

ADMINISTRATIVE PANEL DECISION

ZenBusiness Inc. v. Zhichao Yang

Case No. D2022-4954

1. The Parties

The Complainant is ZenBusiness Inc., United States of America (“United States”), represented by Hanson Bridgett LLP, United States.

The Respondent is Zhichao Yang, China.

2. The Domain Name and Registrar

The disputed domain name <zenbuisness.com> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 23, 2022. On December 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 23, 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 (Redacted for Privacy, See PrivacyGuardian.org) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 27, 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 December 28, 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 December 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 18, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 19, 2023.

The Center appointed Luca Barbero as the sole panelist in this matter on January 25, 2023. 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 provider of business services and offers a one-stop guided platform for entrepreneurs to launch, run, and grow a successful business.

Based in Austin, State of Texas, United States, since at least February 2017, the Complainant has offered its business formation and management services under the trademark ZENBUSINESS in the United States as well as internationally.

The Complainant is the owner of the United States trademark registration No. 5689125 for ZENBUSINESS (word mark), filed on April 25, 2018 and registered on March 5, 2019 in international classes 35, 42 and 45.

The Complainant is also the owner of the domain name <zenbusiness.com>, registered on May 13, 2009, which has been used by the Complainant since 2017 in connection with the Complainant's primary website. Specifically, the Complainant's website "www.zenbusiness.com" is a web platform that allows users to monitor and track business filings and compliance with business organization requirements, access referrals in the field of business formation, access business assistance, access advisory services and consultancy of business registration forms and retrieval of business filing forms, records and certificates, and manage general business office functions.

The disputed domain name <zenbuisness.com> was registered on September 26, 2018 and is pointed to a parking page with pay-per-click links also related to business formation and management services.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the trademark ZENBUSINESS in which the Complainant has rights as it reproduces the trademark in its entirety with the mere misspelling of the word "business", with the letters "i" and "s" switched, and the addition of the generic Top-Level Domain ("gTLD") ".com".

With reference to rights or legitimate interests in respect of the disputed domain name, the Complainant states that the Respondent is not commonly known by the disputed domain name and could in no way have developed common law rights in the Complainant's trademark.

The Complainant also highlights that it has not licensed or permitted the Respondent to use the trademark ZENBUSINESS, any other of the Complainant's trademarks, or any domain names incorporating them. The Complainant further contends that the Respondent has failed to make a good faith use of the disputed domain name in the period that has elapsed since it was first registered, and since the Respondent has only used it to deceive consumers seeking the Complainant's service, redirecting them to third-party competitors' websites.

With reference to the circumstances evidencing bad faith, the Complainant indicates that the Respondent registered and used the disputed domain name in a deliberate attempt to deceive third parties as to its identity or connection with the Complainant, in order to disrupt the Complainant's legitimate business and misdirecting its customers through deceit, since no part of the website hosted at the disputed domain name discloses to users the Respondent's connection with the third-party competing websites until users have clicked on the links, from which the Respondent potentially makes pay-per-click advertising revenue.

The Complainant emphasizes that the Respondent was clearly aware of the Complainant and its prior trademark rights at the time of registering the disputed domain name, as the reputation and renown of the Complainant was instrumental to the Respondent's deceptive scheme.

The Complainant further underlines that the Respondent targeted the Complainant's trademark, in a typical act of typosquatting, by switching the letters "i" and "s" in the word "zenbusiness" so that both terms are nearly identical save for the misspelling, with the intention to confuse users and capitalize on the Complainant's trademark for the Respondent's own monetary benefit.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules: "A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable." Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- (i) that the disputed 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 disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has established rights over the trademark ZENBUSINESS based on the trademark registration cited under Section 4 above and the related trademark certificate submitted as Annex 3 to the Complaint.

It is well accepted that the first element functions primarily as a standing requirement, and that the threshold test for confusing similarity involves a reasoned but relatively straightforward comparison between a complainant's trademark and the disputed domain name to assess whether the trademark is recognizable within the disputed domain name (section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#))).

