

ADMINISTRATIVE PANEL DECISION

Taojing International Limited and Zenni Optical, Inc. v. 艾振华 (ai zhen hua)
Case No. D2022-1841

1. The Parties

The Complainants are Taojing International Ltd. (the “First Complainant”), Hong Kong, China, and Zenni Optical, Inc. (the “Second Complainant”), United States of America (“United States”), represented by Green & Green, United States.

The Respondent is 艾振华 (ai zhen hua), China.

2. The Domain Names and Registrar

The disputed domain names <zenniopticsl.com>, <zennioptical.com>, <zennioptival.com>, and <zennioptucal.com> are registered with Chengdu West Dimension Digital Technology Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on May 21, 2022. On May 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On May 24, 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 Complainants on May 24, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint in Chinese on June 1, 2022.

On May 24, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On June 1, 2022, the Complainants submitted their request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceedings commenced on June 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 23, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 24, 2022.

The Center appointed Linda Chang as the sole panelist in this matter on June 30, 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 is the trademark owner of ZENNI, ZENNI OPTICAL, ZENNI.COM, and ZENNIOPTICAL.COM, and the Second Complainant is the exclusive licensee of the trademarks at issue. The Complainants are together running business in eyeglasses and optical accessories through "www.zenni.com" and "www.zennioptical.com".

The First Complainant owns United States Trademark ZENNI Registration No. 3389855, registered on February 26, 2008; United States Trademark ZENNI OPTICAL Registration No. 3597735, registered on March 31, 2009; United States Trademark ZENNI.COM Registration No. 6438164, registered on August 3, 2021; and International Trademark ZENNIOPTICAL.COM Registration No. 1598932, registered on April 23, 2021 (designating China).

The Respondent registered the disputed domain names <zenniopticsl.com> on July 21, 2011, <zennioptical.com> on September 27, 2012, <zennioptival.com> on July 30, 2012, and <zennioptucal.com> on July 30, 2012.

All the disputed domain names resolve to parking pages comprising pay-per-click links.

5. Parties' Contentions

A. Complainants

The Complainants contend that the disputed domain names are confusingly similar to the ZENNI, ZENNI OPTICAL, ZENNI.COM, and ZENNIOPTICAL.COM trademarks.

The Complainants further contend that the Respondent has no rights or legitimate interests in respect of the disputed domain names as the Respondent is making illicit offerings of goods similar to those of the Complainants'.

The Complainants finally contend that the disputed domain names were registered and are being used in bad faith as the Respondent is deliberately capitalizing on the reputation and goodwill of the Complainants' trademarks and competing with the Complainants.

B. Respondent

The Respondent did not reply to the Complainants' contentions.

6. Discussion and Findings

6.1. Procedural Issues

A. Consolidation of Complainants

The Complainants have filed a single Complaint against the Respondent.

Based on the evidence submitted by the Complainants, the Panel determines that the Complainants share common legal interests and grievance in the ZENNI, ZENNI OPTICAL, ZENNI.COM, and ZENNIOPTICAL.COM trademarks, which are allegedly affected by the Respondent's registration and use of the disputed domain names.

Therefore, the Panel finds it is procedurally efficient to grant the Complainants' request for consolidation.

B. Language of the Proceeding

The Registrar confirms that the language of the Registration Agreement is Chinese.

The Complainants originally filed the Complaint in English and later filed the amended Complaint in Chinese. The Complainants request the language of the proceeding be English based on the factors that (1) all the websites associated with the disputed domain names are displayed in English and redirecting to third-party websites in English; and (2) the disputed domain names contain misspelled words of the Complainants' trademarks.

The Respondent had been given opportunity to comment on the Complainants' language request but did not do so.

Giving full consideration of above circumstances, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding be English.

6.2 Substantive Issues

According to paragraph 4(a) of the Policy, the Complainants must prove each of the following elements to win the case, namely that:

- (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainants has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names were registered and are being used in bad faith.

The Panel's decision is based on the consideration of three elements below.

A. Identical or Confusingly Similar

The Complainants have successfully established registered trademark rights in ZENNI, ZENNI OPTICAL, ZENNI.COM, and ZENNIOPTICAL.COM.

In the course of assessing whether the disputed domain names are identical or confusingly similar, the generic Top-Level Domain ("gTLD") suffix ".com" as a standard registration requirement should be disregarded under the Policy. Thus, the distinctive part of each disputed domain name is respectively "zennioptics!", "zennioptical", "zennioptival", and "zennioptucal", which contains the Complainants' ZENNI trademark in its entirety and also closely resembles the Complainants' ZENNI OPTICAL trademark by

deliberately misspelling “optical” respectively as “opticsl”, “optioical”, “optival”, and “optucal”.

In cases where a domain name consists of a common, obvious or intentional misspelling of a trademark, confusing similarity has been held for purposes of UDRP standing. The Panel concludes that the disputed domain names are confusingly similar to the Complainants’ trademarks ZENNI, ZENNI OPTICAL, ZENNI.COM, and ZENNIOPTICAL.COM.

B. Rights or Legitimate Interests

The Panel observes the Respondent is resolving the disputed domain names to parking pages containing pay-per-click links to third-party providers of eyeglasses. Clearly, the Respondent is intentionally diverting Internet users for commercial gain to such websites by taking unfair advantage of the reputation of the Complainants’ trademarks. The Panel determines that such use will not create any rights or legitimate interests on the Respondent nor represent a *bona fide* offering of goods or services by the Respondent.

The Panel holds that the Complainants have made out a *prima facie* case that the Respondent does not have rights or legitimate interests in respect of the disputed domain names. The burden of production on this element hence shifts to the Respondent to rebut the Complainants’ contentions. The Respondent however did not submit a response to rebut the Complainants’ *prima facie* case.

Therefore, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

C. Registered and Used in Bad Faith

The Respondent should have been aware of the Complainants’ trademarks at the time of registration judging from the intentional misspelling of the Complainants’ ZENNI OPTICAL trademark. The Respondent’s registration of the disputed domain names is a typical example of typosquatting and bad faith can be inferred.

The Respondent is using the disputed domain names to host pay-per-click links, which on its own is sufficient for a finding of registration and use of the disputed domain names in bad faith, regardless of whether they were directly placed by the Respondent or not. By choosing domain names confusingly similar to the Complainants’ trademarks and using them to host pay-per-click links competing with the Complainants, the Respondent is obviously intending to make a commercial gain by attracting Internet users to its own websites.

The Panel therefore finds that the disputed domain names have been registered and are being used in bad faith and that paragraph 4(a)(iii) of the Policy is satisfied.

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 <zennopticsl.com>, <zennoptioical.com>, <zennoptival.com>, and <zennoptucal.com> be transferred to the Complainants.

/Linda Chang/

Linda Chang

Sole Panelist

Date: July 21, 2022