

## **ADMINISTRATIVE PANEL DECISION**

Dakine IP Holdings LP v. Shuhua Zhao  
Case No. D2023-0405

### **1. The Parties**

The Complainant is Dakine IP Holdings LP, United States of America (U.S.), represented by Tucker & Latifi, LLP, U.S.

The Respondent is Shuhua Zhao, China.

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

The disputed domain name <dakneoutlet.com> is registered with Name.com, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 27, 2023. On January 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 31, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

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 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 2, 2023.

The Center appointed Andrea Mondini as the sole panelist in this matter on March 7, 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 was established in 1979 and offers backpacks, bags, sports and outdoor products under the DAKINE brand on an international basis.

The Complainant owns numerous trademarks with the element DAKINE, *inter alia*, the U.S. Trademark DAKINE No. 3,644,469 registered on June 23, 2009 and the European Union Trademark DAKINE No. 011320033 registered on April 12, 2013.

The Complainant also holds several domain names and operates the website "www.dakine.com".

The disputed domain name was registered on December 13, 2021.

The disputed domain name resolves to an online store displaying the Complainant's brand and logo and using images from the Complainant's advertising campaigns and official online site.

#### **5. Parties' Contentions**

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

The Complainant contends as follows:

The disputed domain name is confusingly similar to the DAKINE trademark in which the Complainant has rights, because the omission of the letter "i" in "dakne" is an obvious misspelling of DAKINE, and the addition of the word "outlet" is not sufficient to avoid confusing similarity.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not commonly known by the domain name and has not been licensed or authorized by the Complainant to use this trademark. The Respondent uses the disputed domain name to operate a website prominently displaying the Complainant's logo and brand name, thus misleading the public to believe that it is associated or authorized by the Complainant.

The disputed domain name was registered and is being used in bad faith because it is obvious that the Respondent had knowledge of both the Complainant and its well known trademark DAKINE at the time it registered the disputed domain name, as evidenced by the fact that it uses the Complainant's logo and brand on the website linked to the disputed domain name. The Respondent's use of the disputed domain name to operate a website prominently displaying the Complainant's logo and brand name to offer products that are believed to be counterfeit constitutes use in bad faith.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, in order to succeed, a complainant must establish each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to the 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 disputed domain name has been registered and is being used in bad faith.

### **A. Identical or Confusingly Similar**

The Panel is satisfied that the Complainant owns trademark registrations for its DAKINE trademark.

The Panel notes that the element “dakne” in disputed domain name is an obvious intentional misspelling of the Complainant’s well-known mark DAKINE. The omission of the letter “i” and the addition of the word “outlet” do not prevent a finding of confusing similarity under Policy, paragraph 4(a)(i). See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.8.

The addition of the Top Level Domain “.com” in the disputed domain names is a standard registration requirement and as such is disregarded under the confusing similarity test under Policy, paragraph 4(a)(i). See [WIPO Overview 3.0](#), section 1.11.1.

For these reasons, the Panel concludes that the disputed domain name is confusingly similar to the Complainant’s trademark DAKINE.

The first element of paragraph 4(a) of the Policy has been met.

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

The Complainant states that the Respondent is not known by the disputed domain name, that the Complainant has not licensed or authorized the Respondent to use the trademark DAKINE and that before notice of the dispute, there is no evidence of the Respondent’s use, or demonstrable preparation to use, the disputed domain name in good faith. The Panel does not see any contrary evidence from the record.

In the view of the Panel, the Complainant has succeeded in raising a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. For its part, the Respondent failed to provide any explanations as to any rights or legitimate interests. Therefore, the Panel finds that the Respondent does not have any rights or legitimate interests in the disputed domain name.

The second element of paragraph 4(a) of the Policy has been met.

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

The Complainant has shown to the satisfaction of the Panel that its DAKINE trademark is well-known.

In the view of the Panel, it is inconceivable that the Respondent could have registered the disputed domain name without knowledge of the Complainant’s well-known trademark, particularly considering that the disputed domain name resolves to a website prominently displaying the Complainant’s logo and brand name Dakine (without misspelling). In the circumstances of this case, this is evidence of registration in bad faith.

The disputed domain name resolves to a website making unauthorized use of the Complainant’s logo, brand name and images, thus misleading the public to believe that it is operated or authorized by the Complainant, without prominently disclaiming that this is not the case. The Panel thus finds that by using the disputed domain names, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its websites by creating a likelihood of confusion as to the source, sponsorship or affiliation of its website in the sense of paragraph 4(b) (iv) of the Policy, irrespective of whether the goods offered by the Respondent are counterfeit or not.

The Panel thus finds that the disputed domain name was registered and is being used in bad faith.

The third element of paragraph 4(a) of the Policy has been met.

## 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, <dakneoutlet.com> be transferred to the Complainant.

*/Andrea Mondini/*

**Andrea Mondini**

Sole Panelist

Date: March 20, 2023