

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE
(Beijing Office)
ADMINISTRATIVE PANEL DECISION
Case No. CN-1300662

Complainant: Zippo Manufacturing Company

Respondent: ZENDO DESIGNS

Domain Name: szippo.com

Registrar: GoDaddy. Com, Inc.

1. Procedural History

On 2 April 2013, the Complainant submitted its Complaint to the Beijing Office of the Asian Domain Name Dispute Resolution Centre (the "ADNDRC"), in accordance with the Uniform Domain Name Dispute Resolution Policy (the "Policy") adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN") on August 26, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "Rules"), and ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "ADNDRC Supplemental Rules").

On 3 April 2013, the ADNDRC sent to the Complainant by email an acknowledgement of the receipt of the Complaint. On the same day, the ADNDRC transmitted by email to the Registrar and ICANN a request for registrar verification in connection with the disputed domain name.

On 4 April 2013, the ADNDRC received the Registrar's confirmation of registration information of the domain name in dispute.

On 15 April 2013, the ADNDRC transmitted the Written Notice of the Complaint to the Respondent, which informed that the Complainant had filed a Complaint against the Respondent over the disputed domain name and the ADNDRC had sent the Complaint and its attachments to the Respondent through email according to the Rules and the

Supplemental Rules. On the same day, the ADNDRC notified the Complainant that the Complaint has been confirmed and transmitted to the Respondent, and notified the ICANN and the Registrar of the commencement of the proceedings.

The Respondent failed to submit a Response within the specified time period. On 17 May 2013, the ADNDRC notified that no Response was received and the case shall be heard by default.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Ms. Xue Hong, on 21 May 2013, the ADNDRC informed the Complainant and the Respondent of the appointment of the Panelist, and transferred the case file to the Panelist on 27 May 2013.

The Panel finds that it was properly constituted and appointed in accordance with the Rules and the ADNDRC Supplemental Rules. The Panel should render the Decision within 14 days, i.e., on or before 10 June 2013.

The language of the proceeding is English, as being the language of the Domain Name Registration and Service Agreement, pursuant to Paragraph 11(a) of the Rules, and also in consideration of the fact that there is no express agreement to the contrary by the Parties.

2. Factual Background

For the Complainant

The Complainant in this case is Zippo Manufacturing Company. The registered address is 33 Barbour Street, Bradford, PA 16701. The authorized representative in this case is FENG Chao. The Complainant has the trademark registrations for "ZIPPO" in 128 countries and regions primarily on lighter products.

For the Respondent

According to the record in the Whois database, the Respondent is ZENDO DESIGNS and the disputed domain name “szippo.com” was registered on 28 December 2010. The registered address is 2 Kooringa Street Taperoo, South Australia 5017.

3. Parties' Contentions

The Complainant (Excerpted from the text of the Complaint)

(1)The disputed domain name “szippo.com” contains the word “zippo” which is identical with complainant’s registered trademark.

The complainant, ZIPPO Manufacturing Company (hereafter as ZMC) was established in 1932, is the world's largest manufacturer of lighters and one of the most fascinating firms anywhere. As a world famous manufacturer, ZMC always be happy to restore any old Zippo Windproof lighter to flaming youth within 3 working days at absolutely no cost. The "forever" guarantee is one reason why privately held Zippo, which sells "millions" of lighters a year ranging from brushed chrome to solid gold.

Besides, “ZIPPO” is distinctive part of the company name of ZMC, as a globally prestigious enterprise, ZMC attaches significant importance to all its intellectual property rights and has been approved for registration of the marks in more than 128 countries and regions, including but not limited to America, Canada, Australia, Japan, Korea and China. The aforementioned registration has covered the classification of goods and service including but not limited to 3, 4, 6, 7, 8, 9, 11, 12, 14, 16, 18, 20, 21, 22, 25, 26, 28, 34, etc. Currently, the aforementioned trademarks are remaining in force.

“ZIPPO” is the distinctive part of ZMC’s company name; the complainant enjoys company name rights for “ZIPPO”.

The complainant has registered a series domain names containing "ZIPPO" characters in China and the world, such as www.zippo.cn, www.zippo.com, www.zippo.biz, www.zippo.asia, etc.

