ARBITRATION
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MEDIATION CENTER

WIPO
WORLD
INTELLECTUAL PROPERTY
ORGANIZATION

# ADMINISTRATIVE PANEL DECISION
Dan Foam ApS v. Zhichao
Case No. D2025-3675

## 1. The Parties

The Complainant is Dan Foam ApS, Denmark, represented by Vice Cox & Townsend PLLC, United States of America.

The Respondent is Zhichao, China.

## 2. The Domain Name and Registrar

The disputed domain name <tempurpedix.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 September 10, 2025. On September 11, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 12, 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 Super Privacy Service LTD c/o Dynadot) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 16, 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 September 16, 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 September 19, 2025. In accordance with the Rules, paragraph 5, the due date for Response was October 9, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 16, 2025.

The Center appointed Jon Lang as the sole panelist in this matter on October 31, 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

Tempur Sealy International, Inc., is the parent company of the Complainant, Dan Foam ApS, and also Tempur-Pedic Management, LLC. For purposes of this decision, all three entities will hereafter collectively be referred to as the Complainant.

The Complainant owns numerous trademarks for or including TEMPUR, including the following registered in the United States Patent and Trademark Office: TEMPUR (Reg No: 1,926,469/Registration date: October 10, 1995) and TEMPUR-PEDIC (Reg No: 1,853,088/Registration date: September 6, 1994), collectively referred to as the TEMPUR Marks.

Long prior to registration of the disputed domain name (the "Domain Name") on July 3, 2025, the Complainant developed, manufactured and marketed visco-elastic foam mattresses, cushions, pillows, and other comfort products and accessories under the TEMPUR-PEDIC and TEMPUR trademarks. The Complainant began using the TEMPUR-PEDIC mark on October 30, 1992, and use of the TEMPUR mark began at least as early as November 10, 1994.

The Complainant owns and operates websites accessible through the domain names "www.tempurpedic.com" and "www.tempursealy.com", among others.

The Domain Name resolves to what appears to be the home page of the Complainant's Tempur-Pedic website at "www.tempurpedic.com"

The Complainant has spent millions of dollars in advertising products offered in connection with the TEMPUR Marks and as a result of the widespread and continuous use and promotion of the Complainant's trademarks, they have achieved fame and distinctiveness. The TEMPUR Marks are widely known and recognized as source identifiers for a variety of goods and services originating with the Complainant and serve to distinguish those goods and services from those of others.

## 5. Parties' Contentions

### A. Complainant

The Complainant contends that it has satisfied each of the three elements required under the Policy for a transfer of the Domain Name.

Notably, the Complainant contends:

Confusing similarity: The Domain Name is confusingly similar to the Complainant's TEMPUR Marks and nearly identical to the Complainant's TEMPUR-PEDIC mark, save that the Respondent has replaced the last letter, "c" with an "x". The word "tempurpedix" sounds to a consumer like a plural version of the Complainant's TEMPUR-PEDIC mark. The addition of the generic Top-Level-Domain ("gTLD") ".com" does not distinguish the Domain Name from Complainant's registered trademarks. As a result of the Complainant's extensive use of the TEMPUR Marks, they are known to identify the Complainant as the source of bedding-related goods including furniture and business support services for its retail locations. The Domain Name creates a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of the Respondent's website, and is likely to misleadingly divert web users trying to locate legitimate information about the Complainant's goods and investor information.

Rights or legitimate interests: The Respondent has no rights or legitimate interests with respect to the Domain Name. The Complainant did not grant any authorization to the Respondent to use the TEMPUR Marks. The Respondent is not a licensee of Complainant, or associated with the Complainant in any way or, it is believed, operating a business under the Domain Name, or affiliated with or commonly known as Tempur Pedix. The TEMPUR Marks are strong trademarks with no other known meanings and therefore are not terms the Respondent would legitimately choose unless seeking to create an association with the Complainant. Mere registration of a domain name is not sufficient to confer rights or legitimate interests.

Bad faith*:* The Respondent has registered and is using the Domain Name in bad faith because it was registered and is being used primarily with the intent to disrupt the business of the Complainant. There is a presumption of bad faith where a respondent was aware, actually or constructively, of a Complainant's famous and distinctive trademark at the time of registration. Here, the Complainant's federal trademark registrations predate the Domain Name registration by many years. The Complainant has invested a great deal of time, effort and resource in the TEMPUR Marks and as a result, the marks have become well-known and strong. The Internet is an integral component of the success of the Complainant because of the information, goods and services it provides to consumers and potential consumers online. The Respondent is not making a legitimate noncommercial or fair use of the Domain Name without intent for commercial gain. The Respondent also knows or should know that Internet users looking for websites containing information about Tempur products and services are likely to encounter the Respondent's website by entering the URL "www.tempurpedix.com", which incorporates the TEMPUR-PEDIC trademark in its entirety (except for substitution of the last letter "c" for "x"). In using the Domain Name, the Respondent has intentionally attempted 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 Respondent's website or location. The Complainant's business has been harmed by Respondent's unauthorized and bad faith registration and use of the Domain Name.

