

ADMINISTRATIVE PANEL DECISION

Swedish Match North Europe AB, Philip Morris International, Inc. v. chen wuhu

Case No. D2024-4811

1. The Parties

The Complainants are Swedish Match North Europe AB and Philip Morris International, Inc., United States of America ("United States"), represented by D.M. Kisch Inc., South Africa (herein collectively referred to as the "Complainant").

The Respondent is chen wuhu, United States.

2. The Domain Name and Registrar

The disputed domain name <zynfeelz.com> is registered with NameSilo, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 21, 2024. On November 21, 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 (Private Registration) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 26, 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 November 27, 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 28, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 18, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 19, 2024.

The Center appointed Marilena Comanescu 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, Swedish Match North Europe AB, is part of the group of companies affiliated to the Complainant Philips Morris International, Inc., an international tobacco company, which is engaged in the business of manufacturing, marketing, and selling tobacco and smoke-free products worldwide.

The Complainant has a long history of selling and manufacturing smoke-free tobacco products; one of these products are nicotine pouches under the ZYN brand. First launched in the United States in 2016, the ZYN brand has obtained a 76 percent share of the United States market; and currently, the ZYN nicotine product is available in key cities in around 15 markets across the world. The Complainant's ZYN nicotine product is primarily distributed through official or endorsed stores.

The Complainant, directly or through affiliates, holds trademarks for ZYN in numerous jurisdictions worldwide, such as the following:

- the International trademark registration number 1421212 for ZYN (word), registered on April 18, 2018, and covering goods in International Class 34; and
- the United States trademark registration number 5061008 for ZYN (word), filed on December 7, 2015, registered on October 11, 2016, covering goods in International Class 34.

The disputed domain name was registered on September 28, 2024, and, at the time of filing of the Complaint, it was used to resolve to a commercial website, allegedly selling and offering the Complainant's ZYN nicotine products, displaying the Complainant's ZYN trademark, logo, and official product images (altered without the Complainant's authorization by including imagery generally associated with certain flavourings or often used to convey specific qualities or experiences), as well as reproducing official ZYN nicotine product videos belonging to the Complainant. The website under the disputed domain name is provided in English language and the prices are indicated in United States currency. The website under the disputed domain name does not show any details regarding the disputed domain name holder, nor does it acknowledge the Complainant as the brand owner of the ZYN nicotine product, however, it does claim copyright over the material displayed.

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 confusingly similar to its trademark because it is formed of the well-known ZYN mark with the additional non-distinctive and descriptive word "feelz"; that the Respondent has no rights or legitimate interests in the disputed domain name; and that the Respondent registered and is using the disputed domain name in bad faith, purporting to be an official online retailer of the Complainant's ZYN nicotine product.

B. Respondent

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

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities 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 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

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 Panel finds the mark is recognizable 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.

While the addition of other terms, here, "feelz", 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.

The disputed domain name is used in connection with a website purportedly providing goods of the Complainant, without any disclaimer or authorization from the Complainant. Even if the goods were genuine, the lack of any disclaimer, as well as the misleading content, on the website at the disputed domain name

would falsely suggest to Internet users that the website to which the disputed domain name resolved is owned by the Complainant or at least affiliated to the Complainant. Accordingly, such use cannot be considered “fair”, nor to have conferred upon the Respondent any rights or legitimate interests for the purposes of the Policy. [WIPO Overview 3.0](#), section 2.8.

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 disputed domain name was registered in bad faith, with knowledge of the Complainant and its trademark particularly because it incorporates the Complainant’s ZYN trademark registered since 2015. Furthermore, the use of the disputed domain name in relation to promoting similar goods corroborates this judgement.

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, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt “to attract, for commercial gain, Internet users to [the respondent’s] website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of [the respondent’s] website or location or of a product or service on [the respondent’s] website or location” is evidence of registration and use in bad faith.

Given that the disputed domain name incorporates the Complainant’s trademark and the website operated under the disputed domain name displays the Complainant’s trademark, official product images (although altered), and official presentation videos, and has no disclaimer, indeed in this Panel’s view, the Respondent intended to attract Internet users accessing the website corresponding to the disputed domain name who may be confused and believe that the website is held, controlled by, or somehow affiliated or related to the Complainant, for its commercial gain

Further, the Respondent failed to provide a response to the Complainant’s allegations, including that the physical address listed in the Whois was inaccurate or incomplete. Along with other circumstances in this case, such facts constitute further signs of bad faith.

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 <zynfeelz.com> be transferred to the Complainant.

/Marilena Comanescu /

Marilena Comanescu

Sole Panelist

Date: January 8, 2025