<sup>1</sup> The Complainant requested withdrawal of four domain names from this proceeding upon received the Center’s notice of multiple underlying registrant. The Center received several email communications from one of the registrants of the withdrawn domain names.

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 September 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 10, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 11, 2022.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on October 20, 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 complainants operate in the field of eyeglasses. The Complainants’ businesses consist of computerized online retail store services in the field of eyeglasses, most of which are prescription, ophthalmic, vision correcting medical devices, also called spectacles, and other related goods and services.

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

The disputed domain names <zenisbetter.com> and <zeniscool.com> were registered on June 28, 2022.

At the date of the Complaint, both disputed domain names are used to host a parked page comprising pay-per-click links.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainants request that the disputed domain names be transferred to the Complainant.

According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainants submit that the disputed domain names are identical or confusingly similar to the ZENNI trademark registrations of the Complainants.

Second, the Complainants argue that the Respondent has neither rights nor legitimate interests in the disputed domain names.

Third, the Complainants submit that the disputed domain names were registered and are being used in bad faith.

## B. Respondent

The Respondent did not reply to the Complainants' contentions.

## 6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements which a complainant must satisfy in order to succeed. The complainant must satisfy that:

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

### A. Identical or Confusingly Similar

The Panel is satisfied that the Complainants have adduced evidence to demonstrate their established rights in the ZENNI trademarks.

The Panel notes that the disputed domain names comprise the ZENNI trademark omitting a letter "n". In cases where a domain name incorporates the entirety of a trademark, or 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. See section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)).

The Panel also notes that the disputed domain names contain terms such as "better" or "cool" and the letter "s" between the trademark and those terms, which do not change the above conclusion of confusing similarity.

Lastly, it is permissible for the Panel to ignore the generic Top-Level Domain ("gTLD"), in this case ".com". See section 1.11.1 of the [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the Complainants have satisfied the first element under paragraph 4(a) of the Policy.

### B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that the Respondent has rights or legitimate interests in the disputed domain name:

- (i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

There is no evidence of the existence of any of those rights or legitimate interests. The Complainants have not authorized, licensed, or permitted the Respondent to register or use the disputed domain names or its

trademarks. The Complainants have prior rights in the trademarks which precede the Respondent's registration of the disputed domain names. The Respondent is using the disputed domain names in connection with websites displaying pay-per-click links, which cannot constitute a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use. The Complainants have therefore established a *prima facie* case that the Respondent has no rights and legitimate interests in the disputed domain names and thereby shifted the burden to the Respondent to produce evidence to rebut this presumption. The Respondent has failed to rebut the Complainants' *prima facie* case.

Therefore, the Panel finds that the Complainants have satisfied the second requirement of paragraph 4(a) of the Policy.

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

The Complainants must prove both that the disputed domain names were registered in bad faith and that they are being used in bad faith.

The Complainants' allegations with regard to the Respondent's registration and use of the disputed domain names in bad faith has been considered by the Panel. These allegations have not been contested by the Respondent.

In the present case, the Respondent registered two disputed domain names containing the typo version of the ZENNI trademark with the addition of generic terms on the same day. The Panel agrees therefore with the Complainants that it is not conceivable that the Respondent chose the disputed domain names without knowledge of the Complainants' activities and their trademarks under which the Complainants are doing business.

The Panel visited the disputed domain names and was able to verify that they contain pay-per-click links. Such conduct of using a domain name, to attract Internet users for commercial gain, falls squarely within the meaning of paragraph 4(b)(iv) of the Policy. Given the above, the Panel believes that the Respondent has registered the disputed domain names in order to trade off the reputation of the Complainants.

Accordingly, the Panel finds that the Complainants have satisfied the third element under paragraph 4(a) 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, <zenisbetter.com> and <zeniscool.com>, be transferred to the Complainant.

*/Pablo A. Palazzi/*

**Pablo A. Palazzi**

Sole Panelist

Date: October 31, 2022