



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

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| Case No: | HK-2301790 |
| Complainant: | Guangzhou Rimsea Technology Co., Ltd. |
| Respondent: | BERAT ASLAN |
| Disputed Domain Name: | <zendure.net> |

1. The Parties and Contested Domain Name

Complainant is Guangzhou Rimsea Technology Co., Ltd. of Room 317, No. 5 Junwen Street, Huangpu District, Guangzhou, China.

Respondent is BERAT ASLAN of AKCAY CADDESI NO:64/2, IZMIR, GAZIEMIR, Turkey 35410

The domain name at issue is <zendure.net>, registered by Respondent with PDR Ltd. d/b/a PublicDomainRegistry.com.

2. Procedural History

On 11 August 2023, Complainant filed a Complaint in this matter with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (“Centre”). On 15 August 2023, the Centre confirmed receipt of the Complaint and requested Complainant to submit the case filing fee. On 15 August 2023, the Centre informed PDR Ltd. d/b/a PublicDomainRegistry.com (“Registrar”) of the Disputed Domain Name of the proceedings by email with ICANN on copy.

On 29 August 2023, the Registrar acknowledged the email of Centre confirming that the Disputed Domain Name is registered with the Registrar, that BERAT ASLAN is the holder of the Disputed Domain Name, that the Internet Corporation for Assigned Names and Numbers Uniform Domain Name Dispute Resolution Policy (“the Policy”) is applicable to the Disputed Domain Name, the language of the Disputed Domain Name is English as provided by the WHOIS information in relation to the Disputed Domain Name and confirmed that the Disputed Domain Name is under Registrar lock status.

On 30 August 2023, the Centre sent Complainant a Notification of Deficiencies of the Complaint, referring to that the information of Respondent in the Complaint is different from the Whois information provided by the Registrar and requiring Complainant to rectify the

above deficiency within 5 calendar days (on or before 3 September 2023). On 31 August 2023, Complainant filed the amended complaint with the Centre.

On 1 September 2023, the Centre confirmed the Complaint's compliance with the Policy and its Rules. On the same day, the Centre sent Respondent a Written Notice of Complaint, together with the Complaint, requiring Respondent to file a Response within 20 days (on or before 21 September 2023), in accordance with Article 5 of the Rules and the Supplemental Rules. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on 26 September 2023.

The Panel comprising of Dr. George Tian as a single panelist was appointed by the Centre on 26 September 2023. The papers pertaining to the case were delivered to the Panel by email on the same date.

3. Factual background

A. Complainant

Complainant, Guangzhou Rimsea Technology Co., Ltd., is a company incorporated in Guangzhou, China. Founded in 2017, Complainant is a design and technology-driven high-tech enterprise in China, dedicated to the research and development of portable outdoor power supply, home energy storage, intelligent outdoor equipment and other products, with perfect online and offline channels at home and abroad. Complainant's ZENDURE brand has a high reputation in Europe and the United States ("U.S.") and has a large number of loyal users around the world. ZENDURE USA INC. is an affiliate of Complainant. Complainant and its affiliates have their main headquarters in Guangzhou, R&D headquarters in Shenzhen, and branches in the U.S., Japan, Germany, and Hong Kong. Zendure's distribution spans 63 countries across Europe, America, the Middle East, Japan, and beyond, including offline shops and popular e-commerce platforms like eBay.

Complainant has exclusive rights in ZENDURE, and ZENDURE related marks (hereinafter "ZENDURE marks"). Complainant is the exclusive owner of several ZENDURE marks worldwide, such as Chinese trademark registration number 37914645, registered on March 14, 2020 and European Union ("EU") trademark registration number 014863261, registered on June 6, 2016 (Annex 4 to the Complaint).

