



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2301801
Complainant:	ZO Skin Health, Inc.
Respondent:	Domain Admin Domain Privacy Ltd
Disputed Domain Name(s):	<zoskinchina.com>

1. The Parties and Contested Domain Name

The Complainant is ZO Skin Health, Inc., of California, United States of America.

The Respondent is Domain Admin Domain Privacy Ltd, of Massachusetts, United States of America.

The domain name at issue is <zoskinchina.com> (“Disputed Domain Name”) registered by Respondent with DropCatch.com 578 LLC of Colorado, United States of America.

2. Procedural History

On 30 August 2023, the Complainant filed a Complaint in this matter with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (“ADNDRC-HK”).

On 1 September 2023, the ADNDRC-HK notified DropCatch.com 578 LLC (“Registrar”) of the Disputed Domain Name of the proceedings by email and requested registrar verification in connection with the domain name at issue.

On 2 September 2023, the Registrar acknowledged the email of ADNDRC-HK confirming that the Disputed Domain Name is registered with the Registrar, that Domain Admin Domain Privacy Ltd is the holder of the Disputed Domain Name and provided contact details.

On 12 September 2023, the ADNDRC-HK sent a Notification of Deficiencies of the Complaint to Complainant and, on 14 September 2023, an Amended Complaint was filed with the ADNDRC-HK. The Center verified that the Complaint satisfied the requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy”), the Rules of Procedure under the Policy (the “Rules”), and the Center’s Supplemental Rules.

In accordance with the Rules, the ADNDRC-HK sent a Written Notice of Complaint (“Notification”), together with the Complaint, to the Respondent on 14 September 2023. The

Notification gave the respondent twenty (20) calendar days to file a Response (i.e., on or before 4 October 2023).

On 5 October 2023, the ADNDRC-HK sent a Respondent in Default notice to the parties.

The Panel, comprised of Steven M. Levy, Esq. as a single panelist, was appointed by the ADNDRC-HK on 5 October 2023. The papers pertaining to the case were delivered to the Panel by email on the same date. The Panel finds that it was properly constituted and has acted impartially in reaching its conclusion.

3. Factual background

The Complainant is a skincare company that was established in 2007 and promotes its products through various channels, including at a website using the domain name <zoskinhealth.com>. It owns registrations for a range of ZO formative trademarks in many countries, e.g., European Union Reg. No. 008708711 for ZO SKIN HEALTH, registered 27 May 2010; United States of America Reg. No. 4359846 for ZO SKIN HEALTH CIRCLE and Design, registered 2 July 2013; Canada Reg. No. TMA886921 for ZO SKIN HEALTH, registered 29 September 2014; and a number of others.

Respondent registered the <zoskinchina.com> domain name on 19 May 2023 and it resolves to a pay-per-click page with links titled “Skincare Products”, “Skincare”, and “Face Products”.

4. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

- i. Complainant develops manufactures, and markets a wide spectrum of advanced skincare protocols and products designed to promote healthier skin and is now among the largest skincare companies in the US market with products offered in over 100 countries. It operates a website at the domain name <zoskinhealth.com>.
- ii. Complainant owns many registrations for a range of ZO formative trademarks.
- iii. The <zoskinchina.com> domain name is confusingly similar to Complainant’s trademarks as it copies the “ZO” or “ZO SKIN” portions of the marks.
- iv. Respondent has no rights or legitimate interests in the Disputed Domain Name as it is not commonly known by the name and it is not making a *bona fide* offering of goods or services, nor is it making a legitimate noncommercial or fair use of the domain name. Rather, the domain name resolves to a pay-per-click page with monetized links to other websites offering competitive skin care products.
- v. The Disputed Domain Name was registered and is used in bad faith as Respondent’s pay-per-click website monetizes Complainant’s trademarks and creates confusion by trading off the goodwill in such marks.

B. Respondent

The Respondent has not filed any Response to the Complaint.

5. Findings

Having considered all the documentary evidence before me, and the Respondent's nonparticipation in these proceedings after being afforded every opportunity to do so in accordance with Paragraph 14 of the Rules for Uniform Domain Name Dispute Resolution Policy ("the Rules") the Panel is of the view that it should proceed to decide on the Disputed Domain Name <zoskinchina.com> based upon the Complaint and evidence submitted by the Complainant.

In accordance with Paragraph 4(a) of the Policy, the Panel finds that:

- i. Complainant owns rights in the ZO SKIN HEALTH, and other ZO formative trademarks and that Respondent's <zoskinchina.com> domain name is confusingly similar to such marks;
- ii. Respondent has no rights or legitimate interests in respect of the Disputed Domain Name as it is not commonly known thereby and, by leveraging the reputation of Complainant's trademarks, it is not making a *bona fide* offering of goods or services or a legitimate noncommercial or fair use thereof; and
- iii. The Disputed Domain Name has been registered and is being used in bad faith where it is used to resolve to a pay-per-click page with links to other products that appear to be competitive with those offered by Complainant.

