

## **ADMINISTRATIVE PANEL DECISION**

Yakima Products, Inc. v. Tgwh Rfdghi  
Case No. D2024-0250

### **1. The Parties**

The Complainant is Yakima Products, Inc., United States of America (“United States” or “US”), represented by Hanson Bridgett LLP, United States.

The Respondent is Tgwh Rfdghi, Hong Kong, China.

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

The disputed domain name <yakimaoutlet.com> is registered with Name.com, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 20, 2024. On January 22, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 23, 2024, 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 verified that the 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 24, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 13, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 14, 2024.

The Center appointed Angelica Lodigiani as the sole panelist in this matter on February 20, 2024. 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 is a US manufacturer of vehicle cargo accessories, including cargo and sporting equipment racks, bicycle carriers, and cargo boxes. The Complainant operates under the trademark YAKIMA in the United States since 1981 and in many foreign countries since 1993. The Complainant sells its YAKIMA products on its website at “www.yakima.com”, and through various authorized dealers.

The Complainant is the owner of various YAKIMA trademark registrations, including the following:

- YAKIMA (figurative), US registration No. 1509179, registered on October 18, 1988, claiming a date of first use in commerce of April 1986, for goods in class 12; and
- YAKIMA (word), US registration No. 1508043, registered on October 11, 1988, for goods in class 12.

The Complainant is also the owner of the domain name <yakima.com>, registered on February 10, 1995.

The disputed domain name was registered on April 2, 2022, and resolves to a website prominently displaying the Complainant’s mark and purportedly offering for sale YAKIMA branded products at discounted prices.

#### **5. Parties’ Contentions**

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

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the Respondent is not affiliated with the Complainant. The Complainant did authorize the Respondent to make use of its YAKIMA mark in any manner, including as part of the disputed domain name. The Respondent is not a Complainant’s licensee and is not known by the term “yakima”. The Respondent has not developed common law trademark rights in the Complainant’s senior mark. The Respondent uses the disputed domain name to host a scam copycat website titled “Yakima”, displaying the YAKIMA branded products and the YAKIMA mark with the registration symbol ®, featuring the Complainant’s product listings. The Respondent’s website also includes the Complainant’s original copyright protected photography, embedded in a website layout, which is closely similar to the Complainant’s website layout, colors and text. The Respondent’s website contains links enabling users to purchase YAKIMA branded products after inputting credit card information. The “About Us” section of the Respondent’s website states the following: “We take pride in our customer service. We have an entire team based in our corporate office in Montgomery, Alabama”. However, the Complainant has no office in Montgomery, Alabama.

The Complainant argues that the Respondent’s website is designed to deceive web users and consumers into believing that they are accessing the Complainant’s genuine YAKIMA website, particularly a website for the Complainant’s outlet, and trick consumers into parting with valuable confidential information by representing that the fraudulent website will send the Complainant’s genuine products after placing an order. According to the Complainant, the YAKIMA mark enjoys reputation, and the Respondent was aware of the Complainant’s earlier mark when it registered the disputed domain name. The independent rating service offered by the website “www.scamdiviser.com” rate the disputed domain name as “unsafe” with a No. 1 out of 100 trust score. The Complainant conducted a test buy of a product offered for sale on the Respondent’s website to ascertain the nature of the Respondent operation. After submitting the payment, the Complainant received an error message indicating “transaction failure” and did not receive the purchased products.

##### **B. Respondent**

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

## 6. Discussion and Findings

### A. Identical or Confusingly Similar

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

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. It is a generally accepted principle that "in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing". [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here "outlet", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Therefore, the Panel finds the first element of the Policy has been established.

### B. Rights or Legitimate Interests

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds 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 rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Complainant does not have any relationship with the Respondent and did not authorize the Respondent to make use of its trademark YAKIMA in any manner whatsoever, including as part of the disputed domain name. Moreover, the Panel cannot find indications that could lead to the conclusion that the Respondent is commonly known by the disputed domain name. The disputed domain name resolves to a website prominently depicting the Complainant's figurative trademark, and displaying YAKIMA branded products at discounted prices. The website associated with the disputed domain name reproduces the Complainant's copyrighted photos without authorization. The Respondent's website appears very similar to the Complainant's official website, also due to the adoption of a similar layout, text, and colors. The Respondent's website does not contain a disclaimer pointing out the lack of affiliation of the Respondent with the Complainant. On the contrary, the disputed domain name (which also includes the word "outlet") and the associated website are highly misleading for the Internet users, who can consider that they belong to the Complainant. The Respondent's website purportedly offers for sale branded YAKIMA products at reduced products. The Complainant has conducted a test purchase of these products and has inserted credit card

information on the Respondent's website. After inserting its credit card information, the Complainant has received a transaction failure message and did not receive the requested products. Panels have held that the use of a domain name for illegal activity, such as phishing, impersonation/passing off, or other types of fraud, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. Under the circumstances, the Panel finds that the use of the disputed domain name does not amount to a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

In light of the above, the Panel finds the second element of the Policy has been established.

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

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Complainant's trademark is distinctive and uniquely associated with the Complainant. As mentioned above, the disputed domain name is highly misleading for the Internet consumers. It identically reproduces the Complainant's mark followed by the word "outlet", which is likely to attract the potential consumers of the Complainant's products interested in making good deals when purchasing these products. The Respondent's website associated with the disputed domain name is a near copy of the Complainant's website. Hence, it is clear that when the Respondent registered the disputed domain name it had well in mind the Complainant's mark. The registration of a domain name confusingly similar to a third party's trademark, being aware of this trademark and without rights or legitimate interests amounts to registration in bad faith. In addition, the Panel notes that the composition of the Respondent's name consists of series of letters placed at random. It is therefore likely that the Respondent provided false contact information at the time of the registration of the disputed domain name. This circumstance is additional evidence of bad faith.

Panels have held that the use of a domain name for illegal activity, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's use of the disputed domain name constitutes bad faith under the Policy. The Respondent is purportedly offering for sale YAKIMA branded products, but when the Internet users inserts their credit card numbers, the transactions are not finalized, and the products are not delivered. Therefore, the Panel finds that the Respondent is luring unsuspecting Internet users to its website in order to obtain sensitive information (such as credit card numbers and other personal data), for commercial gain or other type of fraud. Accordingly, the Respondent has registered and is being using the disputed domain name in bad faith to intentionally attempt to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

For all the aforesaid reasons, the Panel finds that the Complainant has established the third 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 <yakimaoutlet.com> be transferred to the Complainant.

*/Angelica Lodigiani/*  
**Angelica Lodigiani**  
Sole Panelist  
Date: March 5, 2024