

## **ADMINISTRATIVE PANEL DECISION**

Trent Limited v. South Store  
Case No. D2023-2276

### **1. The Parties**

The Complainant is Trent Limited, India, represented by Anand & Anand, India.

The Respondent is South Store, India.

### **2. The Domain Name and Registrar**

The disputed domain name <zudioapparels.com> is registered with GoDaddy.com, LLC (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 25, 2023. On May 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 26, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Domains By Proxy, LLC, DomainsByProxy.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 30, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on May 31, 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 June 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 21, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 25, 2023.

The Center appointed Ashwinie Kumar Bansal as the sole panelist in this matter on June 30, 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.

On July 2, 2023, the Center received an informal email communication from the Respondent, which was forwarded to the Panel's attention.

#### **4. Factual Background**

The Complainant is a lifestyle retail chain which was originally incorporated as Lakme Limited on December 5, 1952, and was in the business of manufacturing, sale, and export of cosmetics, toiletries, and perfumery products. In 1998, the Complainant divested from its cosmetics business to shift business towards apparel retailing under new name Trent Limited and it commenced its retail operations in 2016 with Zudio. As of now, the Complainant has around 315 outlets covering number of cities across India which offer garments and fashion accessories for men, women, and children as well as cosmetics and perfumes and household accessories, *etc.*

The Complainant has furnished evidence of registration of the Trademark ZUDIO in various classes including Indian Trademarks No. 3078069 dated September 13, 2016, in Class 14, and No. 3078070 dated September 13, 2016, in Class 18.

The disputed domain name was registered on November 12, 2022. The disputed domain name previously resolved to an active website being hosted thereat in the past. At present, the disputed domain name does not resolve to an active website.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant in its Complaint has, *inter alia*, raised the following contentions:

The Complainant is the proprietor of several trademarks comprising of the Trademark ZUDIO in India and has been using the Trademark ZUDIO continuously and extensively since the year 2016. The Complainant also registered the domain name <zudio.com> on September 15, 2011, which leads to active websites being run and operated by the Complainant containing detailed information on the various brands and products available under the Zudio brand at the Zudio stores of the Complainant. The website "www.zudio.com" is a highly popular and successful online retail and shopping website ranking at the 23rd position in the Lifestyle, Jewellery and Luxury category of websites visited in India according to the Similarweb as on May 18, 2023.

The Complainant has spent substantial time, effort, and money advertising and promoting the Trademark ZUDIO. As a result, the Trademark ZUDIO has become famous, and the Complainant has developed enormous reputation and goodwill in the Trademark ZUDIO, such that it is exclusively associated with the Complainant.

The disputed domain name fully incorporates the Complainant's Trademark ZUDIO in entirety and is essentially identical and highly confusingly and deceptively similar as a whole to the Complainant's domain name. The disputed domain name comprises of the Complainant's Trademark ZUDIO and "apparels" which is merely descriptive of clothing items and does not distinguish the disputed domain name from the Complainant's Trademark ZUDIO. The overall impression, of the terms comprised in the disputed domain name, is one of being connected to the Trademarks and business of the Complainant. The Complainant further contends that ".com" is a Top-Level Domain ("TLD") and non-distinctive. It is an essential part of most domain names. Thus, ".com" part of the disputed domain name does nothing to distinguish the disputed domain name from the Complainant's Trademark ZUDIO, and in particular, the Complainant's registered domain name <zudio.com>.

The Respondent does not appear to have any rights or legitimate interests in the disputed domain name. The disputed domain name has resolved to an active website being hosted thereat in the past. The website

being hosted appeared to have been an online retail platform for clothing and apparel, and the said website appears to have been active at least until March 30, 2023, as revealed by a snapshot captured on March 30, 2023, on the Wayback Machine Internet Archive. At present, the disputed domain name does not resolve to an active website. The website earlier hosted upon the disputed domain name appears to have been disabled at present and remains "parked" by the Respondent - with no active business or intent to do business and is clearly parked for illicit gains. Therefore, the disputed domain name appears to have been registered without any *bona fide* intention for use in relation to website hosting or a business. The Respondent has never used or made preparations to use the disputed domain name in connection with a *bona fide* offering of goods and services.

The Complainant never agreed to or consented to use of the Complainant's Trademark ZUDIO by the Respondent in any manner and/or form. The Complainant never granted any license to or transferred any right to or authorized the Respondent to use or register the Complainant's Trademark ZUDIO in any manner or form. The Respondent appears to have registered the disputed domain name to make illegitimate and/or unfair use of the disputed domain name for commercial gain by piggybacking off of the Complainant's goodwill and reputation in their e-commerce and online marketplace business under the Complainant's Trademark ZUDIO.