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- i. the domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- ii. 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.

In view of Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations set forth in a complaint; however, the Panel may deny relief where a complaint contains mere conclusory or unsubstantiated arguments. *See* WIPO Jurisprudential Overview 3.0 at ¶ 4.3; *see also eGalaxy Multimedia Inc. v. ON HOLD By Owner Ready To Expire*, FA 157287 (FORUM June 26, 2003) ("Because Complainant did not produce clear evidence to support its subjective allegations [...] the Panel finds it appropriate to dismiss the Complaint").

A) Identical / Confusingly Similar

Complainant asserts rights in the ZO SKIN HEALTH, and other ZO formative trademarks based upon registration thereof with various trademark offices such as the United States Patent and Trademark Office, the European Intellectual Property Office, the Canadian Intellectual Property Office, and others. Under Policy ¶ 4(a)(i), registration with such

trademark offices is sufficient to establish rights in a trademark. *See Red Hat, Inc. v. Muhammad Shahzad*, FA 1787738 (FORUM June 19, 2018) (“Registration of a mark with multiple trademark agencies is sufficient to demonstrate rights to a mark per Policy ¶ 4(a)(i).”) As Complainant has submitted screenshots from the websites of various trademark offices evidencing registration of its asserted trademarks, the Panel finds that Complainant has rights in these marks under Policy ¶ 4(a)(i).

Next, Complainant asserts that Respondent’s <zoskinchina.com> domain name is confusingly similar to the ZO SKIN HEALTH and other ZO formative trademarks as it copies the most significant portions of these marks and merely deletes the word “health” and adds the geographic term “China” and the “.com” TLD. Adding a geographic term and a TLD rarely distinguishes a disputed domain name from the mark incorporated therein under Policy ¶ 4(a)(i). *See CBS Broadcasting Inc. v. Wei Ni*, HK-23017100 (ADNDRC February 20, 2023) (<cbsnewsdetroit.com> held confusingly similar to the trademark CBS NEWS as “the mere addition of a geographical modifier does not of itself reduce the incidence of confusion.”). In view of the above, the Panel accepts Complainant’s assertions and finds that the Disputed Domain Name is confusingly similar to Complainant’s trademarks under Policy ¶ 4(a)(i).

B) Rights and Legitimate Interests

Complainant must first make a *prima facie* case that Respondent lacks rights and legitimate interests in the Disputed Domain Name under Policy ¶ 4(a)(ii). Should it succeed in this effort, the burden then shifts to Respondent to show that it does have rights or legitimate interests. *See Advanced International Marketing Corporation v. AA-1 Corp*, FA 780200 (FORUM November 2, 2011) (finding that a complainant must offer some evidence to make its *prima facie* case and satisfy Policy ¶ 4(a)(ii)); *see also Neal & Massey Holdings Limited v. Gregory Ricks*, FA 1549327 (FORUM April 12, 2014) (“Under Policy ¶ 4(a)(ii), Complainant must first make out a *prima facie* case showing that Respondent lacks rights and legitimate interests in respect of an at-issue domain name and then the burden, in effect, shifts to Respondent to come forward with evidence of its rights or legitimate interests”).

Complainant contends that Respondent lacks rights or legitimate interests in the <zoskinchina.com> domain name since Respondent is not commonly known by the Disputed Domain Name and Complainant has not authorized or licensed to Respondent any rights in the asserted trademarks. WHOIS information is often referenced when considering whether a respondent is commonly known by a disputed domain name under Policy ¶ 4(c)(ii). *See Amazon Technologies, Inc. v. LY Ta*, FA 1789106 (FORUM June 21, 2018) (concluding that a respondent has no rights or legitimate interests in a Disputed Domain Name where the complainant asserted it did not authorize the respondent to use the mark, and the relevant WHOIS information indicated the respondent is not commonly known by the domain name). Additionally, lack of authorization to use a complainant’s mark may indicate that the respondent is not commonly known by a disputed domain name. *See Emerson Electric Co. v. golden humble / golden globals*, FA 1787128 (FORUM June 11, 2018) (“lack of evidence in the record to indicate a respondent is authorized to use [the] complainant’s mark may support a finding that [the] respondent does not have rights or legitimate interests in the Disputed Domain Name per Policy ¶ 4(c)(ii)”). The WHOIS information for the Disputed Domain Name does not identify the registrant and only mentions the name of a privacy shield called “Domain Admin Domain Privacy Ltd”. Further, there is no evidence to suggest that Respondent is known by, or that it is authorized to use Complainant’s ZO SKIN HEALTH or other ZO formative marks. Finally, Respondent has defaulted in this case and so has not

submitted any argument pertaining to this issue. Therefore, the Panel finds no ground upon which to conclude that Respondent is commonly known by the Disputed Domain Name under Policy ¶ 4(c)(ii).