The complainant ZMC should be dated back to 1932 when its founder Mr. George G Blaisdell founded it in Bradford, PA. The first Zippo was produced in early 1933. It got its name because Blaisdell liked the sound of the word "zipper" and "zippo" sounded more modern. On March 3, 1936, patent was granted for Zippo.

Zippo is unique in U.S. industry and a hero in World War II by blocking the bullet and saving a soldier's life. Besides, Zippo is also an active "actor" and have been perfectly shown in more than 1000 Hollywood movies. Including the movie "FROM HERE TO ETERNITY" which earned the best movie of Oscar Award in 1953, the film "Lethal Weapon" which starred by Mel Gibson in 1992, "The JURASSIC PARK" in 1993, "Apollo" in 1995, "The Independence Day" in 1996, "Face Off" in 1997, and Charlie's Angels. In 1999, Zippo has been named as symbol of America by Times Magazine.

ZMC developed into a successful business enterprise by designing a lighter that lives up to a simple slogan "It works." In 1962, ZMC diversified its output by bringing out a six-foot flexible steel pocket rule. Since then they have added pocket knives, money-clip knives, golf balls, key holders, wood desk items, and writing instruments. Like the lighters, all Zippo products pledge: "If for any reason, your Zippo will not work, regardless of age or condition -we'll fix it free." Even the golf ball is guaranteed playable for 180 holes.

Due to the popularity among the consumers, the wartime production of Zippo has peaked in 1945 when 3 million Zippo were made. In 1969,

the output of Zippo's has achieved to one hundred millions. In 1980s, the marketing networks for ZIPPO products have been spread across the world. In 2003, ZMC produced the 400 millionth lighter in its 71-year history. The milestone lighter has been on permanent display in the company's museum in the Zippo/Case Visitors Center.

ZMC has been playing an active role in Chinese market and increasingly become the leading brand among the lighter manufacturers. Based on the statistics, from 2000 to 2002, the sales volume of Zippo in China has occupied four-fifths of ZMC's total exports. To build a more prestigious brand and enhance the popularity, ZMC poured great investment into advertising through different media in China. In 2009, exclude other Chinese branches, the advertising expense by Zippo (Hong Kong and China) Co. has exceeded 0.3 million dollars.

The complainant propagate its brand through different media, mainly includes:

- Advertisements published in website, magazine and newspaper etc. The complainant has published many introduction articles and advertisement on famous magazines, website, etc. Through these propagation, ZIPPO became well known among the relevant public.

- From 2003, in order to adapt to competition and further open up the market, ZMC began to organize the ZIPPO Hot Tour, much music fan and the fans for ZIPPO get together to communicate via music and exchange their key ideas. The flame of the tour ignited the Zippo fans and the said tours were successful holding across china for recent years. In 2012, ZMC has participated MIDI Musical Festival in Beijing and Shanghai that sponsored by Beijing Midi School of Music.

Based on unceasing efforts, the complainant established a perfect

marketing network and opened more branches in different cities.

ZIPPO brand has acquired high popularity in China. Entered ZIPPO as the key word in GOOGLE as well as BAIDU, we will get hundreds of thousands links displaying the ZIPPO product, ZMC's introduction, propagation and the comments made by the consumers to ZIPPO product.

After continuous use and propagation, ZIPPO brand earned a great reputation all over the world and should be granted more extensive protection.

The disputed domain name "szippo.com" contains the word "zippo" which is identical with complainant's registered trademark. Furthermore, "s" is a common English letter that doesn't acquire significance. Thus, the disputed domain name was distinguished by the word "zippo" that shall easily mislead the consumers in misunderstanding the website had some commercial connections with ZMC.

(2) The respondent have no rights or legitimate interests in respect of the domain name "szippo.com";

The respondent is not the trademark owner of "Zippo"; The complainant have never authorized the respondent to use the aforementioned trademark and never transferred the said trademark to the respondent. In addition, the respondent has never acquired authorization from other legitimate channel in using the "Zippo" trademark; Based on further investigation, the respondent was not the employee or agent of ZMC who has been authorized to complete the registration of the disputed domain name.

Therefore, the respondent have no rights or legitimate interests in respect of the domain name "szippo.com".

