

## **ADMINISTRATIVE PANEL DECISION**

Aqualung Corporate v. huanfang cheng  
Case No. D2024-4360

### **1. The Parties**

The Complainant is Aqualung Corporate, France, internally represented.

The Respondent is huanfang cheng, China.

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

The disputed domain name <aqualungdiving.com> is registered with Dynadot Inc (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 23, 2024. On October 23, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 23, 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 (Respondent’s name is redacted for privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 25, 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 October 28, 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 November 4, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 24, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 25, 2024.

The Center appointed Eva Fiammenghi as the sole panelist in this matter on December 9, 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, is a global leader in the development, production, and distribution of diving equipment and related products. The Complainant operates as a legally established entity with a well-recognized presence in the scuba diving industry. Its products are marketed and sold under the AQUA-LUNG brand, which has gained substantial reputation and goodwill worldwide.

The Complainant owns numerous trademark registrations for AQUA-LUNG in various jurisdictions, including but not limited to the following:

- United States of America ("United States") Trademark Reg. No. 2160570, AQUA-LUNG, registered on May 26, 1998 - class 9;
- United States Trademark Reg. No. 2139279, AQUA-LUNG, registered on February 24, 1998 - class 28; and
- United States Trademark Reg. No. 2142884, AQUA-LUNG, registered on March 10, 1998 - class 25.

The Complainant operates several domain names incorporating its AQUA-LUNG trademark, including but not limited to <aqualung.com> and <aqualung.eu>.

These domain names are used to promote the Complainant's products and provide information to consumers globally.

The disputed domain name <aqualungdiving.com>, was registered on May 29, 2024. The Respondent uses the disputed domain name to host a website that mimics the appearance and style of the Complainant's official website, misleading consumers into believing it is affiliated with 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 name.

Notably, the Complainant asserts that the disputed domain name incorporates the Complainant's registered trademark AQUA-LUNG in its entirety, which is well-known globally for diving equipment and related products. The addition of generic or descriptive term "diving" does not diminish the confusing similarity but rather increases the likelihood of consumer confusion by suggesting an affiliation with the Complainant's brand.

The Respondent lacks rights or legitimate interests in the disputed domain name. The Complainant has not authorized the Respondent to use its trademark, nor is there any evidence that the Respondent is commonly known by the disputed domain name. Additionally, the Respondent has not demonstrated any bona fide offering of goods or services or a legitimate noncommercial use of the disputed domain name.

The Complainant argues that the Respondent registered and is using the disputed domain name in bad faith.

The disputed domain name was intended to exploit the goodwill and reputation associated with the Complainant's trademark AQUA-LUNG. The Complainant further asserts that the Respondent's actions, including selling counterfeit goods with lower prices under the Complainant's brand or by using the website as a phishing tool and pretending to sell the Complainant's products to collect sensitive information about interested customers, are clear indications of bad faith intent.

The Complainant previously submitted two takedown requests to the disputed domain name's registrar, both of which resulted in the temporary closure of the Respondent's website. However, the Respondent reinstated the website and continued its infringing activities, demonstrating bad faith and fraudulent intent.

The Complainant concludes that the Respondent's registration and use of the disputed domain name is designed to capitalize on the Complainant's reputation for commercial gain, thereby meeting the requirements under the Policy. Accordingly, the Complainant requests the transfer of the disputed domain name.

## **B. Respondent**

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

## **6. Discussion and Findings**

Under paragraph 4(a) of the Policy, to succeed a complainant must prove that:

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

These elements are discussed in turn below. In considering these elements, paragraph 15(a) of the Rules provides that the Panel shall decide the Complaint on the basis of statements and documents submitted and in accordance with the Policy, the Rules and any other rules or principles of law that the Panel deems applicable.

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

It is well accepted that the first element functions primarily as a standing requirement. The standing test for confusing similarity involves a straightforward comparison between the Complainant's trademark and the disputed domain name.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") , section 1.2.1.

The disputed domain name incorporates the Complainant's registered trademark AQUA-LUNG omitting the hyphen. Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark for the purpose of the Policy. [WIPO Overview 3.0](#), section 1.7.

The inclusion of additional term does not prevent a finding of confusing similarity. [WIPO Overview 3.0](#), section 1.8.

The Panel finds that 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.

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.

The Respondent is not commonly known by the disputed domain name, nor has the Respondent made any demonstrable preparations to use the disputed domain name for a bona fide offering of goods or services.

Furthermore, the use of the disputed domain name to purportedly offer goods under the Complainant's trademark, while falsely suggesting an affiliation with the Complainant and without any disclaimer regarding the lack of relationship with the Complainant, cannot be considered a legitimate noncommercial or fair use under the Policy. [WIPO Overview 3.0](#), section 2.8.

Panels have held that where a domain name consists of a trademark plus an additional term (at the second- or top-level), such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1. Here, the incorporation of the Complainant's well-known AQUA-LUNG trademark with a descriptive term associated with the Complainant's retail activities effectively impersonates or suggests sponsorship or endorsement by the Complainant. Moreover, the evidence indicates that the Respondent's use of the disputed domain name is designed to unfairly capitalize on the goodwill of the Complainant's trademark for commercial gain.

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 sets out circumstances, in particular but without limitation, that, if found to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel finds that the Respondent's actions fall within these circumstances. The disputed domain name incorporates the Complainant's trademark AQUA-LUNG, which is highly distinctive and enjoys significant reputation worldwide. The Respondent could not have registered the disputed domain name without knowledge of the Complainant's rights, given the longstanding use and global recognition of the Complainant's trademark in the diving and watersports industries.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith. Here, the disputed domain name resolves to a website prominently displaying the Complainant's trademark, and purportedly offering the Complainant's branded products at discounted prices. The Panel infers that the products sold on the Respondent's *website* are likely to be counterfeit.

The Respondent's use of the disputed domain name demonstrates clear bad faith. Specifically, the Respondent has blatantly reproduced the Complainant's marketing materials, logos, and product descriptions on its website. This deliberate imitation is intended to deceive visitors into believing that the Respondent is affiliated with or endorsed by the Complainant.

Moreover, the Respondent has been offering potentially counterfeit goods under the Complainant's well-known trademark at reduced prices. Such actions not only mislead consumers but also tarnish the reputation of the Complainant, causing significant harm to its trademark and goodwill.

Panels have held that the use of a domain name for illegitimate activity, such as claimed selling counterfeit goods, impersonation, or engaging in phishing (e.g., collecting personal or financial data fraudulently), constitutes bad faith under [WIPO Overview 3.0](#), section 3.4.

Based on the foregoing, the Panel finds that the disputed domain name was registered and is being used in bad faith under paragraphs 4(b)(iii) and 4(b)(iv) of the Policy.

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 <aqualungdiving.com> be transferred to the Complainant.

*/Eva Fiammenghi/*

**Eva Fiammenghi**

Sole Panelist

Date: December 23, 2024