

ADMINISTRATIVE PANEL DECISION

Zoomlion Heavy Industry Science and Technology Co., Ltd. v. Red Door Holdings Pty Ltd

Case No. DAU2024-0034

1. The Parties

The Complainant is Zoomlion Heavy Industry Science and Technology Co., Ltd., of China, represented by Chofn Intellectual Property (Chofn IP), China.

The Respondent is Red Door Holdings Pty Ltd, of Australia.

2. The Domain Name and Registrar

The disputed domain name <zoomlionaustralia.com.au> is registered with GoDaddy.com, LLC.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 18, 2024. On November 18, 2024, the Center transmitted by email to GoDaddy.com, LLC, a request for registrar verification in connection with the disputed domain name. On November 18, 2024, GoDaddy.com, LLC, transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the .au Dispute Resolution Policy (the "Policy" or ".auDRP"), the Rules for .au Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for .au Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on November 25, 2024. In accordance with the Rules, paragraph 5(a), the due date for Response was December 15, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 18, 2024.

The Center appointed Alistair Payne as the sole panelist in this matter on December 24, 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

Founded in 1992, the Complainant is a Chinese publicly listed company that primarily engages in the research, development, and manufacturing of high-tech equipment such as engineering machinery and agriculture machinery, as well as new types of construction materials. It has been recognised by Fortune China as one of the Fortune 500 companies in China and is a leading manufacturer of full-process agricultural machinery in China, has opened subsidiaries in East Asia, Southeast Asia, Europe and other regions, invested in industrial parks in Italy, Germany, Brazil, India and Belarus, plans to build new plants in Türkiye and Saudi Arabia, and has established more than 50 permanent organizations around the world. It has also developed a global logistics network and spare parts supply system in which its business covers more than 100 countries and regions around the world. In Australia it has operated a subsidiary, Zoomlion Australia-New Zealand Pty Ltd and conducted business activities through it in Australia since 2008.

The Complainant owns various trade mark registrations internationally for its ZOOMLION mark, including Australian trade mark registration number 1197054 for the ZOOMLION word mark registered on September 4, 2007.

The disputed domain name was registered on June 27, 2021. It does not resolve to an active web page.

5. Parties Contentions

A. Complainant

The Complainant submits that it owns registered trade mark rights for its ZOOMLION mark as set out above and that the disputed domain name wholly contains its mark and is therefore confusingly similar to it. It says that the inclusion of the term “Australia” in the disputed domain name does not prevent a finding of confusing similarity.

The Complainant also submits that the Respondent is neither the Complainant's distributor nor partner. It has never directly or indirectly authorised the Respondent to use the ZOOMLION trade mark and the corresponding domain names in any form. The Complainant notes that the disputed domain name has not been in regular use since it was registered based on the “Wayback” records submitted in evidence and accordingly says that it is impossible for the Respondent to have obtained relevant legal rights and interests in the disputed domain name through use and there is no evidence to suggest that the Respondent will use the disputed domain name in good faith in the long term. The Complainant searched various national and regional trade mark databases (including in Australia) in the name of the Respondent and did not find that the Respondent had trade mark rights for ZOOMLION. It notes that the name of the Respondent is Red Door Holdings Pty Ltd and asserts that it has therefore not developed goodwill in connection with the ZOOMLION name.

As far as registration in bad faith is concerned, the Complainant says that prior to the registration of the disputed domain name, the ZOOMLION brand had already gained a high level of global recognition including in Australia, where the Complainant had opened a subsidiary, Zoomlion Australia-New Zealand Pty Ltd, and conducted business activities as early as 2008. Accordingly, the Complainant submits that whether the Respondent is located in China or the United States of America, or any other country, in view of the degree of renown attaching to the ZOOMLION mark and the fact that it does not correspond to any word in common use in the English or in any other language, the Respondent is more than likely to have been aware of the existence of the Complainant's ZOOMLION trade mark prior to the registration of the disputed domain name.

