



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2501962
Complainant:	Shenzhen YouMe Information Technology Co. Ltd.
Respondent:	Domain Administrator
Disputed Domain Name:	<airbarvapes.com>

1. The Parties and Contested Domain Name

The Complainant is Shenzhen YouMe Information Technology Co., Ltd. of 201, Building B Dianling TechBldg., NanhuanAve., Mashantou Community, Matian street, Guangming, Shenzhen, China 518000. The Complainant is represented in these proceedings by Ms. Ziai Luo, Fangda Law of Shenzhen China.

The Respondent is Domain Administrator, Privacy Guardian of 1928 E, Highland Ave. Ste F104, PMB # 255, Phoenix, AZ 85016, United States of America.

The domain name at issue is <airbarvapes.com>. The Registrar of the domain name is NameSilo LLC, of 390 NE 191st Street 8437, Miami, Florida 33179, United States of America.

2. Procedural History

The Complaint was filed with the Hong Kong Office of Asian Domain Name Dispute Resolution Centre (“ADNDRC” or the “Centre”) on February 5, 2025. On February 6, 2025, ADNDRC sent an email to the Registrar with a request to verify the registrant of the disputed domain name. On February 6, 2025, the Registrar transmitted by email to the Centre its verification response disclosing that it is the Registrar for the disputed domain name and that the registrant’s name is privacy protected.

The Centre verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Dispute Resolution Policy (“UDRP” or the “Policy”), the Rules for the Uniform Domain Name Dispute Resolution Policy (the “Rules”) and the Asian Domain Name Dispute Resolution Supplemental Rules (the “Supplemental Rules”).

The Centre formally notified the Respondent of the Complaint on February 14, 2025 and the proceedings commenced. The Respondent was informed that under Article 5 of the

Rules that the Response was due within 20 days from the date of notice, on or before March 6, 2025. The Respondent did not submit a Response within the stipulated time.

The Complainant opted for a single member panel and the Centre appointed Harini Narayanswamy as the Panel on March 7, 2025. The Panel confirmed by email to the Centre acceptance to serve as an impartial Panel in this matter.

3. Factual background

The Complainant is in the business of electronic cigarettes, also known as “vapes”. The Complainant was established by the YouMe Group in the year 2014 and its operation for the vape brand started in 2019. The Complainant owns the trademark “AIRBAR” and acquired the domain name <airbar.com> in June 2022 from which it hosts its website.

The Complainant owns several trademark registrations for “AIRBAR” (stylized mark), some of which are:

1. USPTO trademark registration No. 6939043 dated January 03, 2023 in Class 34
2. European Union registration No. 018604950 dated April 21, 2022 in Class 34
3. European Union registration No. 018444821 dated August 11, 2021 in Classes 34 and 35
4. China CNIPA registration No. 61211794 dated September 21, 2022 in Class 34

The disputed domain name was registered on July 5, 2023 by the Respondent. The name of the registrant is withheld due to use of privacy shield services, therefore information about the Respondent is not available.

The disputed domain name resolves to a website that offers and sells vapes. Displayed on the Respondent’s website, are vapes that correspond to the Complainant’s vape products, such as AIRBAR BOX, AIRBAR MAX, AIRBAR MINI and AIRBAR DIAMOND. Further, the vape products being displayed on the Respondent’s website have the logo of the AIRBAR products and displays the same flavors. It is however not clear whether the Respondent is promoting and selling the Complainant’s products or selling counterfeit products from the website.

4. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

- i. The Complainant states that it is a leading disposable vapes brand that offers a wide range of vape devices and flavors. The Complainant states its brand is recognized not only for its exceptionally wide variety of flavors but also for its simple and convenient design.
- ii. The Complainant states it has received awards and recognition for its products. It was recognized for “Best Overall Branding & Marketing” at the Alternative Products Expo, Houston Excellence Awards 2024.

- iii. The Complainant states that the disputed domain name contains its mark and is confusingly similar to the mark despite the additional word “vapes”. The Complainant argues that the word “vapes” adds to confusing similarity and consumer deception.
- iv. The Complainant contends that the Respondent lacks rights in the disputed domain name, as mere registration does not confer rights. The Complainant is the prior adopter of the mark, and the use of the mark. The Respondent has no authorization or rights to use the Complainant’s mark, which, among other factors, indicates that the Respondent’s use of the disputed domain name is neither *bona fide* nor legitimate use.
- v. The Complainant contends the disputed domain name was registered and is being used in bad faith and to exploit the goodwill associated with its mark. The Complainant adds that the Respondent’s website has knowingly used the trademark and the logo of the Complainant’s products with the intention to mislead people. The Complainant asserts that such use constitutes bad faith registration and use of the disputed domain name under the Policy.

