

ADMINISTRATIVE PANEL DECISION

VENTE-PRIVEE.COM v. RAVI Gupta

Case No. D2022-4079

1. The Parties

The Complainant is VENTE-PRIVEE.COM, France, represented by Cabinet Degret, France.

The Respondent is RAVI Gupta, India.

2. The Domain Name and Registrar

The disputed domain name <veepeespg.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 October 28, 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 31, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 1, 2022, 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 amendment to the Complaint on November 7, 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 the Respondent of the Complaint, and the proceedings commenced on November 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 28, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 30, 2022.

The Center appointed Gareth Dickson as the sole panelist in this matter on December 6, 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

The Complainant is an e-commerce company based in France. It is the owner of a number of trade mark registrations, including for the marks VENTE-PRIVEE (the “VENTE-PRIVEE Mark”) and VEEPEE (the “VEEPEE Mark”) as well as various device marks which incorporate these word marks (together, the “Marks”) around the world, including:

- European Union trade mark registration number 11991965 for VENTE-PRIVEE (device), registered on January 3, 2014;
- European Union trade mark registration number 17442245 for VEEPEE (word), registered on March 29, 2018; and
- International trade mark registration number 1409721 for VEEPEE (word), registered on November 8, 2017.

The disputed domain name was registered on September 19, 2022. It currently redirects Internet users to a webpage, which appears to offer the disputed domain name for sale at the price of USD 5,000.

5. Parties' Contentions

A. Complainant

The Complainant argues that it has rights in the Marks by virtue of its ownership of various trade mark registrations for the Marks around the world. It contends that the disputed domain name is confusingly similar to the VEEPEE Mark since it incorporates the VEEPEE Mark in its entirety (which is recognisable within the disputed domain name) with the addition of the letters “spg” (which have no apparent meaning or relevance to the VEEPEE Mark) under the generic Top-Level Domain (“gTLD”) “.com”.

The Complainant confirms that the disputed domain name was registered by the Respondent without its permission and that the Respondent is not a licensee of the Complainant. It alleges that the Respondent has been using the disputed domain name to direct Internet users to a webpage where the disputed domain name is being offered for sale (the “Website”).

The Complainant submits that there is no evidence to suggest that the Respondent: has been commonly known by the disputed domain name; is making, or intends to make, a legitimate noncommercial or fair use of it or has ever used or demonstrated preparations to use it in connection with a *bona fide* offering of goods or services.

The Complainant submits that, due to the international reputation of the Marks and the Complainant, the Respondent must have known of the Complainant and the Marks when it registered the disputed domain name. In particular, the VEEPEE Mark, according to the Complainant, is an invented name which has acquired distinctiveness and is immediately recognisable as a designation of the Complainant. The Complainant argues that the VEEPEE Mark has also acquired the extensive international reputation previously held by the VENTE-PRIVEE Mark, following a comprehensive rebranding of the Complainant in 2019. The Complainant contends that the Respondent registered the disputed domain name for the sole purpose of selling it to the Complainant, or to third parties, at an inflated price for profit.

The Complainant also notes that the disputed domain name's MX servers have been activated and that the Respondent may be using, or is intending to use, the disputed domain name for phishing purposes.

Finally, the Complainant argues that the Respondent has used the disputed domain name to attempt to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the VEEPEE Mark, contrary to the Policy. Together, the Complainant submits that the disputed domain name has been registered and is being used in bad faith.

The Complainant notes too that the Respondent has used a privacy service to conceal its identity.

Together, the Complainant submits that the Respondent is using the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant bears the burden of proving that:

- a) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- b) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- c) the disputed domain name has been registered and is being used in bad faith.

These criteria are cumulative. The failure of the Complainant to prove any one of these elements means the Complaint must be denied.

A. Identical or Confusingly Similar

The Panel accepts that the Complainant is the owner of, and therefore has rights in, the Marks.

Section 1.7 of the [WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition](#), ("[WIPO Overview 3.0](#)") provides that: "[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 to that mark for purposes of UDRP standing".