**B. Respondent**

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

**6. Discussion and Findings**

Paragraph 4(a) of the Policy requires a complainant to prove: (i) that a respondent has registered a domain name which is identical or confusingly similar to a trademark or service mark in which a complainant has rights; (ii) that the respondent has no rights or legitimate interests in respect of the domain name; and (iii) that the domain name has been registered and is being used in bad faith. A complainant must prove each of these three elements to succeed.

**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 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 both the TEMPUR-PEDIC and TEMPUR trademarks for the purposes of the Policy. WIPO Overview 3.0, section 1.2.1.

Both trademarks are recognizable within the Domain Name <tempurpedix.com>. So far as the TEMPUR-PEDIC trademark is concerned, substitution of the letter "x" for "c" does not prevent a finding of confusing similarity with the Domain Name. Nor would the absence of the hyphen between the two components of the trademark. Indeed, section 1.9 of WIPO Overview 3.0 states that "A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element".

As for the TEMPUR trademark, the addition of the term "pedix", does not prevent a finding of confusing similarity with the Domain Name - it contains the TEMPUR trademark and as section 1.8 of WIPO Overview 3.0 states, "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element".

For the purposes of comparison, the gTLD ".com" may be ignored.

The Panel finds that the Domain Name is confusingly similar to both the TEMPUR-PEDIC and TEMPUR trademarks for the purposes of the Policy and thus paragraph 4(a)(i) of the Policy (the first element) 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.

A respondent can show it has rights to or legitimate interests in a domain name in various ways even where, as is the case here, it is not licensed by or, by agreement or otherwise, legitimately affiliated with a complainant.

For instance, a respondent can show that it has been commonly known by the domain name or that it is making a legitimate noncommercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. A respondent can also show that it is using a domain name in connection with a bona fide offering of goods or services.

There is nothing on the record to indicate that the Respondent is commonly known by the Domain Name. The Domain Name was designed to be seen as incorporating the TEMPUR-PEDIC and TEMPUR trademarks. Whist the precise underlying purpose of such registration is unclear, particularly given that the Domain Name appears to resolve to the Complainant's own website at the domain name <tempurpedic.com> as opposed to, for instance, a parking page with links to competing products, what is clear is that Internet users will be misled into believing that the Domain Name is genuinely associated in some way with the Complainant. The purpose of this, no doubt, is for some immediate or future commercial benefit but precisely how, what or when is unknown. In these circumstances, it cannot be said that there is legitimate noncommercial or fair use without intent for commercial gain to mislead, or a bona fide offering of goods or services.

The Domain Name clearly seeks to create an association with the Complainant in the minds of Internet users. As far as the TEMPUR-PEDIC trademark is concerned, the Domain Name appears to be a clear case of typosquatting i.e. the deliberate but usually minor misspelling of another's trademark to mislead. Section 1.9 of the WIPO Overview 3.0 makes clear that under "the second and third elements, panels will normally find that employing a misspelling in this way signals an intention on the part of the respondent (typically corroborated by infringing website content) to confuse users seeking or expecting the complainant". As for the TEMPUR trademark, this has been incorporated into the Domain Name in its entirety and again likely to mislead Internet users.

The Respondent has not come forward with a Response or engaged in any other way with this UDRP proceeding.

In all the circumstances, there is nothing to indicate that the Respondent has rights or legitimate interests in the Domain Name. The contentions of the Complainant have been made out but not answered by the Respondent and accordingly, the Panel finds that the Complainant has fulfilled the requirements of paragraph 4(a)(ii) of the Policy (the second element).

**C. Registered and Used in Bad Faith**

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 too 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.

The Respondent was obviously aware of the Complainant and its TEMPUR-PEDIC and TEMPUR trademarks at the
time of registration of the Domain Name given its formulation and the use to which it has been put.

One way a complainant may demonstrate bad faith registration and use is to show that a respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with a complainant's mark as to the source, sponsorship, affiliation or endorsement of its website or of products or services on it.

WIPO Overview 3.0, section 3.1.4, in answer to the question, "How does a complainant prove that a respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark?" states:

"Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith.

Panels have moreover found the following types of evidence to support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark: …… (v) redirecting the domain name to the complainant's (or a competitor's) website, and (vi) absence of any conceivable good faith use. …..

….panels have found that a respondent redirecting a domain name to the complainant's website can establish bad faith insofar as the respondent retains control over the redirection thus creating a real or implied ongoing threat to the complainant."

The TEMPUR Marks are widely known. The Respondent retaining control over the redirection of the confusingly similar (almost identical, in the case of the TEMPUR-PEDIC trademark) Domain Name in respect of which there can be no conceivable good faith use, creates an ongoing threat to the Complainant, is disruptive to its business should not be allowed to continue.

The Panel finds that in the circumstances there is evidence of both registration and use of the Domain Name in bad faith (the third element).

**7. Decision**

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name <tempurpedix.com> be transferred to the Complainant.

*/Jon Lang/*
**Jon Lang**
Sole Panelist
Date: November 11, 2025