The Respondent has no relationship with the Complainant nor the Complainant has authorized or licensed the Respondent to register or use the disputed domain name. The Respondent cannot show that it is commonly known as "zudio". Rather, the disputed domain name has been used to mislead viewers and consumers looking for the Complainant's goods and services by redirecting them to the impugned website being hosted upon the disputed domain name.

The Respondent has laid bare his intent to commercially exploit the Complainant's Trademark ZUDIO, for the sole purpose of freeriding on and/or causing irreparable damage and injury to the Complainant's goodwill and reputation, resulting in dilution of the Complainant's Trademark ZUDIO, and in particular, the Complainant's Trademark ZUDIO registered in India. In fact, by acquiring the disputed domain name, the Respondent has shown bad faith opportunism in encashing the popularity of the Complainant's Trademark ZUDIO.

The Respondent's intention while registering the disputed domain name is to misappropriate the reputation and goodwill associated with the Complainant's Trademark ZUDIO, in an attempt to unfairly benefit from the reputation and goodwill attached to it. The Respondent has used the disputed domain name to mislead consumers and the browsing public looking for the Complainant's goods and services by redirecting them to the fraudulent website which had been hosted on the disputed domain name.

The Respondent being a Delhi/India based entity, is bound to have been aware of the Complainant, its business, goods, and services under the Complainant's Trademark ZUDIO. The Respondent is presumed to have had knowledge of the Complainant's Trademark ZUDIO at the time it registered the identical and confusingly and deceptively similar disputed domain name keeping in mind the Complainant's prior use and/or registration of the domain name. In light of the same, the Respondent's registration of the disputed domain name in its name is patently dishonest.

The Complainant pleads that the disputed domain name be transferred to the Complainant.

## **B. Respondent**

The Respondent did not submit reply to the Complainant's contentions. However vide email dated July 2, 2023, the Respondent has informed that it is not using the disputed domain name anymore and is ready to surrender the disputed domain name. The Respondent also asked the Registrar to transfer the disputed domain name on its behalf.

## 6. Discussion and Findings

As per paragraph 5(f) of the Rules, where a respondent does not submit a substantive response, in the absence of exceptional circumstances, the panel shall decide the dispute based upon the Complaint. The Panel does not find any exceptional circumstances in this case preventing it from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a substantive response. As per paragraph 14(b) of the Rules, where a party does not comply with any provision of the Rules, the Panel is to draw such inferences therefrom as it considers appropriate.

The Complainant is required to make out its case in all respects under paragraph 4(a) of the Policy, which sets out the three elements that must be present for the proceeding to be brought against the Respondent, which the Complainant must prove to obtain a requested remedy. It provides as follows:

“Applicable Disputes. You are required to submit to a mandatory administrative proceeding in the event that a third party (a “complainant”) asserts to the applicable Provider, in compliance with the Rules of Procedure, that:

(i) your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

(ii) you have no rights or legitimate interests in respect of the domain name; and

(iii) your domain name has been registered and is being used in bad faith.

In the administrative proceeding, the complainant must prove that each of these three elements are present.”

The Panel will address all three aspects of the Policy listed above hereunder:

### A. Identical or Confusingly Similar

The Complainant has furnished evidence of its rights in the Trademark ZUDIO through details of its registrations and common law rights accrued to it due to long and substantial use of the trademark. The Panel has considered and examined all the documents submitted by the Complainant in support of its claim that the Complainant has been using and has registrations in its favour for the Trademark ZUDIO. There is no doubt that the Complainant has rights in the Trademark ZUDIO.

The disputed domain name incorporates the entire Trademark ZUDIO of the Complainant. The WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7 provides the consensus view of panelists: “While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant trademark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that trademark for purposes of UDRP standing.”

The mere addition of the suffix “apparels” does not prevent a finding of confusing similarity between the disputed domain name and the Complainant’s Trademark ZUDIO. The Panel considers it useful to refer to [WIPO Overview 3.0](#), section 1.8: “Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements”.

[WIPO Overview 3.0](#), section 1.11.1 states that the applicable TLD in a domain name (e.g., “.com”, “.club”, “.nyc”) is viewed as a standard registration requirement and as such may be disregarded under the first element confusing similarity test.

Therefore, the Panel finds that the Complainant has successfully established the first element of paragraph

4(a) of the Policy that there is a confusing similarity between the disputed domain name and the Complainant's Trademark ZUDIO.

## **B. Rights or Legitimate Interests**

The Complaint is based on the Trademark ZUDIO registered in Complainant's favor and used in connection with the goods offered by it. The term "zudio" has come to be uniquely associated with the famous ZUDIO retail stores operated and run by the Complainant owing to its trademark rights in the term ZUDIO as well as due to popularity of the Complainant's website hosted on its registered domain name <zudio.com>.