Section 1.8 of the [WIPO Overview 3.0](#) further provides that: "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 Panel therefore finds that the disputed domain name is confusingly similar to the VEEPEE Mark, since the disputed domain name incorporates the VEEPEE Mark in its entirety with the addition of the letters "spg" in the domain name (which do not prevent the confusing similarity of the disputed domain name to the VEEPEE Mark), and the gTLD ".com".

Accordingly, the Panel finds that the disputed domain name is confusingly similar to a trade mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Although a complainant is required to demonstrate that a respondent has no rights or legitimate interests in respect of the domain name, as explained in section 2.1 of the [WIPO Overview 3.0](#), the consensus view of previous UDRP panels is that where a complainant establishes 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.

In the current proceeding, the Complainant has established its *prima facie* case. The evidence before the Panel is that the VEEPEE Mark is neither generic nor descriptive but enjoys a degree of inherent distinctiveness that makes a coincidental adoption by the Respondent highly unlikely. The Complainant states that it has not given the Respondent permission to use the Marks, in a domain name or otherwise, and submits that the Respondent has not been commonly known by the disputed domain name.

There is no evidence that the Respondent has acquired any common law rights to use the Marks, is commonly known by the Marks or has chosen to use the VEEPEE Mark in the disputed domain name in any descriptive manner or is making any use of the disputed domain name that would establish rights or legitimate interests as a result of a noncommercial or fair use of it. Moreover, the construction of the disputed domain name is such to carry a risk of implied affiliation to the Complainant, contrary to the fact, which cannot constitute fair use.

By not participating in these proceedings, the Respondent has failed to refute the Complainant's *prima facie* case that it has met its burden under the second UDRP element.

As clearly stated in section 2.1 of the [WIPO Overview 3.0](#), "a panel's assessment will normally be made on the basis of the evidence presented in the complaint and any filed response. The panel may draw inferences from the absence of a response as it considers appropriate, but will weigh all available evidence irrespective of whether a response is filed". Having reviewed and weighed the available evidence, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The Panel notes that the disputed domain name was registered many years after the Marks were registered and accepts that the disputed domain name was chosen by reference to the VEEPEE Mark.

As a result, and in the absence of evidence from the Respondent that the similarity of the disputed domain name to the VEEPEE Mark is coincidental, the Panel must conclude that the Respondent knew of the Complainant's rights in the VEEPEE Mark when it registered the disputed domain name.

The Panel therefore finds that the Respondent's registration of the disputed domain name was in bad faith since it attempted to appropriate for the Respondent, without the consent or authorisation of the Complainant, rights in the Complainant's VEEPEE Mark.

The disputed domain name is also being used in bad faith as it is being used for a commercial purpose that involves redirecting Internet users to a webpage, which offers the disputed domain name for sale. Such use falls squarely within the Policy's non-exhaustive list of circumstances indicating bad faith registration and use, *i.e.*, paragraph 4(b)(i) wherein a respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name for valuable consideration in excess of a respondent's documented out-of-pocket costs directly related to the domain name.

Further, the Panel notes that the Marks are distinctive of the Complainant and further notes that the Respondent has not participated in these proceedings or sought to explain its registration and use of the disputed domain name, and has sought to conceal its identity through a privacy service.

The Panel also notes that the Respondent may have used (or may be preparing to use) the disputed domain name as a means of electronic communication in a manner that will inevitably confuse recipients of such communications as to their true origin.

Therefore, and on the basis of the information available to it, the Panel finds that the Respondent's use of the disputed domain name is without justification and is inconsistent with the Complainant's exclusive rights in the Marks. Consideration of these and other factors militates in favour of a finding of bad faith.

The Panel finds that the Respondent has registered and is using the disputed domain name 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 <veepeesp.com> be transferred to the Complainant.

/Gareth Dickson/

Gareth Dickson

Sole Panelist

Date: December 20, 2022