

ADMINISTRATIVE PANEL DECISION

Tonzon Holding B.V. v. James H Park
Case No. D2023-0180

1. The Parties

The Complainant is Tonzon Holding B.V., Netherlands, represented by Inaday Merken BV, Netherlands.

The Respondent is James H Park, Republic of Korea.

2. The Domain Name and Registrar

The disputed domain name <tonzon.com> (the “Disputed Domain Name”) is registered with DropCatch.com 1015 LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 13, 2023. On January 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On January 13, 2023, the Registrar 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 sent an email communication to the Complainant on January 25, 2023, regarding Registrar information, inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on January 26, 2023.

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

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on January 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 16, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 22, 2023.

The Center appointed Flip Jan Claude Petillion as the sole panelist in this matter on March 9, 2023. 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

The Complainant, Tonzon Holding B.V., is a Dutch company active in isolation material for buildings since 1980.

The Complainant is the owner of several registered trademarks consisting of or including the term TONZON, such as the following:

- TONZON, Benelux word mark registered under No. 755814 on October 11, 2004, in classes 11, 17 and 37.

The Disputed Domain Name was registered on December 2, 2018. The Disputed Domain Name appears to resolve to a parking page containing pay-per-click ("PPC") links to advertisements of competitors of the Complainant. The parking page also mentions the following:

"Buy this domain

The owner of tonzon.com is offering it for sale for an asking price of 9800 USD!"

5. Parties' Contentions

A. Complainant

The Complainant considers the Disputed Domain Name to be identical and/or confusingly similar to trademarks in which it claims to have rights.

The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. According to the Complainant, the Respondent has not been licensed or authorized to use the Disputed Domain Name. The Complainant claims that the use of the Disputed Domain Name is unfair and does not amount to a *bona fide* offering of goods or services. Also, according to the Complainant, there is no evidence that the Respondent has been commonly known by the Disputed Domain Name and the Respondent has never acquired any trademark rights to the Disputed Domain Name.

Finally, the Complainant claims that the Disputed Domain Name was registered and is being used in bad faith. According to the Complainant, the Respondent must have had knowledge of the Complainant's trademark rights when registering the Disputed Domain Name. The Complainant also claims:

- that the Respondent is creating a likelihood of confusion with the TONZON trademarks, constituting bad faith use pursuant to paragraph 4(b)(iv) of the Policy;
- that the Disputed Domain Name was registered for the purpose of selling or transferring the Disputed Domain Name to the Complainant or to a competitor for valuable consideration in excess of the Respondent's out-of-pocket costs directly related to the Disputed Domain Name;
- the Disputed Domain Name was registered primarily for the purpose of disrupting the business of the Complainant.

B. Respondent

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

6. Discussion and Findings

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

The *onus* is on the Complainant to make out his case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer the Disputed Domain Name. As the UDRP proceedings are administrative, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

- (i) The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- (iii) The Disputed Domain Name has been registered and is being used in bad faith.

The Panel will therefore deal with each of these requirements.

A. Identical or Confusingly Similar

To prove this element, the Complainant must first establish that there is a trademark or service mark in which it has rights. The Complainant has clearly established that it has rights in the TONZON trademark, which has been registered and used in connection with the Complainant's isolation material business.

The operative element of the Disputed Domain Name is identical to the Complainant's TONZON mark.

The only additional element in the Disputed Domain Name is the generic Top-Level Domain ("gTLD") suffix (.com). As a technical requirement of registration, this element is generally disregarded in the comparison between a domain name and a trademark for the purposes of the first element of the Policy (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.11).

Therefore, the Panel finds that the Disputed Domain Name is identical to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* showing that the Respondent has no rights or legitimate interests in the Disputed Domain Name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

The Panel notes that the Respondent has not apparently been commonly known by the Disputed Domain Name and that the Respondent does not seem to have acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is "James H Park". The Respondent's use and registration of the Disputed Domain Name was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent exists or existed.

