

ADMINISTRATIVE PANEL DECISION

Ziwi Limited v. Marie Hueber

Case No. D2025-2120

1. The Parties

The Complainant is Ziwi Limited, New Zealand, represented by James & Wells Lawyers, New Zealand.

The Respondent is Marie Hueber, Germany.

2. The Domain Name and Registrar

The disputed domain name <ziwi-peak.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 May 29, 2025. On May 30, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 3, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 4, 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 on June 5, 2025.

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 June 5, 2025. In accordance with the Rules, paragraph 5, the due date for Response was June 25, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 26, 2025.

The Center appointed Zoltán Takács as the sole panelist in this matter on July 3, 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 Complainant in this administrative proceeding is a limited liability company incorporated in 2007 under the laws of New Zealand and headquartered in Auckland, New Zealand.

The Complainant is one of the global leaders of air-dried pet nutrition, exporting its products to over 35 countries worldwide.

The Complainant is the owner of a significant portfolio of trademarks around the world, inclusive of the New Zealand Trademark Registration No. 716539 for the word mark ZIWIPEAK with the deemed registration date of August 9, 2004.

The Complainant is also the owner of a number of domain names incorporating the ZIWIPEAK trademark, e.g. the domain name <ziwipeak.com> (registered on September 27, 2004) which redirects to the Complainant's primary domain name <ziwipets.com> (registered on April 25, 2016).

The disputed domain name was registered on November 18, 2024, and used to resolve to a website confusingly similar to the Complainant's website, which was displaying the ZIWIPEAK trademark, the Complainant's logo and product images, and purportedly offered for sale the Complainant's products at discounted prices. Following a test purchase on the website at the disputed domain name the Respondent neither delivered the product nor refunded the private investigator that acted on behalf of the Complainant.

Currently the disputed domain name resolves to a webpage with the message "Sorry, you have been blocked, You are unable to access ziwipeak.com".

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

- the disputed domain name which incorporates the entirety of its trademark is, save for the hyphen, identical, or accounting for the hyphen, confusingly similar to its trademark;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name since it is unable to rely on any of the circumstances set out in paragraphs 4(c)(i), (ii), or (iii) of the Policy;
- the Respondent knew of the Complainant and registered the disputed domain name to pass-off the Complainant and cause confusion amongst the Internet users as to the source or affiliation of the Respondent's website and the products offered for sale on that website; and
- the goods purchased through the Respondent's website were not delivered and the purchase was not refunded.

The Complainant requests that the disputed domain name be transferred from the Respondent to the Complainant.

B. Respondent

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

6. Discussion and Findings

A complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely that:

- (i) the 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 domain name; and
- (iii) the 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 disputed domain name comprises the ZIWIPEAK trademark with the addition of a hyphen. The trademark is recognizable within the disputed domain name and the addition of the hyphen does not prevent a finding of confusing similarity between the disputed domain name and the trademark for the purposes of the Policy.

Accordingly, the disputed domain name is confusingly similar to the Complainant's trademark for the purposes of the Policy. [WIPO Overview 3.0](#), sections 1.7 and 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.

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.

According to the documentary evidence submitted by the Complainant, the Respondent used the disputed domain name to deceive Internet users looking for the Complainant through directing them to a website confusingly similar to the Complainant's website that displayed the ZIWIPEAK trademark, the Complainant's logo and its product images and purportedly offered for sale the Complainant's products at discounted prices.

There is no indication of any relationship of the Respondent with the Complainant as to the source of the products at issue and the website at the disputed domain name, which implied that the products offered for sale on the Respondent's website originated with the Complainant.

The Panel notes that there is no evidence as to whether the goods offered on the Respondent's website at the disputed domain name were counterfeit or genuine, or whether any of those goods ultimately existed.

The Panel also notes that it is evident that the Complainant has not authorized, licensed, or allowed the Respondent or any third party to use its trademark in the disputed domain name or in any other way that would confer validity or legitimacy upon such usage. Consequently, even if the products that appeared on the Respondent's website under the disputed domain name would have existed and were genuine, the Respondent's website would still not qualify as fair use. [WIPO Overview 3.0](#), sections 2.13.2 and 2.8.1; *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

In the Panel's view it is indisputable that the Respondent was impersonating the Complainant by using on its website at the disputed domain name the Complainant's trademark and imagery. In addition, the evidence that the goods purchased from the Respondent's website through a "trap-purchase" were not delivered and refunded is indicative of the Respondent's illegal activity. Panels have held that the use of a domain name for illegal activity, here impersonation/passing off and fraud can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Also, the current use of the dispute domain name to resolve to a webpage stating that access to it has been blocked does not amount to use in connection with a bona fide offering of goods and services.

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name and that 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.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

In the present case, the Panel notes that the Complainant's ZIWIPEAK trademark is inherently distinctive and that its registration predates the date of registration of the disputed domain name. The website at the disputed domain name featured the Complainant's trademark, logo and imagery; thus in view of the Panel, it is clear that the Respondent had actual knowledge of the Complainant and its trademark and registered the disputed domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark. Paragraph 4(b)(iv) of the Policy.

The Respondent's intent to target the Complainant and its mark can be readily inferred from the contents of the Respondent's website seeking to impersonate the Complainant by directing Internet traffic to its website in order to gain illegitimate profit through impersonation or false association. Visitors of the Respondent's website might have reasonably believed that it was connected to or approved by the Complainant as it appeared to offer products under the Complainant's trademark, logo and imagery and gave impression that

the website attached to the disputed domain name is official or at least authorized by the Complainant, while that was clearly not the case.

Also, as mentioned above, the goods purchased at the Respondent's website through a "trap-purchase" were neither delivered nor refunded. Panels have held that the use of a domain name for illegal activity, in this case impersonation/passing off and fraud constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

As for the current, effectively inactive status of the disputed domain name, the Panel finds that it does not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. In this context the Panel notes the degree of distinctiveness of the Complainant's trademark, the composition and previous use of the disputed domain name and finds that in the circumstances of this case, the current passive holding of the disputed domain name does not prevent a finding of 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 <ziwi-peak.com> be transferred to the Complainant.

/Zoltán Takács/

Zoltán Takács

Sole Panelist

Date: July 17, 2025