

## **ADMINISTRATIVE PANEL DECISION**

API Consolidated LLC v. Martinez Betty  
Case No. D2024-0488

### **1. The Parties**

The Complainant is API Consolidated LLC, United States of America (“United States”), represented by Vice Cox & Townsend PLLC, United States.

The Respondent is Martinez Betty, United States.

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

The disputed domain name <appliancezones.com> is registered with Gname.com Pte. Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 1, 2024. On February 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 5, 2024, 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) 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 filed an amended Complaint on February 12, 2024.

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 February 14, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 5, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 6, 2024.

The Center appointed Kathryn Lee as the sole panelist in this matter on March 11, 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 sells kitchen and laundry appliance parts and accessories through its website at domain name <appliancezone.net>, which redirects from <appliancezone.com>. The Complainant owns trademark registrations for APPLIANCE ZONE (United States Trademark Registration Number 3,567,201, registered on January 27, 2009) and APPLIANCEZONE.COM (United States Trademark Registration Number 3,567,723, registered on January 27, 2009), and has been using these marks since 2007.

The Respondent appears to be an individual with an address in the United States.

The disputed domain name was registered on October 10, 2023. At the time of filing of the Complaint, the disputed domain name resolved to a website displaying an “Appliance Zone” logo and offering parts and accessories for sale of the same type as sold by the Complainant.

#### **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 names.

Notably, the Complainant contends that the disputed domain name is confusingly similar to the APPLIANCE ZONE and APPLIANCEZONE.COM marks of the Complainant. The Complainant contends that its marks are famous and distinctive, and that they represent and embody the reputation and goodwill associated with the Complainant’s marks.

The Complainant also contends that the Respondent has no rights or legitimate interests in the disputed domain names and confirms that it has not authorized or licensed rights to the Respondent in any respect.

Finally, the Complainant contends that the disputed domain names were registered and used in bad faith. The Complainant contends that the Respondent has used fraudulent information for purposes of registering the disputed domain name, alleging that neither the disclosed phone number or email are operational and that the disclosed physical address corresponds to an individual other than the disclosed Respondent. The Complainant contends that based on its trademark registrations, the Respondent had actual or constructive knowledge of the Complainant’s marks, and that the website at the disputed domain name is a “cloned” website nearly identical in appearance and layout to the Complainant’s own website. The Complainant asserts that the disputed domain name was registered for the purpose of defrauding consumers, and that its business was harmed by the Respondent’s registration and use of the disputed domain name.

##### **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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[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, with the additional letter "s" added to the ZONE element of the mark. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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

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

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity - here, impersonation/passing off and possible sale of counterfeit goods, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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

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

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent linked the disputed domain name to a website which looks very similar to the Complainant website, using the Complainant's APPLIANCEZONE mark and logo and similar layout, and also advertising appliance parts and accessories for sale.

Panels have held that the use of a domain name for illegal activity - here, impersonation/passing off, and possible sale of counterfeit goods, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Further, based on the Respondent's use of the disputed domain name for a copycat website and the fact that the disputed domain name is essentially identical to the Complainant's mark, it is apparent that the Respondent had bad faith when registering the disputed domain name, and intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark.

While the Complainant has pointed to the provision of potentially fraudulent information for purposes of the registration of the disputed domain name, the Panel notes that the Center's email communications were delivered to the disclosed email address for the Respondent despite the Complainant's claims of it being nonoperational. Further, the Center's written communication was delivered to the physical address disclosed and, as reported above, no communications were received from the Respondent or any other individual claiming potential use of their information without authorization. The Respondent's silence in the face of the Complainant's claims do however speak to the Respondent's bad faith conduct and further reinforce the Panel's finding that there is no plausible good faith basis to which the disputed domain names could have been put that would not infringe the Complainant's rights.

The Panel finds that the Complainant has established the third element 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 <appliancezones.com> be transferred to the Complainant.

*/Kathryn Lee/*

**Kathryn Lee**

Sole Panelist

Date: March 25, 2024