The Complainant requests transfer of the disputed domain name as it has met all the requirements under the Policy.

B. Respondent

The Respondent did not file a response in these proceedings.

5. Findings

I. Preliminary

A) Language of the Proceedings

According to Article 11(a) of the Rules, the language of the administrative proceeding shall be the language of the Registration Agreement, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, subject to the authority of the Panel. The Panel determines that the language of these proceedings shall be the language of the Registration Agreement, which is English.

II. Substantive

Paragraph 5(e) of the Rules directs that if a respondent does not submit a response, the Panel shall proceed to render a decision based on the complaint, unless there are any exceptional circumstances. There are no exceptional circumstances, and the Panel proceeds to make the findings on the merits of the case.

The Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be cumulatively 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 first element requires the Complainant to demonstrate that it has rights in the trademark and that the disputed domain name is confusingly similar to the said mark.

The Complainant has provided evidence of its registered trademarks for the AIRBAR mark. Based on the evidence on record, the Panel finds that the Complainant has established its rights in respect of the AIRBAR mark.

It is well accepted that the first element functions primarily as a standing requirement. The threshold test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. *See* WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“WIPO Overview 3.0”), section 1.7.

The disputed domain name contains the entire AIRBAR mark along with the term “vapes”. The Complainant has argued that the additional term “vapes” will not impact the assessment of confusing similarity, but it is likely to enhance confusing similarity as the term “vapes” describes the Complainant's product.

It is well established in UDRP cases, that where the trademark is recognizable in the disputed domain name, any additional terms, words or punctuation marks does not prevent a finding of confusing similarity between the disputed domain name and the mark. *See* for instance *TikTok Ltd. v. Sumon Rana*, Case No. HK-2501956, at 3 Administrative Panel Decision (ADNDRC 2025), https://adndrc.org/storage/uploads/decisions/udrp/udrp_2025022403495358.pdf, where the domain name <ttokplus.com> was found to be confusingly similar to the mark despite the addition of the term “plus”.

Accordingly, the disputed domain name is found to be confusingly similar to the mark for the purposes of Paragraph 4(a)(i) of the Policy. The Panel finds the Complainant has satisfied the first element under the Policy.

B) Rights and Legitimate Interests

The second element of the Policy under paragraph 4 (a) (ii) requires the Complainant to make a case that the Respondent lacks rights or legitimate interests in the disputed domain name. It is well accepted in UDRP cases, that if a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden shifts to the respondent to come forward with relevant submissions and evidence demonstrating rights or legitimate interests in the domain name. *See* for instance *OTIS Elevator Company v. C/O Private Ranger Limited*, Case No. HK-2401953, Administrative Panel Decision, at 7 (ADNDRC 2024), https://adndrc.org/storage/uploads/decisions/udrp/udrp_2025030603275598.pdf and *Cummins Inc. v. DG Lanshan Mechanical Electrical Equipment Co., Ltd.*, Case No. HK-1000286, Administrative Panel Decision, at 4 (ADNDRC 2010), https://www.adndrc.org/storage/files/udrp/HK/HK-1000286_Decision.pdf

and if the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

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 for purposes of paragraph 4(a)(ii) of the Policy, these are:

- i. Before any notice of the dispute the use of or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods and services or
- ii. You (as an individual, business or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- iii. You are making legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel finds that the material on records does not show the Respondent is known by the disputed domain name. Further, the Respondent has not demonstrated any legitimate reason for the registration of the disputed domain name. Evidence provided by the Complainant shows that the disputed domain name resolves to the Respondent's website, which offers and promotes vape products which competes with the Complainant's business.

A reseller of trademark goods may have a legitimate interest in a domain name which incorporates a trademark, but only under certain circumstances. In this regard, the *Okidata* test set out in *Okidata Americas, Inc. v. ASD Inc.* Case No. D2001-0903, Administrative Panel Decision (WIPO 2001), <https://www.wipo.int/amc/en/domains/decisions/html/2001/d2001-0903.html> is instructive and has laid down the fair use test for online resellers of trademark products. Under the *Okidata* test, if a disputed domain name is being used by a reseller of trademarked products, four criteria needs to be establish in order for the disputed domain name to be covered under legitimate fair use, these are: (i) The respondent must actually be offering the goods or services at issue; (ii) The respondent must use the site to sell only trademarked goods and not to bait and switch; (iii) The site must accurately disclose the registrant's relationship with the trademark owner; (iv) The respondent must not try to corner the market in all domain names.

