

## **ADMINISTRATIVE PANEL DECISION**

VIOOH Limited v. 吴清儒 (wu qing ru)

Case No. D2023-2155

### **1. The Parties**

Complainant is VIOOH Limited, United Kingdom, represented by Nameshield, France.

Respondent is 吴清儒 (wu qing ru), China.

### **2. The Domain Name and Registrar**

The disputed domain name <viooh.info> (the “Domain Name”) is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on May 16, 2023. On May 17, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On May 18, 2023, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details. The Center sent an email communication to Complainant on May 19, 2023, providing further registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint in English on May 19, 2023.

On May 19, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On May 19, 2023, Complainant submitted its request that English be the language of the proceeding. Respondent did not comment on the language of the proceeding.

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 Respondent in English and Chinese of the Complaint, and the proceedings commenced on May 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 15, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on June 16, 2023.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on June 29, 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**

Complainant, headquartered in Middlesex, United Kingdom, is a global digital out of home marketplace, that combines data and technology, to enable buyers and sellers to connect.

Complainant owns several registered trademarks VIOOH, such as:

- French registered trademark VIOOH number 4404784, registered on November 15, 2017;
- International Trademark VIOOH number 1436571, registered on May 14, 2018, designating among others China; and
- International Trademark VIOOH number 1434610, registered on May 14, 2018.

Complainant is also the owner of several domain names with the VIOOH mark, including:

- <viooh.com>, registered on February 27, 2017;
- <viooh.net>, registered on November 9, 2017;
- <viooh.fr>, registered on November 29, 2017; and
- <viooh.us>, registered on January 24, 2018.

The Domain Name was registered on May 15, 2023 and reverted to an inactive site at the time of filing of the Complaint. At the time of this Decision, the Domain Name resolves to a website offering it for sale or lease.

#### **5. Parties' Contentions**

##### **A. Complainant**

Complainant contends that (i) the Domain Name is identical or confusingly similar to Complainant's trademarks; (ii) Respondent has no rights or legitimate interests in the Domain Name; and (iii) Respondent registered and is using the Domain Name in bad faith.

In particular, Complainant contends that it has trademark registrations for VIOOH and that Respondent registered and is using the Domain Name with the intention to confuse Internet users looking for *bona fide* and well-known VIOOH products and services.

Complainant notes that it has no affiliation with Respondent, nor authorized Respondent to register or use a domain name, which includes Complainant's trademark, and that Respondent has no rights or legitimate interests in the registration and use of the Domain Name. Rather, Complainant contends that Respondent has acted in bad faith in registering and setting up the Domain Name, when Respondent clearly knew of Complainant's rights.

##### **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

### **6.1. Preliminary Issue: Language of the Proceeding**

The Rules, in paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement between the respondent and the registrar in relation to the disputed domain name, the language of the proceeding shall be the language of the registration agreement, subject to the authority of the panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

Complainant submitted its original Complaint in English. In its email dated May 19, 2023, Complainant submitted its request that the language of the proceeding should be English. According to the information received from the Registrar, the language of the Registration Agreement for the Domain Name is Chinese.

Complainant asserts that English is the most widely used language in international relations and is one of the working languages of the Center; that the Domain Name is formed by Latin characters and not in Chinese script; and that holding the proceeding in Chinese would cause considerable extra expense and burden on Complainant.

In exercising its discretion to use a language other than that of the Registration Agreement for the Domain Name, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both Parties, taking into account all relevant circumstances of the case, including matters such as the Parties' ability to understand and use the proposed language, time and costs.

The Panel accepts Complainant's submissions regarding the language of the proceeding. The Panel also notes that the Domain Name does not have any specific meaning in the Chinese language, and that the Domain Name is identical to Complainant's VIOOH trademarks. The Panel further notes that the Center notified the Parties in Chinese and English of the language of the proceeding as well as notified Respondent in Chinese and English of the Complaint. Respondent chose not to comment on the language of the proceeding, nor did Respondent choose to file a Response in Chinese or English.

The Panel is also mindful of the need to ensure that the proceeding is conducted in a timely and cost-effective manner. Complainant may be unduly disadvantaged by having to translate the Complaint into Chinese and to conduct the proceeding in Chinese.

Having considered all the circumstances of this case, the Panel determines that English be the language of the proceeding.

### **6.2. Substantive Issues**

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

- (i) the Domain Name is 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) the Domain Name was registered and is being used in bad faith.

Section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") states that failure to respond to the complainant's contentions 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.

