

ADMINISTRATIVE PANEL DECISION

Leaseweb IP BV v. ilias ezzobai

Case No. D2022-4043

1. The Parties

Complainant is Leaseweb IP BV, Netherlands, represented by Boekx Advocaten, Netherlands.

Respondent is ilias ezzobai, Morocco.

2. The Domain Name and Registrar

The disputed domain name <leaseweb.vip> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 27, 2022. On October 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 28, 2022, 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 and contact information in the Complaint (Privacy service provided by Withheld for Privacy ehf). The Center sent an email communication to Complainant on November 1, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on November 2, 2022.

The Center verified that the Complaint together with the amendment to 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 Respondent of the Complaint, and the proceedings commenced on November 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 23, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on November 24, 2022.

The Center appointed Phillip V. Marano as the sole panelist in this matter on November 29, 2022. 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

Complainant is an Infrastructure as a Service (“IaaS”) provider with nineteen data centers in locations across Europe, Asia, and North America serving a worldwide portfolio of 17,500 customers ranging from small to medium businesses from almost every country in the world. Complainant offers IaaS through its official <leaseweb.com> domain name and website. Complainant owns valid and subsisting registrations for the LEASEWEB trademark in numerous countries, including the trademark for LEASEWEB in Benelux and the European Union (Reg Nos. 722,934 and 5,304,449 respectively), with the earliest priority dating back to September 6, 2002.

Respondent registered the disputed domain name on June 5, 2021. At the time this Complaint was filed, the disputed domain name resolved to a draft placeholder website titled “A Passionate Web Company”, which contains placeholder Latin text and a putative contact address in Dhaka, Bangladesh.

5. Parties’ Contentions

A. Complainant

Complainant asserts ownership of the LEASEWEB trademark and has adduced evidence of trademark registrations in numerous regions and countries around the world including in Benelux and the European Union (Reg Nos. 722,934 and 5,304,449 respectively), with the earliest priority dating back to September 6, 2002. The disputed domain name is identical to Complainant’s LEASEWEB trademark, according to Complainant, because it is visually, auditorily, and conceptually identical once the Top-Level Domain (TLD) is disregarded.

Complainant further asserts that Respondent lacks any rights or legitimate interests in the disputed domain name based on: Respondent’s use of the disputed domain name to resolve to draft landing page with mostly Latin text commonly used for design purposes; Respondent’s use of an inactive email address; the lack of any evidence that Respondent is known by Complainant’s LEASEWEB trademark; and the lack of any trademark rights owned by Respondent.

Complainant argues that Respondent has registered and used the disputed domain name in bad faith for numerous reasons, including: Respondent’s registration of the disputed domain name identical to Complainant’s well-known LEASEWEB trademark; the relative impossibility Respondent was unaware of Complainant’s well-known LEASEWEB trademark; Respondent’s use of the disputed domain name to resolve to draft website content related to cloud hosting services and Complainant’s IaaS services; Respondent’s failure to register or use the disputed domain name for a legitimate aim; Respondent’s failure to acknowledge or comply with Complainant’s cease and desist correspondence; Respondent’s website publication of a non-functional inactive email address; and Respondent’s intent to disrupt the business of Complainant.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

To succeed in its Complaint, Complainant must establish in accordance with paragraph 4(a) of the Policy:

- i. The disputed domain name is identical or confusingly similar to a trademark in which Complainant has rights;
- ii. 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.

Although Respondent did not reply to Complainant's contentions, the burden remains with Complainant to establish by a balance of probabilities, or a preponderance of the evidence, all three elements of paragraph 4(a) of the Policy. A respondent's default would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true. UDRP panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case, e.g. where a particular conclusion is *prima facie* obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), sections 4.2 and 4.3; see also *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#) ("The Respondent's default does not automatically result in a decision in favor of the complainant. The Complainant must still prove each of the three elements required by Policy paragraph 4(a)").

A. Identical or Confusingly Similar

Ownership of a nationally or regionally registered trademark serves as *prima facie* evidence that Complainant has trademark rights for the purposes of standing to file this Complaint. [WIPO Overview 3.0](#), section 1.2.1. Complainant submitted evidence that the LEASEWEB trademark has been registered numerous countries and regions with priority dating back to September 6, 2002. Thus, the Panel finds that Complainant's rights in the LEASEWEB trademark have been established pursuant to the first element of the Policy.

The only remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant's LEASEWEB trademark.

In this Complaint, the disputed domain name is identical to Complainant's LEASEWEB trademark because, disregarding the ".vip" generic Top-Level Domain ("gTLD"), the entirety of the LEASEWEB trademark is contained within the disputed domain name. [WIPO Overview 3.0](#), section 1.7. ("This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name ... [I]n 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..."). In regards to gTLDs, such as ".vip" in the disputed domain name, they are generally viewed as a standard registration requirement and are disregarded under the first element. [WIPO Overview 3.0](#), section 1.11.

In view of the foregoing, the Panel concludes that Complainant has established the first element of the Policy.

