

## ADMINISTRATIVE PANEL DECISION

10Days Wholesale B.V. v. Zhang Qiang  
Case No. D2024-0732

### 1. The Parties

The Complainant is 10Days Wholesale B.V., Netherlands (Kingdom of the), represented by Leeway Advocaten, Netherlands (Kingdom of the).

The Respondent is Zhang Qiang, China.

### 2. The Domain Name and Registrar

The disputed domain name <10daysschweiz.com> is registered with Paknic (Private) Limited (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 16, 2024. On February 19, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 20, 2024, 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 and PakNIC Private Limited) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 21, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amended Complaint. The Complainant filed an amended Complaint on February 22, 2024.

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 February 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 17, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 20, 2024.

The Center appointed Beatrice Onica Jarka as the sole panelist in this matter on March 21, 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 the owner of various trademark registrations for the trademark 10DAYS worldwide, including inter alia the following Trademark Registrations (The Trademarks):

- European Union Trademark (“EUTM”), registered on January 17, 2011, with registration number 009213166, for the wordmark 10DAYS for goods and services 14, 18, 25, 26, and 35; and
- EUTM Trademark, registered on October 8, 2021, with registration number 018478506, for the wordmark 10DAYS for goods and services 3, 20, 21, 24, 27, and 35.

The Complainant sells fashion and homeware to consumers under the Trademarks. The Complainant offers a webshop with shipping to Austria, Belgium, Denmark, Finland, France, Germany, Italy, Luxembourg, the Netherlands, Poland, Portugal, Spain, and Sweden.

The Respondent in this administrative proceeding, as was disclosed by the Registrar, is Zhang Qiang, China.

The Respondent appears to operate under the disputed domain name a web shop pretending to be an authorized reseller or an affiliated website of the Complainant, displaying the 10DAYS trademark.

The Respondent registered the disputed domain name on July 7, 2023.

#### **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:

- By using the disputed domain name, the Respondent operates a so-called fake web shop purportedly offering the Complainant’s 10DAYS trademarked goods.
- The Respondent exploits a fraudulent website, pretending to be an authorized reseller or an affiliated website of the Complainant.
- The Complainant’s exclusive rights therefore predate the registration of the disputed domain name.
- The trademarks of the Complainant have substantive inherent and acquired distinctiveness.
- Based on the online and offline presence of the Complainant’s products the awareness of the 10DAYS brand in the European Union is significant as well.
- The Complainant refers to its official website “www.10dayslifestyle.com”, the Instagram account @10dayslifestyle and the offline stores of the Complainant.
- On this basis, this trademark registration satisfies the requirement that the Complainant show “rights in a mark” for further assessment as to confusing similarity.
- The disputed domain name is identical or at least confusingly similar to the Complainant’s trademarks, as the trademarks are highly recognizable in the disputed domain name:
- The addition of “.com” is the mere addition of a generic Top-Level Domain (“gTLD”). A gTLD is disregarded when assessing confusing similarity.
- The addition of the geographical term “Schweiz” (in English - Switzerland) does not suffice to prevent a finding of confusing similarity between the disputed domain name and the Complainant does not serve to distinguish the disputed domain name from the trademarks in any way, but rather it increases the similarity, as it suggests that the disputed domain name resolves to the official website of its Swiss subsidiary.

- There is a considerable risk that the trade public will perceive the disputed domain name either as a domain name owned by the Complainant or expect a commercial relation with the Complainant.
- In addition, by using the Complainant's trademarks as the dominant part of the disputed domain name, the Respondent exploits the goodwill of the Complainant. In this case, the content of the website on the disputed domain name confirms the confusing similarity.
- The disputed domain name contains a fake web shop, where unauthorized products reflecting the 10DAYS trademark are displayed, by using copyright-protected images from the Complainant on the website.
- It appears that the Respondent seeks to target the Complainant's trademarks through the disputed domain name, which results in dilution and other damage to the Complainant's trademarks.
- In light of the above, the disputed domain name is confusingly similar to the Complainant.
- The Respondent has no rights or legitimate interests in respect of the disputed domain name.
- The Respondent is not commonly known under the disputed domain name and there are no registered trademarks in the name of the Respondent consisting of, or connected to, the disputed domain name.
- The Respondent is not related to the Complainant's business and is not authorized by the Complainant to use its trademarks.
- The disputed domain name consists of the Complainant's trademark plus an additional geographical term, suggesting sponsorship or endorsement by the Complainant. The website suggests the Respondent is the owner of the Complainant's trademark.
- It is unclear to Internet users that the Respondent's website is not in any way operated by the Complainant. Therefore, there is no evidence of fair use of the Complainant's trademark in this case.
- The Complainant has not found evidence of prior use or demonstrable preparations to use the Complainant's trademark, in connection with a bona fide offering of goods or services.
- The Respondent misleads Internet users, who are searching for the website of the Complainant.
- It is evident that the Respondent intentionally chose the disputed domain name based on a registered trademark to derive a commercial benefit by 'riding on the coattails' of the Complainant's trademarks and attached goodwill.
- The Respondent uses copyright-protected images from the Complainant on its website, without any form of consent of the Complainant.
- It is consistent with the prior UDRP panels view that such use does not represent a bona fide offering of goods or services as outlined in the Oki Data Test, in this regard, the Complainant notes: (i) The Respondent does not actually offer genuine Complainant products; (ii) the Respondent does not use the site to sell only the trademarked goods, but to mislead Internet users; (iii) the website does not accurately and prominently disclose the absence of the Respondent's relationship with the Complainant; and (iv) the Respondent tries to "corner the market" by using the disputed domain name that fully incorporates the trademark.
- The Respondent uses the website for illegal activities.
- The Complainant ordered a product on the website and the payment could not be processed. The Complainant's credit card company confirmed that it had blocked all payments from this disputed domain name due to fraudulent activities.
- In this fraudulent context, it is not surprising that the Respondent has masked its identity on the website and in the public Whois record, to avoid being contactable in any way, as any attempts to get in contact with the Respondent have not been successful. In light of the above considerations regarding the lack of a bona fide interest, it is clear that the Respondent registered the disputed domain name or, in any case, is using the disputed domain name in bad faith.
- The mere registration of a domain name that is identical or confusingly similar (particularly domain names incorporating the mark plus a term) to a famous or widely-known trademark by an unaffiliated entity by itself creates a presumption of bad faith.
- It is obvious that the success and expansion of the Complainant's business and fame motivated the Respondent to register the disputed domain name.
- The Respondent cannot claim to have been using the trademarks without being aware of the Complainant's rights to the Complainant's trademarks.
- There is no logical explanation for registering this specific disputed domain name (especially combined with a fake web shop impersonating the Complainant), other than the desire of the Respondents to attract,