(3) The disputed domain name has been registered and is being used in bad faith

According to (ii) and (iv) 4B of Uniform Domain Name Dispute Resolution Policy: Evidence of Registration and Use in Bad Faith, the respondent registered and used the disputed domain name in bad faith, the reasoning is briefed as below:

For the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith: (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

The registered trademark "Zippo" has become world famous through continuous use, registration and propagation, you can find ZIPPO product in most countries. In addition, Zippo is the distinctive part of ZMC's company name. The respondent registered the disputed domain name and made Zippo as the distinctive part of the domain name under the awareness of ZMC is the registrant of ZIPPO trademark, the respondent has intentionally prevented ZMC, who is the owner of the trademark from reflecting the mark in a corresponding domain name.

The complainant considered the respondent have no rights or legitimate

interests in respect of the distinctive part of the disputed domain name ZIPPO, the respondent has registered the disputed domain name to seek the improper benefits and made confusion among the relevant consumers. For the relevant public, the distinctive part of the disputed domain name will easily lead them in misunderstanding the origin of the products or confuse the consumer that the respondent had some commercial connections with ZMC.

All the above facts would verify the respondent has registered the disputed domain name with the purpose to distribute and propagate his counterfeit product, the registration and the use is absolutely in bad faith which has been set forth in the(ii) and (iv) 4B of Uniform Domain Name Dispute Resolution Policy: or (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

The Complainant requests the disputed domain name “szippo.com” be transferred from respondent to complainant.

The Respondent

The Respondent did not submit the Response.

4. Findings

Identity or Confusing Similarity

Pursuant to the Policy, paragraph 4(a)(i), a complainant must prove that the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights. In line with such requirement, a complainant must prove its trademark rights and the similarity between the disputed domain name and its trademark.

The Panel notes that the trademark “ZIPPO” has been registered by the Complainant primarily on lighter products in 128 countries and regions, including China. The Complainant enjoys the exclusive trademark rights therein.

The disputed domain name is “szippo.com”. Apart from the generic top-level domain suffix “.com”, the disputed domain name consists of “szippo”, which apparently consists of the letter “s” and “zippo”, the former of which is a single English letter while the latter is identical with the Complainant’s registered trademark. The Panel finds that addition of a generic letter “s” by no means make the disputed domain name substantively distinct from the Complainant’s trademark “ZIPPO”.

Therefore, the Panel rules that the disputed domain name “szippo.com” is confusingly similar to the Complainant’s registered trademark “ZIPPO”. Accordingly, the Complainant has proven the first element required by paragraph 4(a) of the Policy.

Rights or Legitimate Interests of the Respondent

The Complainant asserts that the Respondent has no rights or legitimate interests in the disputed domain name and, as stated above, the Respondent did not provide any information to the Panel asserting any right or legitimate interest it may have in the disputed domain name.

The Complainant proves that the Respondent does not have any trademark registration and confirms that the Respondent has no connection with the Complainant or its business. Paragraph 4(c) of the Policy lists a number of circumstances which can be taken to demonstrate a respondent’s rights or legitimate interests in a domain name. However, there is no evidence before the Panel that any of the situations described in paragraph 4(c) of the Policy apply here. To the contrary, the lack of a Response leads the Panel to draw a negative inference.

Therefore, and also in light of the Panel's findings below, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name "szippo.com". Accordingly, the Complainant has proven the second element required by paragraph 4(a) of the Policy.

Bad Faith

The Complainant contends that the Respondent had bad faith. The Respondent did not respond.

The evidence submitted by the Complainant shows that "ZIPPO" is a distinctive mark designed by the Complainant and has acquired considerable reputation and recognition in the market through consistent use for more than half a century.

Although the disputed domain name is not being used for any active website, the Respondent has its sole control and can put it in use anytime. The Panel finds that it is barely possible to contemplate any justification for the Respondent to register and hold passively the disputed domain name that is confusingly similar to the Complainant's reputable trademark. The Respondent's acts seem typical "typo-squatting" and attempting to misappropriate the commercial fame and reputation of the Complainant's mark "ZIPPO". The Respondent's lack of Response in the proceeding can be deemed the additional proof of the Panel's above finding. The Panel therefore rules that this is adequate to conclude that the Respondent has the bad faith under the Policy, paragraph 4(b).

As a result, the Complainant has successfully proven the third element required by paragraph 4(a) of the Policy.

5. 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 "szippo.com" be transferred to the Complainant Zippo Manufacturing Company.

Panelist: 薛虹

Dated: 10 June 2013