Where a domain name is identical to a complainant's trademark, UDRP panels have largely held that it carries a high risk of implied affiliation (see section 2.5.1 of the [WIPO Overview 3.0](#)). The Disputed Domain Name being identical to the Complainant's TONZON trademark, the Panel finds that the Disputed Domain Name carries a high risk of implied affiliation with the Complainant and cannot constitute fair use in the circumstances of this case.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, such as the content of the website linked to the disputed domain name and the absence of a response, support a fair use or not (see sections 2.5.2 and 2.5.3 of the [WIPO Overview 3.0](#)).

In this case, the Panel is of the opinion that the Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name. The Panel observes that the Disputed Domain Name is offered for sale and resolves to a parking page containing PPC links resolving to advertisements of competitors of the Complainant.

Therefore, the Panel finds that such PPC links compete with or capitalize on the reputation and goodwill of the Complainant's mark or may mislead Internet users, which cannot be considered as a use of the Disputed Domain Name in connection with a *bona fide* offering of goods or services (see section 2.9 of the [WIPO Overview 3.0](#)).

The Respondent had the opportunity to demonstrate its rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the *prima facie* case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the Disputed Domain Name. In light of the above, the Complainant succeeds on the second element of the Policy.

C. Registered and Used in Bad Faith

The Complainant must prove on the balance of probabilities both that the Disputed Domain Name was registered in bad faith and that it is being used in bad faith (see section 4.2 of the [WIPO Overview 3.0](#) and, for example, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), and *Control Techniques Limited v. Lektronix Ltd*, WIPO Case No. [D2006-1052](#)).

Paragraph 4(b) of the Policy provides a non-exclusive list of factors, any one of which may demonstrate bad faith. Among these factors demonstrating bad faith registration and use is the use of a domain name to intentionally attempt to attract, for commercial gain, Internet users to a 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 website or location or of a product or service on the website or location.

In the present case, the Panel finds it likely that the Respondent was aware of the Complainant and its trademark rights when it registered the Disputed Domain Name. The Complainant's marks predate the Disputed Domain Name by more than a decade and the Disputed Domain Name is identical to the Complainant's distinctive trademark. In the Panel's view, the Respondent's likely awareness of the Complainant's trademark rights at the time of registration suggests bad faith (see *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#)).

The Panel observes that the Respondent uses the Disputed Domain Name to resolve to a parking page containing PPC links to advertisements of competitors of the Complainant. In the Panel's view, this indicates that the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trademark. While the intention to earn click-through-revenue is not in itself illegitimate, the Panel finds that the use of the Disputed Domain Name

that is identical to the Complainant's trademark (as is the case here) to obtain click-through-revenue constitutes bad faith use (see *Mpire Corporation v. Michael Frey*, WIPO Case No. [D2009-0258](#); *L'Oréal, Biotherm, Lancôme Parfums et Beauté & Cie v. Unasi, Inc*, WIPO Case No. [D2005-0623](#)). The fact that the PPC links may be automatically generated by a third party cannot discharge the Respondent of any responsibility for the content appearing on the website connected to the Disputed Domain Name under its control (see section 3.5 of the [WIPO Overview 3.0](#)).

Moreover, in the Panel's view, the fact that the Disputed Domain Name is offered for sale at a price which most probably exceeds by far the Respondent's out-of-pocket costs directly related to the Disputed Domain Name is a further indication of bad faith in the circumstances of this case.

By failing to respond to the Complaint, the Respondent did not take any initiative to contest the foregoing. Pursuant to paragraph 14 of the Rules, the Panel may draw the conclusions it considers appropriate.

Therefore, the Panel finds that, on the balance of probabilities, it is established that the Disputed Domain Name was registered and is being used in bad faith. In light of the above, the Complainant also succeeds on the third and last element of the Policy.

7. Decision

For 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 <tonzon.com> be transferred to the Complainant.

/Flip Jan Claude Petillion/

Flip Jan Claude Petillion

Sole Panelist

Date: March 22, 2023