Thus, although in this case Respondent has failed to respond to the Complaint, the burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence. See, e.g., *The Knot, Inc. v. In Knot We Trust LTD*, WIPO Case No. [D2006-0340](#).

#### **A. Identical or Confusingly Similar**

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. Complainant provided evidence of its rights in the VIOOH trademarks, as noted above. Complainant has also submitted evidence, which supports that the VIOOH trademarks are widely known and a source identifier of Complainant's products and services. Complainant has therefore proven that it has the requisite rights in the VIOOH trademarks.

With Complainant's rights in the VIOOH trademarks established, the remaining question under the first element of the Policy is whether the Domain Name, typically disregarding the Top-Level Domain ("TLD") in which it is registered (in this case, ".info"), is identical or confusingly similar to Complainant's trademark. See, e.g., *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#). The Domain Name incorporates Complainant's VIOOH trademark in this entirety. Hence, the Domain Name is identical to Complainant's VIOOH trademark.

Thus, the Panel finds that Complainant has satisfied the first element of the Policy.

#### **B. Rights or Legitimate Interests**

Under paragraph 4(a)(ii) of the Policy, a complainant must make a *prima facie* showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with relevant evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

From the record in this case, it is evident that Respondent was, and is, aware of Complainant and its VIOOH trademarks, and does not have any rights or legitimate interests in the Domain Name. Complainant has confirmed that Respondent is not affiliated with Complainant, or otherwise authorized or licensed to use the VIOOH trademarks or to seek registration of any domain name incorporating the trademarks. Respondent is also not known to be associated with the VIOOH trademarks, and there is no evidence showing that Respondent has been commonly known by the Domain Name.

In addition, Respondent has not used the Domain Name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. Rather, it previously resolved to an inactive webpage and now directs to a website offering the Domain Name for sale or lease. Such use does not constitute a *bona fide* offering of goods or services or a legitimate noncommercial or fair use and cannot under the circumstances confer on Respondent any rights or legitimate interests in the Domain Name. See, e.g., *Intesa Sanpaolo S.p.A. v. Charles Duke / Oneandone Private Registration*, WIPO Case No. [D2013-0875](#).

Accordingly, Complainant has provided evidence supporting its *prima facie* claim that Respondent lacks any rights or legitimate interests in the Domain Name. Respondent has failed to produce countervailing evidence of any rights or legitimate interests in the Domain Name. Thus, the Panel concludes that Respondent does not have any rights or legitimate interests in the Domain Name and Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

#### **C. Registered and Used in Bad Faith**

The Panel finds that Respondent's actions indicate that Respondent registered and is using the Domain Name in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a domain name registrant, namely:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your web site or location.”

The Panel finds that Complainant has provided ample evidence to show that registration and use of the VIOOH trademarks long predate the registration of the Domain Name. Complainant is also well established and known. Indeed, the record shows that Complainant’s VIOOH trademarks and related products and services are widely known and recognized. Therefore, Respondent was likely aware of the VIOOH trademarks when he registered the Domain Name, or knew or should have known that the Domain Name was identical to Complainant’s trademarks. See [WIPO Overview 3.0](#), section 3.2.2; see also *TTT Moneycorp Limited v. Privacy Gods / Privacy Gods Limited*, WIPO Case No. [D2016-1973](#).

The Panel therefore finds that Respondent’s awareness of Complainant’s trademark rights at the time of registration suggests bad faith. See *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. [D2001-1070](#); *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#).

Further, the registration of the Domain Name incorporating Complainant’s VIOOH trademark in its entirety suggests Respondent’s actual knowledge of Complainant’s rights in the VIOOH trademarks at the time of registration of the Domain Name and its effort to opportunistically capitalize on the registration and use of the Domain Name.

Moreover, the Domain Name previously resolved to an inactive webpage, which does not prevent a finding of bad faith in this case under the doctrine of passive holding. See [WIPO Overview 3.0](#), section 3.3. At the time of this Decision, the Domain Name directs to a website offering it for sale or lease. Such use of the Domain Name demonstrates that Respondent has registered the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant or to a competitor of Complainant, for possible commercial gain.

Finally, the Panel also notes the reputation of the VIOOH trademarks, and the failure of Respondent to submit a response to the Complaint.

Accordingly, the Panel finds that Respondent has registered and is using the Domain Name in bad faith and Complainant succeeds under the third element of paragraph 4(a) 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 Domain Name, <viooh.info>, be transferred to Complainant.

*/Kimberley Chen Nobles/*

**Kimberley Chen Nobles**

Sole Panelist

Date: July 13, 2023