Applying the *Okidata* test to the facts and circumstances of the present case, the Panel finds that it is not clear from the material on record whether the Respondent's website offers and sells the Complainant's products or whether the products are counterfeit products, as no disclaimer or note is visible on the Respondent's website. Second, the Respondent's website does not disclose the lack of any relationship with the Complainant. The Complainant has submitted that the Respondent has no authorization or license to use the Complainant's mark. The Respondent is therefore attempting to impersonate the Complainant to show a false affiliation, when no connection or affiliation exists.

The Respondent's website content is likely to confuse and mislead Internet users regarding its sponsorship or affiliation. The Panel finds that such impersonating use of the mark in the disputed domain name is not *bona fide* use or fair use. The Respondent's use of the

Complainant's mark, under the circumstances discussed is not indicative of the Respondent's rights or legitimate interests in the disputed domain 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 responded and rebutted the Complainant's *prima facie* showing by demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

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

C) Bad Faith

The third element under Paragraph 4(a)(iii) of the Policy requires the Complainant to establish that the disputed domain name has been registered and used in bad faith by the Respondent. The Panel notes that, for the purposes of Paragraph 4(a)(iii) of the Policy, Paragraph 4(b) of the Policy specifies circumstances, in particular, but without limitation, if found by the Panel to be present, shall be evidence of registration and use of a domain name 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 is used in bad faith, but other circumstances may also 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.

- i. Circumstances indicate that the respondent has registered or acquired the domain name primarily for purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of respondent's documented out-of-pocket costs directly related to the domain name; or
- ii. The respondent has 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 the respondent has engaged in a pattern of such conduct; or
- iii. The respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- iv. By using the disputed domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

The Complainant has argued that the registration and use of the disputed domain name by the Respondent shows intent to benefit from the reputation associated with its mark. The Panel having reviewed the material on record, finds the overall circumstances of the case shows that the Complainant has established with supporting evidence, that its trademark is known and associated with its products, namely disposable vapes.

The Respondent has used the Complainant's reputed mark in connection with the same area of business, namely promoting and selling vapes and has used the word "vapes" in the disputed domain name which indicates the Respondent's knowledge of the Complainant's area of business and prior rights in the mark. The Respondent, as discussed in the previous section, has not established any rights or legitimate interest in the disputed domain name.

UDRP panels have widely accepted the proposition that absence of rights or legitimate interests in the disputed domain name impacts the finding of bad faith registration and use. *See Wal-Mart Stores, Inc. v. Pavel Tkachev*, Case No. HK-0800231, Administrative Panel Decision, at 4 (ADNDRC 2008), https://www.adndrc.org/storage/files/udrp/HK/HK-0800231_Decision.pdf. It has been consistently found by UDRP panels that registration of a confusingly similar domain name with a reputed trademark by someone who is not affiliated with the owner of the trademark and has not shown good reason for registration of the disputed domain name or its legitimate use, can by itself create a presumption of bad faith. WIPO Overview 3.0, section 3.1.4.

Having independently visited and viewed the Respondent's website, the Panel finds that the Respondent's website lacks the mandatory health warnings or age verification for the products being offered on the site. Notably, the Complainant's website contains the following warning:

“WARNING: This product contains nicotine. Nicotine is an addictive chemical.
For adult use only”

The Respondent's website is therefore apparently accessible to all persons and potentially even under-age children could have access to the vape products offered on the Respondent's website. Furthermore, the Respondent's website has no warnings regarding the harmful effects of nicotine for the products being endorsed. The Panel finds that the manner of use of the disputed domain name by the Respondent is likely to disrupt the Complainant's business and its credibility and the lack of adequate warning on the Respondent's website or age verification also puts the general public at risk.

The Panel finds, in the light of all that has been discussed, that the Respondent's intent of trying to attract Internet users by impersonation is primarily based on the reputation associated with the Complainant's mark, which is considered bad faith as described under paragraph 4(b)(iv) of the Policy. Furthermore, the use of privacy services to redact the identity of the Respondent, and the lack of response are additional factors to find bad faith registration and use of the disputed domain name.

The Panel finds that the disputed domain name has been registered and is being used in bad faith by the Respondent. The Complainant has satisfied the requirement under Paragraph 4(a)(iii) of the Policy.

6. Decision

For the foregoing reasons in accordance with paragraph 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <airbarvapes.com> be transferred to the Complainant.

Harini Narayanswamy

Harini Narayanswamy
Panelist

Dated: March 21, 2025