The Complainant asserts that it has made substantial use of the ZOOMLION trade mark which is well known internationally. It says that there is no evidence that the Respondent has made any bona fide use of the disputed domain name and that taking the circumstances of the case as a whole into account, the Complainant believes that the Respondent's use amounts to a passive holding in bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has demonstrated that it owns Australian trade mark registration number 1197054 for the ZOOMLION word mark registered on September 4, 2007. The disputed domain name wholly incorporates this mark and is therefore confusingly similar to it. The additional inclusion of the country name "Australia" does not prevent a finding of confusing similarity.

Accordingly, the Complaint succeeds under the first element of the Policy.

B. Rights or Legitimate Interests

The Complainant has submitted that the Respondent is neither the Complainant's distributor nor partner. It has also asserted that it has never directly or indirectly authorised the Respondent to use the ZOOMLION trade mark or corresponding domain names in any form. The Complainant has provided evidence based on the "Wayback" records that the disputed domain name has not been in regular use since it was registered and has submitted that there is no evidence to suggest that the Respondent will use the disputed domain name in good faith in the long term. The Complainant has also submitted that it searched various national and regional trade mark databases (including in Australia) in the name of the Respondent and did not find that the Respondent had trade mark rights for ZOOMLION. It has also noted that the name of the Respondent is Red Door Holdings Pty Ltd and therefore has asserted that it is unlikely in the circumstances that the Respondent has developed any reputation or goodwill in connection with the ZOOMLION name.

The Panel finds that 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 case and has not provided any relevant evidence demonstrating rights or legitimate interests in the disputed domain name, such as those enumerated in the Policy or otherwise. The Panel therefore finds that the Complaint also succeeds under section 4(a)(ii) of the Policy.

C. Registered or Subsequently Used in Bad Faith

Either registration or use in bad faith of the disputed domain name fulfills the requirements of paragraph 4(a)(iii) of the Policy.

The disputed domain name was registered long after the date of registration of the Complainant's Australian trade mark. The ZOOMLION mark is distinctive and is not a commonly used term and enjoys a high degree of global reputation based on the substantial international use that has been made of it by the Complainant, including in Australia where the Complainant has operated through a subsidiary since as early as 2008. In these circumstances the Panel finds that it is more than likely that the Respondent was well aware of the ZOOMLION mark when it registered the disputed domain name in 2024 which fulfills the requirements for registration in bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has asserted that the disputed name has not been used to date and is being held passively by the Respondent in bad faith. Factors that have been considered relevant by past panels in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain

name may be put (see section 3.2 auDA Overview of Panel Views on Selected auDRP Questions and section 3.3 of the WIPO Jurisprudential Overview).

The ZOOMLION mark is distinctive, is not a commonly used term and has been used extensively by the Complainant internationally through its considerable corporate organization and network and as a result appears to enjoy a substantial reputation. It also appears to have used its mark in Australia through the activities of the Complainant's Australian subsidiary for many years.

The Respondent has failed to respond to the Complaint or to explain its registration of the disputed domain name and while it does not appear to have attempted to conceal its identity, there is no evidence to suggest that it has made or intends to make a bona fide use of the disputed domain name. The Panel notes in this regard that the disputed domain name incorporates the ZOOMLION mark together with the country name "Australia". People seeing the disputed domain name would reasonably assume that it relates to the Complainant's activities in Australia but the Complainant denies that the Respondent has any connection or affiliation to it at all. In these circumstances and considering the lack of explanation by the Respondent, the Panel finds it implausible that the Respondent intends to make any good faith use of the disputed domain name.

As a result, the Panel finds that disputed domain name has been registered or used in bad faith and that the Complaint also succeeds under section 4(a)(iii) of the Policy.

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 that if AUDA determines that the Complainant, as a foreign registered entity, is entitled to hold a registration of the domain name <zoomlionaustria.com.au> under the .AU Domain Administration Rules: Licensing then the domain name <zoomlionaustria.com.au> should be transferred to the Complainant. However, if AUDA determines that the Complainant is not eligible to hold the said disputed domain name then the Panel orders that the disputed domain name <zoomlionaustria.com.au> be cancelled.

/Alistair Payne/

Alistair Payne

Sole Panelist

Date: January 7, 2025