B. Rights or Legitimate Interests

Complainant must make out a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name, shifting the burden of production on this element to Respondent to come forward with evidence demonstrating such rights or legitimate interests. Where, as in this Complaint, Respondent fails to come forward with any relevant evidence, Complainant is deemed to have satisfied the second element of the Policy. [WIPO Overview](#), section 2.1.

It is evident that Respondent, identified by Whois data for the disputed domain name as "ilias ezzobai", is not commonly known by the disputed domain name or Complainant's LEASEWEB trademark. Moreover, passively holding a domain name, including with a placeholder or draft website, in and of itself does not constitute a *bona fide* offering of goods or services. *Philip Morris USA Inc. v. Gabriel Hall*, WIPO Case No. [D2015-1779](#).

In view of the foregoing, particularly Respondent's failure to come forward with any evidence demonstrating rights or legitimate interests in the disputed domain name, the Panel can only conclude that Complainant has established the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy proscribes the following non-exhaustive circumstances as evidence of bad faith registration and use of the disputed domain name:

- i. Circumstances indicating that Respondent has registered or Respondent has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to Complainant who is the owner of the trademark to a competitor of that Complainant, for valuable consideration in excess of Respondent's documented out of pocket costs directly related to the disputed domain name; or
- ii. Respondent has registered the disputed domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- iii. Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- iv. By using the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

Passively holding a domain name does not prevent a finding of bad faith. WIPO Overview, section 3.3. This includes domain names that do not resolve to any website content as well as domain names that are parked with a "coming soon" message or other similar content like placeholder draft content in Latin. Where a domain name is being passively held, as alleged in this case, bad faith registration and use exists based upon: (i) the degree of distinctiveness or reputation of the complainant's mark; (ii) the failure of the respondent to submit any response or offer any credible evidence of rights or legitimate interests; (iii) the respondent's concealing its identity or use of false contact details; and (iv) the implausibility of any good faith use which the domain name may be put. See *Id.* See also *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) ("A remedy can be obtained under the Policy only if those circumstances show that the Respondent's passive holding amounts to acting in bad faith.")

Here, Complainant has not submitted evidence regarding the degree of distinctiveness of its LEASEWEB trademark. However, Complainant has submitted reputational evidence beyond mere conclusory statements asserting its well-known nature, including in particular: (i) Google search engine results for "leaseweb" predominantly featuring Complainant and Complainant's official website; (ii) numerous trademark registrations in countries across Asia, Europe, and the Americas; (iii) analytics for Complainant's official website confirming millions of page views throughout only part of 2022; and (iv) more than twenty-five years of common law use of its LEASEWEB trademark in conjunction with over 17,500 customers in 170 countries and over EUR110 million annual revenue in recent years. In the Panel's view, such evidence makes any good faith use of the disputed domain name (which is identical to Complainant's LEASEWEB trademark and <leaseweb.com> domain name, and resolves to a draft placeholder website relevant to Complainant's hosting and IaaS services) by Respondent relatively implausible. Furthermore, the Panel acknowledges Respondent's failure to offer any credible evidence of rights or legitimate interests. And finally, the Panel acknowledges Respondent's either intentional or default use of a proxy registration service to conceal its identity from Complainant.

Where it appears that a respondent employs a proxy service, or selects a registrar that applies default proxy services, merely to avoid being contacted by a complainant, or notified of a UDRP proceeding filed against it, UDRP panels tend to find that this supports an inference of bad faith. WIPO Overview section 3.6. Use of a privacy or proxy registration service to shield a respondent's identity and elude or frustrate enforcement efforts by a legitimate complainant demonstrates bad faith use and registration of a disputed domain name.

See *Fifth Third Bancorp v. Secure Whois Information Service*, WIPO Case No. [D2006-0696](#) (the use of a proxy registration service to avoid disclosing the identity of the real party in interest is also consistent with an inference of bad faith when combined with other evidence of evasive, illegal, or irresponsible conduct). Here, it is evident that Respondent has either intentionally employed a proxy registration service, or intentionally selected a registrar that offers default proxy registration services, to conceal its identity in conjunction with a domain name identical to Complainant's LEASEWEB trademark and <leaseweb.com> domain name, and website content relevant to Complainant's services.

The Panel further concludes that failure by Respondent to answer Complainant's cease and desist letter "suggests that Respondent was aware that it has no rights or legitimate interests in the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith". See *America Online, Inc. v. Antonio R. Diaz*, WIPO Case No. [D2000-1460](#) (internal citations omitted). See also *Spyros Michopoulos S.A. v. John Talias, ToJo Enterprises*, WIPO Case No. [D2008-1003](#). Furthermore, the failure of Respondent to answer this Complaint or take any part in the present proceedings, in the view of the Panel, is another indication of bad faith on the part of Respondent. See *Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. [D2002-0787](#).

In view of the foregoing, the Panel concludes that 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, <leaseweb.vip> be transferred to the Complainant.

/Phillip V. Marano/

Phillip V. Marano

Sole Panelist

Date: December 13, 2022