

ADMINISTRATIVE PANEL DECISION

Swedish Match North Europe and Philip Morris International, Inc. v. 华俊卿 (hua jun qing), 深圳市奈美文化传媒有限公司 (shen zhen shi nai mei wen hua chuan mei you xian gong si)
Case No. D2025-0056

1. The Parties

The Complainants are Swedish Match North Europe, Sweden (the “First Complainant”); and Philip Morris International, Inc., United States of America (“USA”) (the “Second Complainant”), represented by D.M. Kisch Inc., South Africa (hereinafter collectively referred to as the “Complainant”)

The Respondent is 华俊卿 (hua jun qing), 深圳市奈美文化传媒有限公司 (shen zhen shi nai mei wen hua chuan mei you xian gong si), China.

2. The Domain Name and Registrar

The disputed domain name <zyn-official.com> (“Disputed Domain Name”) is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on January 8, 2025. On January 8, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On January 9, 2025, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on January 10, 2025, 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 January 10, 2025.

On January 10, 2025, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the Disputed Domain Name is Chinese. On January 10, 2025, the Complainant requested English to 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 January 20, 2025. In accordance with the Rules, paragraph 5, the due date for Response was February 9, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 10, 2025.

The Center appointed Rosita Li as the sole panelist in this matter on February 14, 2025. 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 First Complainant is part of the group of companies affiliated to the Second Complainant. Founded in 1992, the First Complainant is engaged in the business of manufacturing, marketing, and selling smoke-free tobacco products, including nicotine pouches under the brand ZYN.

The First Complainant is the owner of multiple trademark registrations, including but not limited to the following:

- 1) International Registration No. 1421212 for ZYN registered on April 18, 2018;
- 2) International Registration No. 1456681 for **ZYN** registered on December 27, 2018; and
- 3) International Registration No. 1411950 for **ZYN** registered on April 18, 2018,

(collectively, the “ZYN Trademarks”).

The First Complainant submitted that it has a long history of selling and manufacturing smoke-free tobacco. Since its launch in the USA in 2016, ZYN has obtained a 76 percent market share in the USA and the ZYN oral nicotine product is now available in around 40 countries, achieving considerable international success and reputation.

The Disputed Domain Name was registered by the Respondent on October 17, 2024.

As of the date of filing this Complaint, the Disputed Domain Name resolved to a website being an online shop selling and offering nicotine products bearing the Complainant's ZYN Trademarks, and purportedly using the Complainant's official product images and marketing materials without the Complainant's authorization. A copyright notice was also provided, which claims copyright over the materials presented on the website, but does not show any details or acknowledge the Complainant as the brand owner of the ZYN nicotine products.

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. A summary of the Complainant's submission is as follows:

- (i) The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant contends that:

- The Complainant is the registered owner of the ZYN Trademarks in numerous jurisdictions, including but not limited to the United States of America;
- The Disputed Domain Name is confusingly similar to the ZYN Trademarks of the Complainant, as it identically adopts the Complainant's ZYN Trademarks;
- The Disputed Domain Name reproduces the Complainant's ZYN Trademarks in its entirety, and the addition of the non-distinctive and descriptive word "official" is insufficient to avoid a finding of confusing similarity;
- Internet users will reasonably expect to find the website provided by the Disputed Domain Name to be linked to the owner of the ZYN Trademarks, which is further exacerbated by the use of the Complainant's official product images and marketing materials without authorization.

(ii) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Complainant contends that:

- The Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks or to register a domain name incorporating the ZYN Trademarks;
- The Respondent's behaviour shows a clear intent to obtain an unfair commercial gain, with a view to misleadingly diverting consumers or to tarnish the trademarks owned by the Complainant as the Respondent is not an authorized distributor or seller of the Complainant's ZYN products, and the website resolved under the Disputed Domain Name does not meet the requirements for a bona fide offering of goods nor satisfied the requirements under Oki Data test for using a manufacturer's trademark in a domain name by a reseller;
- The Disputed Domain Name suggests an affiliation with the Complainant and the ZYN Trademarks, as the Disputed Domain Name wholly reproduces the ZYN Trademarks with the non-distinctive and descriptive word "official";
- The website, which uses the Complainant's official product images and marketing materials, and falsely claiming copyright over the materials, supports the false impression that the website is endorsed by the Complainant;
- The website includes no information regarding the identity of the provider of the website, except for "ZYN", a name which includes the Complainant's ZYN Trademarks, further indicating the false impression of an official relationship between the website and the Complainant;
- The Internet users and relevant consumers are misled into falsely believing the website under the Disputed Domain Name is official or an endorsed distributor.