The Panel finds that in consideration of the status and fame of the Complainant's Trademark ZUDIO, the Respondent cannot claim any rights or legitimate interests in the disputed domain name which incorporates the Complainant's Trademark ZUDIO entirely. Particularly, the Panel takes note that the disputed domain name was previously used to host a website seemingly impersonating the Complainant and allegedly offering the Complainant's trademarked goods for sale at discount, without any statement disclosing its (lack of) relationship to the Complainant, none of which vests in the Respondent rights or legitimate interests.

Paragraph 4(c) of the Policy lists circumstances, but without limitation, which, if found by the Panel to be proved, may demonstrate the Respondent's rights or legitimate interests in a disputed domain name for the purposes of paragraph 4(a)(ii) of the Policy.

The Panel considers it relevant to consider the [WIPO Overview 3.0](#), section 2.5, which provides that, "Fundamentally, a respondent's use of a domain name will not be considered "fair" if it falsely suggests affiliation with the trademark owner; the correlation between a domain name and the complainant's mark is often central to this inquiry." The Respondent is in no way related to the Complainant; neither is the Respondent an agent of the Complainant, nor does it in any way or manner carry out activities for or on behalf of the Complainant. The Trademark ZUDIO indisputably vests in the Complainant as evidenced by the statutory registrations secured by the Complainant and its continuous usage of the Trademark ZUDIO since 2016.

[WIPO Overview 3.0](#), section 2.1 states that: "While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of 'proving a negative', requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element."

The Respondent has failed to file a Response to rebut the Complainant's *prima facie* case or to explain its rights or legitimate interests. But subsequently the Respondent had sent an email dated July 2, 2023 stating that it is not using the disputed domain name anymore and is ready to surrender the disputed domain name. The Respondent requested the Registrar to transfer the disputed domain name on its behalf which amounts to an admission that it has no rights or legitimate interests in the disputed domain name. There is no evidence before the Panel that the Respondent has any trademark rights associated with the disputed domain name or has actually been commonly known by the disputed domain name, apart from registration of the disputed domain name. Therefore, the Respondent has failed to demonstrate any rights or legitimate interests in the disputed domain name as per paragraph 4(c) of the Policy or otherwise. Considering the evidence submitted by the Complainant, the Panel finds that the Complainant has satisfied its burden to make out a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Panel is satisfied that the second element of the Policy has been met.

## **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy identifies, in particular but without limitation, four circumstances which, if found

by the Panel to be present, shall be the evidence of the registration and use of the disputed domain name in bad faith. The Complainant is required to prove both that the disputed domain name was registered in bad faith and that it is being used in bad faith. Hence, circumstances at the time of registration and thereafter have to be considered by the Panel.

The Complainant has furnished proof that in the past, the disputed domain name has resolved to an active website which appeared to have been an online retail platform for clothing and apparel, demonstrating the Respondent's attempt to intentionally mislead Internet users for its commercial gain through the incorporation of the Complainant's trademark in the disputed domain name. The said website was active at least until March 30, 2023, as revealed by a snapshot captured on March 30, 2023, on the Wayback Machine Internet Archive appended as Annex 6 by the Complainant. At present, however, the disputed domain name is passively held by the Respondent. The non-use of a domain name is not a conclusive proof against bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3 states that "From the inception of UDRP, panelist have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding."

[WIPO Overview 3.0](#), section 3.2.2 states: "Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant's mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant's mark." The Complainant's Trademark ZUDIO has acquired significant uniqueness and repute due to its long and continuous usage by the Complainant. There is virtually no possibility, noting *inter alia* the well-known nature of the Complainant's Trademark ZUDIO and the well-established reputation and goodwill associated with it that the Respondent was unaware of the existence of the Trademark ZUDIO.

The Complainant has produced evidence of registration of the Trademark ZUDIO and its formatives since 2016. The Respondent registered the disputed domain name on November 12, 2022, incorporating in it the entirety of the Trademark ZUDIO of the Complainant. The Complainant has not granted the Respondent permission or a license of any kind to use its Trademark ZUDIO and register the disputed domain name. Such unauthorized registration by the Respondent suggests opportunistic bad faith in these circumstances.

In view of the above, the Panel concludes that the third and last condition provided for by paragraph 4(a)(iii) of the Policy is met. The Panel therefore, finds that the disputed domain name has been registered and is being used by the Respondent in bad faith.

## 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 <zudioapparels.com> be transferred to the Complainant.

*/Ashwinie Kumar Bansal/*

**Ashwinie Kumar Bansal**

Sole Panelist

Date: July 14, 2023