Moreover, as stated in section 1.9 of the [WIPO Overview 3.0](#), "a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element".

Furthermore, as indicated in section 1.11.1 of the [WIPO Overview 3.0](#), "The applicable Top Level Domain ('TLD') in a domain name (e.g., '.com', '.club', '.nyc') is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test".

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark as it reproduces the trademark ZENBUSINESS in its entirety, with the mere inversion of the adjacent letters "s" and "i" in the Complainant's trademark and the addition of the gTLD ".com", which do not prevent a finding of confusing similarity.

Therefore, the Panel finds that the Complainant has proven that the disputed domain name is confusingly similar to a trademark in which the Complainant has established rights according to paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant must show that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent may establish a right or legitimate interest in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

“(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 non-commercial 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.”

In the case at hand, by not submitting a Response, the Respondent has failed to invoke any circumstance that could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed domain name.

According to the evidence on record, there is no relationship between the Complainant and the Respondent and the Complainant has not authorized the Respondent to register or use its trademark or the disputed domain name.

Moreover, there is no element from which the Panel could infer a Respondent’s right over the disputed domain name or that the Respondent might be commonly known by the disputed domain name.

According to section 2.9 of the [WIPO Overview 3.0](#), “Applying UDRP paragraph 4(c), panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant’s mark or otherwise mislead Internet users”.

In the case at hand, the disputed domain name has been pointed to a parking page with pay-per-click links to third-party websites which offer business formation and management services competing with the ones offered by the Complainant. The Panel finds that such use of the disputed domain name does not amount to a *bona fide* offering of goods or services or a legitimate noncommercial or fair use, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant’s trademark.

Therefore, the Panel finds that the Complainant has proven that the Respondent has no rights or legitimate interests in the disputed domain name according to paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires that the Complainant prove that the disputed domain name was registered and is being used by the Respondent in bad faith.

The Panel finds that, in light of i) the prior use of the Complainant’s trademark ZENBUSINESS in connection with the Complainant’s services, provided online via the Complainant’s website “www.zenbusiness.com” since 2017, ii) the fact that the disputed domain name was registered a couple of months after the Complainant’s filing for its trademark ZENBUSINESS, iii) the fact that the disputed domain name is a clear misspelling of the Complainant’s trademark and its domain name <zenbusiness.com>, and iv) the Respondent’s pointing of the disputed domain name to a parking page with links related to business formation and management services similar to the ones offered by the Complainant, the Respondent very likely registered the disputed domain name having the Complainant’s trademark in mind.

The Panel also finds paragraph 4(b)(iv) of the Policy to be applicable in this case since the Respondent has attempted to attract Internet users to his website for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of the Respondent's website and the services promoted therein.

Lastly, in light of the mere two letters difference between the Complainant's trademark and the disputed domain name, where in the latter, the letters "s" and "i" of the word "business" are switched, the Panel finds that this is a classic example of typosquatting. See *Manheim Auctions Inc. v. Whois ID Theft Protection*, WIPO Case No. [D2006-1044](#) (where it was held that, "in light of the mere one letter difference denoting singular or plural between the Domain Name registered by the Respondent and the Complainant's registered trademark, there is clearly confusing similarity here. The Panel considers such activity a classic example of typosquatting") and *Allied Building Products Corp v. Alliedbuildingproducts.com c/o Whois Identity Shield*, WIPO Case No. [D2006-0833](#) ("it is therefore a reasonable inference from this that the Respondent knew of the Complainant's business and wanted to exploit the name to divert Internet traffic from it, probably to benefit from pay-by-click arrangements with alternative suppliers").

Therefore, the Panel finds that the Complainant has also proven that the Respondent registered and is using the disputed domain name in bad faith according to paragraph 4(a)(iii) 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 name <zenbuisness.com> be transferred to the Complainant.

/Luca Barbero/

Luca Barbero

Sole Panelist

Date: February 8, 2023