(iii) The Disputed Domain Name was registered and is being used in bad faith. The Complainant contends that:

- The Respondent knew of the Complainant's ZYN Trademarks when registering the Disputed Domain Name;
- The Respondent began offering the Complainant's ZYN nicotine products immediately after registering the Disputed Domain Name;
- The term "ZYN" is an imaginative term and unique to the Complainant, which is not commonly associated with tobacco products or electronic devices, making it improbable that the Respondent chose the Disputed Domain Name coincidentally without the intention of invoking a misleading association with the Complainant;
- The Respondent aimed to attract Internet users for commercial gain by creating confusion with the Complainant's ZYN Trademarks, suggesting an affiliation or endorsement that does not exist;
- By using the Complainant's ZYN Trademarks in the Disputed Domain Name and website title, the Respondent implied that the Complainant or its affiliated dealer was the source of the website;
- The Respondent further supported this implication by using the Complainant's official product images and marketing materials, along with a copyright notice; and
- The Respondent's use of a privacy protection service to hide their identity is indicative of bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that a complainant must satisfy each of the following three elements in a complaint:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (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.

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

- 1) The translation of the Complaint and all supporting documents into the language of the registration agreement by the Complainant would cause an unnecessary burden to the Complainant and unnecessarily delay the proceeding; and
- 2) There is evidence supporting the Respondent's capability of communicating in English, including the Disputed Domain Name in Latin script rather than Chinese script, and the website under the Disputed Domain Name is in English.

The Respondent did not make any 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 and the fact that:

- (i) English is the primary language for the content displayed on the site of the Disputed Domain Name; and
- (ii) Even though the Center has used English and Chinese in the relevant correspondences with the Respondent, the Respondent has not filed any response and did not comment on the language of the proceeding;

the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2. Consolidation: Multiple Complainants

The Complaint and the amended Complaint were filed by two complainants. The First Complainant is a subsidiary of the Second Complainant. The Panel finds that the two complainants have a common grievance against the Respondent and that it is efficient to permit the consolidation of their complaints. Therefore, the Complainants are referred to below separately and collectively as “the Complainant” except as otherwise indicated.

6.3. Substantive Issues

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 a complainant’s trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available records, the Panel finds 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 entirety of the ZYN Trademarks is reproduced within the Disputed Domain Name. Accordingly, the Disputed Domain Name is confusingly similar to the ZYN Trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here, “official”, may bear on assessment of the second and third elements, the Panel finds the addition of such a term does not prevent a finding of confusing similarity between the Disputed Domain Name and the ZYN Trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available records, 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 records, 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.

In accordance with [WIPO Overview 3.0](#), section 2.5.1, where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. Based on the

available records, the landing page of the Disputed Domain Name displays several references to the Complainant and the ZYN Trademarks. The Respondent also displayed the Complainant's official product images and marketing materials on the website. Further, the Disputed Domain Name included the Complainant's ZYN Trademarks in its entirety, and the additional term "official" does not help eliminate the likelihood of confusion as one would easily interpret the Disputed Domain Name leads to an official website of the Complainant's ZYN nicotine products.

Panels have held that the use of a domain name for illegal activity, such as the claimed impersonation of the Complainant, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. By using the Complainant's official product images and marketing materials without authorization, and claiming copyright in these materials, the Respondent falsely associated with the Complainant and/or impersonated the Complainant.

Given the above, the Panel finds it apparent that the Respondent had the intention to divert consumers seeking to find the Complainant, or to tarnish the Complainant's ZYN Trademarks. It is clear that the use of the Disputed Domain Name, which incorporates the ZYN Trademarks in its entirety, is an attempt by the Respondent to capitalize on the goodwill and reputation of the ZYN Trademarks, which the Panel considers not to be for a legitimate noncommercial or fair use of the Disputed Domain Name.

Based on the available records, 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's registration of the Disputed Domain Name incorporates the ZYN Trademarks in its entirety. The Panel also notes that the time of registration of the Disputed Domain Name on October 17, 2024 is well after the registration of the Complainant's ZYN Trademarks. The Complainant provided supporting documents to show that the ZYN Trademarks are well known and reputable amongst the general public, including evidence showing that the Complainant's nicotine products bearing the ZYN Trademarks are available in multiple countries worldwide. The Panel accepts that the Complainant has been continuously using its ZYN Trademarks and finds that it would not be plausible for the Respondent to claim that it was unaware of the Complainant and the ZYN Trademarks. Having considered the composition and use of the Dispute Domain Name by the Respondent, the Panel is prepared to find that the Respondent knew that the registration of the Disputed Domain Name would be confusingly similar to the ZYN Trademarks. Accordingly, the Panel finds that the Respondent's registration of the Disputed Domain Name, which is confusingly similar to the ZYN Trademarks, which are well-known and registered earlier, is a clear indication of bad faith.

In accordance with paragraph 4(b)(iv) of the Policy, if by using the Disputed Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to 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 an indicator of bad faith on the part of the Respondent. As elaborated in the previous section "B. Rights or Legitimate Interests" and in the paragraph above, the Disputed Domain Name formerly resolved to a website offering the Complainant's ZYN nicotine products for sale. The website gave the false impression that it was operated by, or affiliated with, the Complainant. In view of this, the Panel is of the view that the Respondent registered and used the Disputed Domain Name in bad faith. Although the Disputed Domain Name, as at the date of this Decision, resolved to an error page, this change in use does not alter the Panel's conclusion.

Based on the available records, 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 <zyn-official.com> be transferred to the Complainant.

/Rosita Li/

Rosita Li

Sole Panelist

Date: February 28, 2025