Next, Complainant argues that Respondent fails to use the <zoskinchina.com> domain name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use as the domain name “resolves to a parking page of pay-per-click commercial links.” Where the Respondent uses a confusingly similar domain name to display a pay-per-click page with links to third-party products or services, Panels often find that respondents fail to make a *bona fide* offering of goods or services or a legitimate noncommercial or fair use per Policy ¶¶ 4(c)(ii) or (iv). *See Tencent Holdings Limited v. Gba Gaun*, HK-2201589 (ADNDRC February 17, 2022) (“Trading or the generation of pay-per-click revenue by use of the Complainant's trademark cannot qualify as bona fide use.”). Complainant provides a screenshot of the Disputed Domain Name’s resolving website, which features pay-per-click links titled “Skincare Products”, “Skincare”, and “Face Products”. Using a confusingly similar domain name in this manner shows neither a *bona fide* offering of goods or services under Policy ¶ 4(c)(i), nor a legitimate noncommercial or fair use under Policy ¶ 4(c)(iii). For its part, Respondent has provided no Response nor made any submission in this case and so it does not attempt to explain its actions. Therefore, as Complainant has set out a *prima facie* claim which has not been rebutted by Respondent, the Panel finds, by a preponderance of the evidence, that Respondent does not use the Disputed Domain Name for any *bona fide* offering of goods or services, nor does it make a legitimate noncommercial or fair use thereof under Policy ¶¶ 4(c)(i) and (iii).

C) Bad Faith

Complainant argues that Respondent had Complainant’s trademarks in mind at the time it registered the <zoskinchina.com> domain name. A respondent’s knowledge of a complainant's rights in an asserted mark prior to registering the Disputed Domain Name can form a foundation upon which to base an argument for bad faith registration. *See AutoZone Parts, Inc. v. Ken Belden*, FA 1815011 (FORUM December 24, 2018) (“Complainant contends that Respondent’s knowledge can be presumed in light of the substantial fame and notoriety of the AUTOZONE mark, as well as the fact that Complainant is the largest retailer in the field. The Panel here finds that Respondent did have actual knowledge of Complainant’s mark, demonstrating bad faith registration and use under Policy ¶ 4(a)(iii).”). *See also iFinex Inc. v. xu shuaiwei*, FA 1760249 (FORUM January 1, 2018) (“Respondent’s prior knowledge is evident from the notoriety of Complainant’s BITFINEX trademark as well as from Respondent’s use of its trademark laden domain name to direct internet traffic to a website which is a direct competitor of Complainant”). In promoting its assertion, Complainant claims that its ZO SKIN HEALTH and other ZO formative trademarks are both distinctive and have gained a substantial reputation such that “Respondent’s choice of domain name cannot have been accidental and must have been influenced by the fame of the Complainant and its earlier trademarks”. Submitted into evidence are screenshots of search results for the term “zoskin” on the Baidu and Google websites, which refer exclusively to Complainant and its trademarks. While the Panel would prefer to see further evidence of the brand reputation for Complainant’s trademarks, it finds that the submitted evidence does narrowly support Complainant’s assertion that its marks have gained a significant reputation. This, combined with the fact that the <zoskinchina.com> domain name resolves to a website that references skin care products, leads the Panel to find it more likely than not that Respondent did have actual knowledge of Complainant’s rights in its mark at the time that it registered the Disputed Domain Name.

Finally, Complainant asserts that Respondent registered and uses the <zoskinchina.com> domain name in bad faith because it resolves to a pay-per-click website with links to other websites offering competing skincare products. Use of a disputed domain name to drive consumers to third-party goods or services can be evidence of bad faith disruption of a complainant's business under Policy ¶ 4(b)(iii) and an attempt to attract users for commercial gain under Policy ¶ 4(b)(iv). See *block.one v. Negalize Interactive Things*, FA 1798280 (FORUM August 21, 2018) (“Offering links to competing products or services can demonstrate bad faith under Policy ¶ 4(b)(iii) where a respondent registers a domain name that is confusingly similar to the mark of another.”) Complainant provides a screenshot of the Disputed Domain Name resolving to a pay-per-click page with links titled “Skincare Products”, “Skincare”, and “Face Products” and asserts that “use of pay-per-click advertisements through the Disputed Domain Name, trades off the goodwill of the Complainant”. Based on this evidence and the fact that the <zoskinchina.com> domain name is a confusingly similar version of Complainant's trademarks and its own <zoskinhealth.com> website address, the Panel finds that Respondent registered and used the Disputed Domain Name in bad faith under Policy ¶ 4(b)(iv).

6. Decision

The Complainant has proved its case. It has registered trademarks to which the contested domain name is confusingly similar. The Respondent has provided no evidence showing rights or legitimate interest in the Disputed Domain Name. The Complainant has shown that the Respondent registered and used the Disputed Domain Name in bad faith.

For the foregoing reasons and in accordance with Paragraph 4 of the Policy, the Panel concludes that the relief requested by the Complainant be granted and orders that the Disputed Domain Name <zoskinchina.com> be transferred to the Complainant ZO Skin Health, Inc.

Steven M. Levy

Steven M. Levy, Esq.
Panelist

Dated: 10 October 2023