B. Respondent

Respondent is BERAT ASLAN of AKCAY CADDESI NO:64/2, IZMIR, GAZIEMIR, Turkey 35410. The disputed domain name <zendure.net>, was registered on August 8, 2022, after the ZENDURE marks were registered. The disputed domain name does not resolve to an active website.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

- i. Complainant contends that the disputed domain name is confusingly similar to the ZENDURE marks. the addition of the generic Top-Level Domain (“gTLD”) suffix “.net” does not have the capacity to distinguish the disputed domain name from the Complainant’s prior rights on ZENDURE marks.
- ii. Complainant contends that Respondent has no rights or legitimate interests in respect of the disputed domain name.
- iii. Complainant contends that the disputed domain name was registered and is being used in bad faith.
- iv. Complainant requests that the disputed domain name <zendure.net> be transferred to it.

B. Respondent

Respondent did not reply to Complainant’s contentions.

5. Findings

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent’s domain name 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. Respondent’s domain name has been registered and is being used in bad faith.

A) Identical / Confusingly Similar

The Panel finds that Complainant has rights in the ZENDURE marks acquired through registration. The disputed domain name <zendure.net> comprises the ZENDURE mark in its entirety. The disputed domain name only differs from Complainant’s trademarks by the gTLD suffix “.net” to the ZENDURE marks. This does not compromise the recognizability of Complainant’s marks within the disputed domain name, nor eliminate the confusing similarity between Complainant’s registered trademarks and the disputed domain name (*Decathlon v. Zheng Jianmeng*, WIPO Case No. D2019-0234).

Previous UDRP panels have consistently held that a domain name may be identical or confusingly similar to a trademark for purposes of the Policy “when the domain name includes the trade mark, or a confusingly similar approximation, regardless of the other terms in the domain name” (*Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. D2000-0662).

Further, in relation to the gTLD suffix, *WIPO Overview of WIPO Panel Views on Selected UDRP Questions*, Third Edition (“WIPO Overview 3.0”) further states: “The applicable Top Level Domain (“TLD”) in a domain name (e.g., ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.” (WIPO Overview 3.0, section 1.11.1.)

The Panel therefore holds that the Complaint fulfils the first condition of paragraph 4(a) of the Policy.

B) Rights and Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that Respondent has rights or legitimate interests in the disputed domain name:

- (i) before any notice to Respondent of the dispute, the use by Respondent of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) Respondent has been commonly known by the disputed domain name, even if Respondent has acquired no trademark or service mark rights; or
- (iii) Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish Complainant's trademarks.

The overall burden of proof on this element rests with Complainant. However, it is well established by previous UDRP panel decisions that once a complainant establishes a *prima facie* case that a respondent lacks rights or legitimate interests in a domain name, the burden of production shifts to respondent to rebut complainant's contentions. If the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. (*Danzas Holding AG, DHL Operations B.V. v. Ma Shikai*, WIPO Case No. D2008-0441; WIPO Overview 3.0, section 2.1 and cases cited therein).

According to the Complaint, founded in 2017, Complainant is a design and technology-driven high-tech enterprise in China, dedicated to the research and development of portable outdoor power supply, home energy storage, intelligent outdoor equipment and other products. Complainant's ZENDURE brand has a high reputation in the EU and the US and has a large number of loyal users around the world. Complainant has rights in the ZENDURE marks worldwide, including in China (since 2020), and in the EU (since 2016), which precede Respondent's registration of the disputed domain name (in 2022).

Moreover, Respondent is not an authorized dealer of ZENDURE-branded products or services. The Panel finds that Complainant has established a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name and thereby shifts the burden to Respondent to produce evidence to rebut this presumption (*The Argento Wine Company Limited v. Argento Beijing Trading Company*, WIPO Case No. D2009-0610; *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. D2000-0624; *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455).

Based on the following reasons the Panel finds that Respondent has no rights or legitimate interests in the disputed domain name:

- (i) There has been no evidence adduced to show that Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services. Respondent has not provided evidence of a legitimate use of the disputed domain name

or reasons to justify the choice of the term “zendure” in its business operation. There has been no evidence to show that Complainant has licensed or otherwise permitted Respondent to use the ZENDURE marks or to apply for or use any domain name incorporating the ZENDURE marks.

