

ADMINISTRATIVE PANEL DECISION

Veka Aktiengesellschaft (AG) v. Zoran Cvetković
Case No. D2022-4919

1. The Parties

The Complainant is Veka Aktiengesellschaft (AG), Germany, represented by rwzh Rechtsanwälte Wachinger Zoebisch Partnerschaft mbB, Germany.

The Respondent is Zoran Cvetković, Serbia.

2. The Domain Name and Registrar

The disputed domain name <vekapvc.com> is registered with Gransy, s.r.o. d/b/a subreg.cz (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 21, 2022. On December 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 22, 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. The Center sent an email communication to the Complainant on December 22, 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 amended Complaint on December 22, 2022.

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 December 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 18, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 19, 2023.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on January 24, 2023. 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 Veka Aktiengesellschaft AG, a company incorporated under the laws of Germany dedicated to producing PVC profile systems for windows, doors, roller shutters, and sliding doors. The Complainant has been operating for more than 50 years.

The Complainant group of companies has a total of more than 6,500 employees worldwide, 1,400 of whom work at the headquarters in Sendenhorst, Germany. In 2018, the Complainant employed about 6,000 people worldwide, including 4,600 at Veka and 1,400 at Gealan, another Complainant's company for this area of PVC window profiles. The VEKA Group generated annual sales of EUR 1.9 billion.

The Complainant is the owner of several trademarks consisting of the term VEKA in several jurisdictions, *inter alia* Serbia since decades. The Complainant owns the following international registered trademarks:

- International Registration 572118, word: VEKA, registered on June 6, 1991;
- International Registration 476538, word/device: VEKA, registered on March 25, 1983;
- International Registration 1541352, word: VEKA ALUCONNECT, registered on April 24, 2020;
- International Registration 1319493, word: VEKA SPECTRAL, registered *i.a.* in Serbia on June 29, 2016;
- International Registration 1323939, word/device: VEKA DAS QUALITÄTSPROFIL, registered *i.a.* in Serbia on June 29, 2016.

The disputed domain name was registered on September 10, 2020, and is used to redirect to a website that offers for sale products of the Complainant and its competitors.

5. Parties' Contentions

A. Complainant

The Complainant requests that the disputed domain name be transferred to the Complainant.

According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the disputed domain name is identical or confusingly similar to the VEKA trademark registrations of the Complainant.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the disputed domain name.

Third, the Complainant submits that the disputed domain name was registered and is being used in bad faith.

The Complainant also states that there is a risk that current or potential customers of the Complainant contact the website operator through this website when they are looking for the Complainant's products, namely PVC window profiles. However, these customers will not purchase the goods from the Complainant or its dealers in Serbia, but (possibly dubious) goods from the website that the disputed domain name resolves to. As far as the latter also sells window profiles made of PVC, the Respondent can of course do so under his own company or brand, but it must not present itself as the owner of the Complainant's trademarks (which are widely used) or as the Complainant himself. Such behavior does disrupt the business of the Complainant in Serbia and other countries.

The disputed domain name creates the obvious impression (falsely) that it is a branch of the Complainant in Serbia or an official distributor. Of course, the disputed domain name is also used to attract international

customers to this domain or website.

The Respondent intentionally attempted to attract for commercial gain, Internet users to the Respondent's web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or location or of a product or service on the Respondent's web site or location. The only purpose of using the disputed domain name and also the website is to attach to the famous brand of the Complainant and generate own business over it. The Complainant cannot even judge whether the Respondent actually sells the offered products at all.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements which a complainant must satisfy in order to succeed. The Complainant must satisfy that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the 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.

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical or confusingly similar to the Complainant's trademark.

The Complainant holds several valid VEKA trademark registrations.

The disputed domain name is confusingly similar to the Complainant's trademarks since it merely reproduces the VEKA trademark with the addition of the term "PVC".

The disputed domain name incorporates the Complainant's VEKA trademark in its entirety. As numerous UDRP panels have held, where the relevant trademark is recognizable in the disputed domain name, the addition of other terms do not prevent a finding of confusingly similarity.

The Panel finds the first element of the Policy has therefore been met.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that the Respondent has rights or legitimate interests in the disputed domain name:

- (i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

There is no evidence of the existence of any of those rights or legitimate interests. The Complainant has not authorized, licensed, or permitted the Respondent to register or use the disputed domain name or its trademarks. The Complainant has prior rights in the trademarks, which precede the Respondent's registration of the disputed domain name. The Respondent is not using the disputed domain name, which can constitute a *bona fide* offering of goods or services, or a legitimate noncommercial or fair use. The Complainant has therefore established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name and thereby shifted the burden to the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to rebut the Complainant's *prima facie* case. Moreover, the nature of the disputed domain name incorporating the Complainant's trademark and the term "PVC", which is related to the core of the Complainant's business, carries a risk of implied affiliation, contrary to the fact, which cannot constitute fair use. Given the use of the disputed domain name to redirect to a website allegedly offering for sale not only the Complainant's trademarked goods, but also competing goods of third parties, further reinforces the lack of fair use behind the confusingly similar disputed domain name.

Therefore, the Panel finds that the Complainant has satisfied the second requirement of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Complainant must prove both that the disputed domain name was registered in bad faith and that it is being used in bad faith.

The Complainant's allegations with regard to the Respondent's registration and use of the disputed domain name in bad faith has been considered by the Panel. These allegations have not been contested by the Respondent.

As indicated above, the Complainant's rights in the VEKA trademark predate the registration of the disputed domain name for several decades. This Panel finds that the Respondent was or should have been aware of the Complainant's trademark at the time of registration of the disputed domain name, as the Complainant's VEKA trademark is well known and unique to the Complainant. Thus, the Respondent could not reasonably ignore the reputation of the products and services this trademark identifies. The Respondent in all likelihood registered the disputed domain name with the expectation of taking advantage of the reputation of the Complainant's trademark.

In fact, the addition of the generic term "PVC" to the trademark of the Complainant to register the disputed domain name is evidence that the Respondent was aware of the Complainant at the time of registration of the disputed domain name.

According to the Complaint, the disputed domain name currently redirects to a website that impersonates the Complainant's business in Serbia creating the impression (falsely) that it is a branch of the Complainant in Serbia or an official distributor of the Complainant. Also, the website offers PVC window profiles from other third parties. The Respondent has not denied these assertions.

Thus, in light of the evidence, the Panel concludes that the Respondent intentionally attempted to attract for commercial gain, Internet users to the Respondent's web site, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site as required by the Policy.

The failure of the Respondent to formally answer the Complainant's Complaint also suggests, in combination with other factors, bad faith on the part of the Respondent (*Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. [D2002-0787](#)).

Therefore, taking all the circumstances into account and for all the above reasons, the Panel concludes 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 <vekapvc.com> be transferred to the Complainant.

/Pablo A. Palazzi/

Pablo A. Palazzi

Sole Panelist

Date: February 7, 2023