

## **ADMINISTRATIVE PANEL DECISION**

Swedish Match North Europe and Philip Morris International, Inc v. jiujiuba kervin

Case No. D2025-4507

### **1. The Parties**

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

The Respondent is jiujiuba kervin, United States of America (“United States”).

### **2. The Domain Name and Registrar**

The disputed domain name <zynvogue.shop> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 31, 2025. On October 31, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 31, 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 November 3, 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 November 4, 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 November 4, 2025. In accordance with the Rules, paragraph 5, the due date for Response was November 24, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 25, 2025.

The Center appointed Alfred Meijboom as the sole panelist in this matter on November 28, 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 (“Swedish Match”) is a company which is part of a group of companies affiliated to the second Complainant (“Philip Morris”). Founded in 1992, the Complainant is primarily engaged in the business of manufacturing, marketing, and selling smoke-free tobacco products, such as snus and nicotine pouches, which are sold in several countries. In May 2022, Swedish Match was acquired by Philip Morris. The Complainant’s brand portfolio includes the trademark ZYN, which has acquired a 76% market share in the United States. Today, ZYN nicotine products are available in around forty markets across the world.

The Complainant owns a portfolio of trademark registrations for ZYN in class 34, including the following words marks:

- European Union trademark ZYN with registration number 015272487 of July 8, 2016;
- International trademark ZYN with registration number 1411950 of April 18, 2018; and
- United States trademark ZYN, with registration number 5061008 of October 11, 2016, which trademark is owned by Pinkerton Tobacco Co. LP, which is part of the group of companies affiliated to Swedish Match.

The disputed domain name was registered on April 14, 2025. The disputed domain name resolves to a website which displays the Complainant’s ZYN trademark, uses the Complainant’s product images and offers the Complainant’s ZYN marked 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.

Notably, the Complainant contends that the disputed domain name is confusingly similar to its ZYN trademarks, as it identically adopts the ZYN trademark, while the addition of the non-distinctive and descriptive word “vogue” does not prevent a finding of confusing similarity between the disputed domain name and the ZYN Trademark.

The Complainant contends that the Respondent lacks a right or legitimate interest in the disputed domain name because the Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks or to register a domain name incorporating the Complainant’s ZYN trademark or a domain name which will be associated with the ZYN trademark, and the Respondent is also not making a legitimate non-commercial or fair use of the disputed domain name but rather shows a clear intent to obtain an unfair commercial gain, with a view to misleadingly diverting consumers or to tarnish the Complainant’s trademarks. According to the Complainant, the Respondent is not an authorized distributor or reseller of the ZYN nicotine product, and the website provided under the disputed domain name does not meet the requirements set out by numerous panel decisions for a bona fide offering of goods, and the disputed domain name does more particularly not meet the criteria set forth in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#), (“Oki Data criteria”).

According to the Complainant it is evident from the Respondent's use of the disputed domain name that the Respondent knew of the Complainant's ZYN trademark, which term is allegedly purely imaginative and unique to the Complainant, when registering the disputed domain name. The Complainant further contends that it is also evident from the Respondent's use of the disputed domain name that the Respondent registered and used the disputed domain name with the intention to attract, for commercial gain Internet users to its website by creating a likelihood of confusion with the Complainant's ZYN trademark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location, which constitutes registration and use in bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

The Respondent did not file a Response. However, as set out in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 4.3, the consensus view of UDRP panels is that the respondent's default does not automatically result in a decision in favor of the complainant. The Complainant must still establish each of the three elements required by paragraph 4(a) of the Policy. Although the Panel may draw appropriate inferences from the Respondent's default, paragraph 4(a) of the Policy requires the Complainant to support its assertions with actual evidence in order to succeed in these proceedings. Paragraph 14(b) of the Rules provides that, in the absence of exceptional circumstances, the panel shall draw such inferences as it considers appropriate from a failure of a party to comply with a provision or requirement of the Rules. The Panel finds that in this case there are no such exceptional circumstances.

Under the Policy, the Complainant must prove 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 respect of 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 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 Complainant's ZYN trademark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the Complainant's trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here "vogue", 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.

As the disputed domain name resolves to a website which offers the Complainant’s smoke-free nicotine products for sale and for which the Complainant’s ZYN trademark and product images are used, the Panel first needs to decide if the Respondent (could have) made a bona fide offering of goods via the disputed domain name and if the Oki Data criteria, which panels commonly apply in matters of resale, were met. Under this Oki Data test, the following cumulative requirements apply (see also section 2.8 of [WIPO Overview 3.0](#)):

- (i) the respondent must actually be offering the goods or services at issue;
- (ii) the respondent must use the site to sell only the trademarked goods or services;
- (iii) the site must accurately and prominently disclose the registrant’s relationship with the trademark holder; and
- (iv) the respondent must not try to “corner the market” in domain names that reflect the trademark, thus depriving the trademark owner of the ability to reflect its own mark in a domain name.

The evidence submitted by the Complainant shows that the Respondent’s website does not mention its relationship with the Complainant, but instead suggests a connection with the Complainant through the prominent use of the Complainant’s word and figurative mark ZYN, the use of the Complainant’s product images, and the fact that the website contains a copyright notice at the bottom of the website claiming copyright in the material presented on the website. The Panel is therefore satisfied that the Respondent failed the Oki Data test.

What remains is that the Respondent is using the disputed domain name without the Complainant’s consent, offering the Complainant’s products without its permission, and using the Complainant’s trademark and product images without authorization, with the clear intention of profiting from the reputation and goodwill of the ZYN trademark. The Panel is therefore satisfied that the disputed domain name is not being used for a bona fide offering of goods, and the Respondent lacks rights or legitimate interests in the disputed domain name.

The Panel finds the second element of the Policy has been established.

## **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 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 Complainant has demonstrated that it registered its ZYN trademark in the United States, where the Respondent allegedly resides, about a decade prior to the Respondent registering the disputed domain name, and the Complainant has undisputedly argued that its smoke-free nicotine products are available under the ZYN trademark in several dozen markets worldwide and have a market share of 76% in the United States. Since “zyn” also has no immediately apparent descriptive meaning, and the disputed domain name led to a website which offers the Complainant’s nicotine products for sale immediately after registration, the Panel considers it most likely, in the absence of any explanation from the Respondent, that the Respondent registered the disputed domain name because he was aware of the ZYN trademark. Consequently, the Panel is satisfied that the disputed domain name was registered in bad faith.

Further, the Panel is satisfied that the Respondent’s use of the disputed domain name in connection to the offering for sale of the Complainant’s ZYN products, without at least accurately and prominently disclosing the Respondent’s relationship with the Complainant, constitutes an intentional attempt to attract, for commercial gain, Internet users to the Respondent’s website by creating a likelihood of confusion with the ZYN trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website and the products offered on the Respondent’s website. The Panel is therefore satisfied that the Complainant showed that the Respondent used the disputed domain name in bad faith as meant in paragraph 4(b)(iv) of the Policy

The Panel finds the third element of the Policy has been established

## **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 <zynvogue.shop> be transferred to the Complainant.

*/Alfred Meijboom/*

**Alfred Meijboom**

Sole Panelist

Date: December 3, 2025