for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trademark.

- It is more than likely that the Respondent has been anticipating the Complainant's natural zone of expansion of its business to countries like Switzerland, which would lead to an interest in acquiring the disputed domain name.
- The Respondent creates confusion for Internet consumers, who wish to buy genuine products from the Complainant. The use of the disputed domain name for fraudulent activities (the sale of counterfeit goods and/or fraud) is considered evidence of bad faith (see also section 3.1.4 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"),. The Respondent intentionally creates a likelihood of confusion with the trademark and it likely obtains revenue from this practice.
- Additionally, the Respondent's bad faith intent is shown by the fact that, to date, it has chosen to hide its identity, which is another indication of bad faith.
- It is clear that the Respondent intentionally attempts to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trademarks as to the source and the endorsement of the Respondent's website.

To summarize, the Respondent registered a disputed domain name that is identical or confusingly similar to the prior trademarks of the Complainant, which is distinctive and its reputation is growing. Such conduct is a purposeful attempt to profit from or exploit the Complainant's trademark. The use of the disputed domain name takes unfair advantage of the Complainant and is also abusive. Consequently, by referring to the abovementioned indications, the Respondent should be considered to have registered or be using the disputed domain name in bad faith.

## **B. Respondent**

Although properly summoned, 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 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.

The entirety of the mark is reproduced within the disputed domain name, which makes the disputed domain name identical or confusingly similar to the Complainant's trademark.

The Complainant's trademarks are recognizable in the disputed domain name and the addition of ".com" as the gTLD is disregarded when assessing confusing similarity.

The mere addition of the geographical term "Schweiz" (in English - Switzerland) does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark, but may bear on assessment of the second and third elements. [WIPO Overview 3.0](#), section 1.8.

Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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 following circumstances found by the Panel supports the prima facie case made by the Complainant that the Respondent lacks rights or legitimate interests in the disputed domain name, [WIPO Overview 3.0](#), section 2.13.1:

- The disputed domain name contains a web shop displaying the 10DAYS trademark, where allegedly unauthorized products bearing the Complainant’s trademark are displayed, by using copyright-protected images from the Complainant on the website, which indicates that the Respondent is seeking to impersonate the Complainant given the lack of any disclaimer.
- The Respondent is not commonly known under the disputed domain name and there are no registered trademarks in the name of the Respondent consisting of, or connected to, the disputed domain name.
- The Respondent is not related to the Complainant’s business and is not authorized by the Complainant to use its trademarks.
- The disputed domain name consists of the Complainant’s trademark plus an additional geographical term, and coupled together with the use to host an impersonating web shop, suggests sponsorship or endorsement by the Complainant.
- It is unclear to Internet users that the Respondent’s website is not in any way operated by the Complainant. Therefore, there is no evidence of fair use of the Complainant’s trademark in this case.
- The Respondent misleads Internet users, who are searching for the website of the Complainant.

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.

Consequently, 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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may 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.

In the present case, the Panel notes a series of circumstances that indicate the Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark:

- The Respondent registered the disputed domain name subsequent to when the Complainant registered the first of the trademarks, which indicates that the Respondent was aware of, and intended to capitalize on, the Complainant's trademarks and reputation.
- There is no logical explanation for registering this specific disputed domain name (especially combined with a web shop impersonating the Complainant), other than the desire of the Respondent to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trademark.
- The Respondent creates confusion for Internet users by incorporating the Complainant's trademark in its entirety and using it to host a web shop impersonating the Complainant. The use of the disputed domain name for fraudulent activities (the sale of counterfeit goods and/or fraud) is considered evidence of bad faith (see also section 3.1.4 WIPO Overview).
- The Respondent's bad faith intent is shown by the fact that it has chosen to hide its identity on the publicly-available Whois through the use of a privacy service.

Finally, 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, <10daysschweiz.com>, be transferred to the Complainant.

*/Dr. Beatrice Onica Jarka/*

**Dr. Beatrice Onica Jarka**

Sole Panelist

Date: April 4, 2024