

## ADMINISTRATIVE PANEL DECISION

Ballet Makers, Inc. v. zhujie  
Case No. D2024-4734

### 1. The Parties

The Complainant is Ballet Makers, Inc., United States of America (“United States” or “U.S.”), represented by Laubscher & Fretwell, P.C., United States.

The Respondent is zhujie, China.

### 2. The Domain Name and Registrar

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

### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on November 15, 2024. On November 18, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 21, 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 (Bizcn.com, Inc., REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 21, 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 in English on November 22, 2024.

On November 21, 2024, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the disputed domain name is Chinese. On November 22, 2024, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

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 November 27, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 17, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 23, 2024.

The Center appointed Jonathan Agmon as the sole panelist in this matter on December 27, 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 retailer of dancewear, dance shoes, and associated accessories established in 1887 by its namesake founder, Salvatore Capezio.

The Complainant is the owner of various trademark registrations worldwide, including the following:

- United States trademark registration no. 546042 for CAPEZIO, registered on July 31, 1951;
- United States trademark registration no. 662280 for CAPEZIO, registered on May 27, 1958;
- United States trademark registration no. 1037076 for CAPEZIO, registered on March 30, 1976;
- United States trademark registration no. 1826413 for CAPEZIO, registered on March 15, 1994;
- United States trademark registration no. 4656461 for CAPEZIO, registered on December 16, 2014;
- United States trademark registration no. 4548793 for CAPEZIO.COM, registered on June 10, 2014; and
- China trademark registration no. 3289954 for CAPEZIO, registered on February 28, 2004.

In addition to the above cited trademark registrations, the Complainant owns 101 CAPEZIO trademark registrations in a total of 68 countries.

The Complainant owns and operates its official domain name, <capezio.com>, registered on March 6, 2001.

The disputed domain name was registered on June 6, 2024, and at the time of filing the Complaint, resolved to a website resembling the Complainant's official website and purportedly offering goods for sale under the Complainant's CAPEZIO trademark at discounted prices.

#### **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 contends that:

- The disputed domain name is identical or confusingly similar to the CAPEZIO trademark in which the Complainant has rights. The disputed domain name resolves to a website that prominently displays the Complainant's CAPEZIO trademark and copies the overall design and feel of the Complainant's official website, including photographs of products, and product descriptions. The products offered by the

Respondent are identical or nearly identical to the products offered by the Complainant. The Complainant sent an email on July 10, 2024 to the registrar of the disputed domain name, demanding that the Respondent's website be taken down, but as of the date of filing the Complainant, the disputed domain name still remains accessible.

- The Complainant believes that no business other than itself has a legitimate right to use of the CAPEZIO mark and that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has not authorized the Respondent to use its CAPEZIO trademark in any way, including registering the disputed domain name. The CAPEZIO trademark is a distinctive mark that has been used by the Complainant for over 100 years. The Complainant does not know of any other business that can legitimately use the CAPEZIO trademark, unless authorized by the Complainant. Therefore, the Respondent's use of the CAPEZIO trademark is an attempt at creating an association with the Complainant, or to borrow the Complainant's goodwill.

- The disputed domain name was registered and is being used in bad faith. The disputed domain name contains the Complainant's CAPEZIO trademark in its entirety. The disputed domain name resolves to a website that includes contents and products that are identical or nearly identical to those offered by the Complainant on its official website. The Respondent's website is being used to purportedly sell unauthorized and/or counterfeit reproductions of the Complainant's products. The Complainant believes the disputed domain name was registered, and is being used primarily for the purpose of riding on Complainant's reputation to attract and/or divert, for commercial gain, Internet users and traffic to the Respondent's website to sell goods, or as a scam to elicit sensitive information from potential customers, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the Respondent's products

## **B. Respondent**

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

## **6. Discussion and Findings**

### **Language of the Proceeding**

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that:

- The English language is used throughout the Respondent's website to promote and sell counterfeit and/or unauthorized products;
- The Respondent's website is in the English language and purports to accept United States Dollars as the currency for payment; and
- Representatives of the Registrar have communicated to the Complainant in English.

The Respondent did not make any specific submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the

proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

### **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 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. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of another term, here, "on" may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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.

There is no evidence to suggest that the Respondent is commonly known by the disputed domain name. The Complainant's registration of its trademark long predates the registration of the disputed domain name. The disputed domain name resolves to a website displaying the Complainant's CAPEZIO trademark and purportedly offering goods for sale under the Complainant's CAPEZIO trademark at discounted prices. There is no evidence that the Respondent is using or preparing to use the disputed domain name for any legitimate purpose.

Panels have held that the use of a domain name for illegitimate activity, here, claimed as applicable to this case: impersonation/passing off, 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 registered the disputed domain name over 70 years after the Complainant registered its CAPEZIO trademark in the U.S. Given the specific use the Respondent is making of the Complainant's CAPEZIO trademark, including the offering for sale of goods under that trademark, the use of the specific font, form and shape as used by the Complainant, it is highly unlikely that the Respondent was not aware of the Complainant and its trademark prior to the registration of the disputed domain name.

Moreover, the specific use of the CAPEZIO trademark on the Respondent's website, purportedly offering for sale of goods under that trademark, is strong evidence that the Respondent was targeting the Complainant and its trademark. The Respondent failed to file a response in this case and when contacted by the Complainant through the Registrar, the Registrar confirmed that the website under the disputed domain name could not be accessed any more. However, the website under the disputed domain name remains active.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under 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 <capezioon.com> be transferred to the Complainant.

*/Jonathan Agmon/*

**Jonathan Agmon**

Sole Panelist

Date: January 10, 2025