(ii) There has been no evidence adduced to show that Respondent has been commonly known by the disputed domain name. There has been no evidence adduced to show that Respondent has any registered trademark rights with respect to the disputed domain name. Respondent registered the disputed domain name <zendure.net> on August 8, 2022, after the ZENDURE marks became internationally known. The disputed domain name is identical or confusingly similar to Complainant’s ZENDURE marks.

(iii) There has been no evidence adduced to show that Respondent is making a legitimate noncommercial or fair use of the disputed domain name. The disputed domain name does not resolve to an active website.

The Panel finds that Respondent has failed to produce any evidence to rebut Complainant’s *prima facie* showing on Respondent lack of rights or legitimate interests in the disputed domain name. The Panel therefore holds that the Complaint fulfils the second condition of paragraph 4(a) of the Policy.

C) Bad Faith

Paragraph 4(b) of the Policy sets out four circumstances which, without limitation, shall be evidence of the registration and use of the disputed domain name in bad faith, namely:

(i) circumstances indicating that Respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to Complainant who is the owner of the trademark or service mark or to a competitor of Complainant, for valuable consideration in excess of Respondent’s documented out-of-pocket costs directly related to the disputed domain name; or

(ii) Respondent has registered the disputed 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 Respondent has engaged in a pattern of such conduct; or

(iii) Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent’s website or other online location, by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of Respondent’s website or location or of a product or service on the website or location.

Upon the evidence of the circumstances in this case, it is adequate to conclude that Respondent has registered and used the disputed domain name in bad faith.

Registered in Bad Faith

The Panel finds that Complainant has a widespread reputation in the ZENDURE marks with regard to its products and services. Complainant is a design and technology-driven high-tech enterprise in China, dedicated to the research and development of portable outdoor power supply, home energy storage, intelligent outdoor equipment and other products. Complainant's ZENDURE brand has a high reputation in the EU and the US and has a large number of loyal users around the world. Complainant and its affiliates have their main headquarters in Guangzhou, R&D headquarters in Shenzhen, and branches in the U.S., Japan, Germany, and Hong Kong. Complainant has registered its ZENDURE marks internationally, including trademark registrations in China (since 2020), and in the EU (since 2016). It is not conceivable that Respondent would not have had actual notice of Complainant's trademark rights at the time of the registration of the disputed domain name (August 8, 2022). The Panel therefore finds that the ZENDURE mark is not one that traders could legitimately adopt other than for the purpose of creating an impression of an association with Complainant. *The Argento Wine Company Limited v. Argento Beijing Trading Company, supra*.

Moreover, Respondent has chosen not to respond to Complainant's allegations. According to the panel's decision in *The Argento Wine Company Limited v. Argento Beijing Trading Company, supra*, "the failure of the Respondent to respond to the Complaint further supports an inference of bad faith". See also *Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. D2002-0787.

Thus, the Panel concludes that the disputed domain name was registered in bad faith.

Used in Bad Faith

Complainant has adduced evidence to show that the disputed domain name does not resolve to an active website. UDRP panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Section 3.3 of the *WIPO Overview 3.0* provides: "While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant 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."

As discussed above, Complainant's ZENDURE marks are widely known. Further, given the lack of response, the Panel cannot envision any other plausible use of the disputed domain name that would not be in bad faith under the present circumstances. Taking into account all the circumstances of this case, the Panel concludes that the non-use of the disputed domain name by Respondent also constitutes bad faith.

In summary, Respondent, by choosing to register and use the disputed domain name, which is identical or confusingly similar to the ZENDURE mark, intended to ride on the goodwill of this trademark. In the absence of evidence to the contrary and rebuttal from Respondent, the choice of the disputed domain name and the use of the disputed domain name are indicative of registration and use of the disputed domain name in bad faith.

The Panel therefore holds that the Complaint fulfils the third condition of paragraph

4(a) of the Policy.

6. 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 disputed domain name <zendure.net> be transferred to Complainant.



Yijun Tian
Panelist

Dated: October 11, 2023