



**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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| <b>Case No.</b>     | HK-1200466                    |
| <b>Complainant:</b> | Daymen Canada Acquisition ULC |
| <b>Respondent :</b> | Yu Wei                        |

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**1. The Parties and Contested Domain Name**

The Complainant is Daymen Canada Acquisition ULC, of 2800 Park Place, 666 Burrard Street, Vancouver, BC, Canada.

The Respondent is Yu Wei, of Flat 19E, Clifford Mansion, 40 Broadcast Drive, Kowloon Tong, KLN, Hong Kong.

The domain name at issue is [www.loweprobackpacks.com](http://www.loweprobackpacks.com), registered by Respondent with Godaddy.com LLC, of 14455 N. Hayden Road, Suite 226, Scottsdale, AZ 85260, USA.

**2. Procedural History**

The Complaint was filed with the Hong Kong International Arbitration Center (the "Center") on 8 November 2012, 2012. On 13 November 2012, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On 16 November 2012, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name.

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(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on 11 December 2012. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on 2 January 2013.

The Center appointed Adam Samuel as the sole panelist in this matter on 3 January 2013. 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.

### **3. Factual background**

The Complainant manufactures and sells photographic equipment, consumer electronic products and rucksacks in which to carry such products. It is the legal owner of United States trademark registrations for LOWEPRO. The relevant registration numbers are 2706222 and 3123209 and the dates of registration, 15 April 2003 and 1 August 2006 respectively. The Complainant also owns other trademark registrations for same name in Canada and China. It registered www.lowepro.com on 13 February 2011.

The disputed domain name was registered on 7 March 2012.

### **4. Parties' Contentions**

#### **A. Complainant**

The Complainant's contentions may be summarized as follows:

- i. LOWEPRO, the trademark and brand was created in 1967. Since then, the business that originally developed and its successor in title have always been involved in developing and perfecting camera carrying systems, in particular, backpacks. The disputed domain name consists of two parts, the Complainant's trademark, "lowepro" and the common English word "backpacks". The suffix ".com" merely indicates the existence of a domain name and is irrelevant for this purpose.
- ii. The Complainant has never authorized the Respondent to use any of its trademarks, names and logos and never authorized the use or registration of any domain name containing the Complainant's trademarks. The Respondent's name does not contain any words of "lowepro". The Respondent does not appear to have applied for trademark registrations containing the word "lowepro" in China where the Respondent resides.
- iii. The Respondent has plagiarized the Complainant's official website and through this and the confusingly similar domain name, intentionally attracts internet users to their website for commercial gain.
- iv. The Respondent is selling counterfeit backpack products of the "Lowepro" brand through the website concerned.

#### **B. Respondent**

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

### **5. Findings**

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent's domain name must be 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 disputed domain name consists of three elements: the Complainant's trademark, LOWEPRO which is an artificial or made up word, the common English word "backpacks" and the standard ".com" suffix. The ".com" suffix which is necessary to indicate the existence of a domain name is irrelevant for the purposes of this analysis. The addition of generic words (such as "backpacks") and the gTLD suffix ".com" to a trademark does not prevent the resulting domain name from being confusingly similar to the trademark concerned. This is particularly the case here where the trademark is an invented word and the generic word added to it is naturally associated with the products marketed using the trademark concerned.

For these reasons, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademark.

### **B) Rights and Legitimate Interests**

The Respondent is not called "Lowepro" or anything similar and does not appear to trade under that or any related name. There is no evidence that the Complainant has ever authorized the Respondent to use its trademarks. The Respondent has never asserted any rights or legitimate interests in the Complainant's trademark. For these reasons, and in the absence of any response, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

### **C) Bad Faith**

The Respondent's website to which the disputed domain name resolves no longer has any content. However, a screen shot of the website, dated 10 September 2012, provided in evidence by the Complainant shows the website being used to sell the Complainant's products. This is the case even though the Complainant's trademark is an invented word unconnected with those types of products.

It is apparent from the evidence that the Respondent registered the disputed domain name knowing of the Complainants' trademark rights and has been using those trademarks to sell products to Internet users without the Complainants' permission.

It is impossible, at least without a Response to the Complaint, to identify a reason why the Respondent registered the disputed domain names other than to attract business or Internet users to its site who were looking for a site connected to the Complainant's trademark or business.

The only explanation of what has happened seems to be that the Respondent's motive in registering the disputed domain names is either to disrupt the Complainant's relationship with its customers or potential customers, attempt to attract Internet users for potential gain or persuade the Complainant to buy each of the disputed domain names for an amount in excess of the Respondent's out-of-pocket expenses. These all constitute evidence of

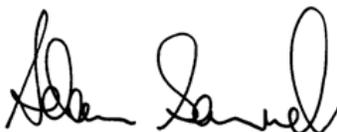
registration and use in bad faith.

For these reasons, the Panel concludes that the disputed domain names was registered and is being used in bad faith. As a result, it is unnecessary to deal with the Complainant's other contentions, particularly those relating to counterfeiting.

For all these reasons, the Panel concludes that the Respondent registered and is using the dispute domain name in bad faith.

## **6. Decision**

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

A handwritten signature in black ink, appearing to read "Adam Samuel". The signature is written in a cursive style with a horizontal line underneath it.

Adam Samuel  
Panelist

Dated: 10 January 2013