

ADMINISTRATIVE PANEL DECISION

Nicoventures Holdings Limited v. joel bernny
Case No. D2024-0072

1. The Parties

The Complainant is Nicoventures Holdings Limited, United Kingdom, represented by Demys Limited, United Kingdom.

The Respondent is joel bernny, United States of America.

2. The Domain Name and Registrar

The disputed domain name <vusego.net> is registered with Hostinger Operations, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 9, 2024. On January 10, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 11, 2024, 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 (Domain Admin Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 11, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed the amended Complaint on January 15, 2024.

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 January 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 5, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 7, 2024.

The Center appointed Zoltán Takács as the sole panelist in this matter on February 12, 2024. 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 entity within the British American Tobacco group of companies (“BAT group”), which ranks among the leading consumer goods businesses headquartered in London, United Kingdom. BAT was founded in 1902 and currently operates in 160 countries, employing over 50,000 people.

The Complainant acts as an investment holding company in the associated undertakings of the BAT group in relation to new category products, including the non-combustible vaping products sold under the VUSE brand.

The Complainant is also the group’s holder of intellectual property rights, which by way of example include:

- Canadian Trademark Registration No. TMA1209034 for the word mark VUSE GO (hereinafter: “the mark”) registered on November 10, 2023, for a variety of tobacco articles, including electronic cigarettes and
- United Kingdom Trademark Registration No. UK00003869004 for VUSE and design (hereinafter: “the figurative mark”) registered on April 14, 2023, for a variety of tobacco articles, including electronic cigarettes.

The Complainant operates several official country-specific VUSE websites to which Internet users are redirected when visiting the Complainant’s <vuse.com> domain name which was registered on May 22, 2006.

The disputed domain name was registered on November 15, 2023, and resolved to a website closely resembling the Complainant’s official VUSE website, displaying the Complainant’s figurative trademark, copyrighted product, and marketing images, allegedly offering for sale competing third party products.

Following review of the Complainant’s request for removal of the infringing web content at the corresponding website, the hosting provider suspended the disputed domain name on December 13, 2023. Since then, the disputed domain name does not resolve to an active website.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

- the disputed domain name, which fully incorporates its VUSE GO trademark is identical to it;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name, and is unable to rely on any of the circumstances set out in paragraphs 4(c)(i), (ii), or (iii) of the Policy;
- the use of its figurative trademark and imagery on the website at the disputed domain name showed the Respondent’s awareness of its trademark at the time of registration of the disputed domain name as well as the Respondent’s intent to deceive consumers into believing that it was a website operated or authorized by the Complainant.

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

B. Respondent

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

6. Discussion and Findings

A complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely that:

- (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) the domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds that the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the VUSE GO mark is reproduced in the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge of the respondent. As such, where a complainant makes out 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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

As shown by the Complainant the Respondent effectively impersonated the Complainant as it used the disputed domain name to confuse Internet users presumably looking for the Complainant by redirecting them

to its own website, which closely resembled the Complainant's official VUSE website and extensively used the Complainant's figurative trademark and copyrighted product and marketing images.

Panels have held that the use of a domain name for illegal activity, here impersonation/passing off, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel finds that the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

In the present case, the Panel notes that the Respondent reproduced the Complainant's distinctive trademark in the disputed domain name and used the Complainant's figurative trademark and copyrighted product and marketing images on the website at the disputed domain name. Thus, the Respondent obviously had full knowledge of the Complainant's business and trademarks at the time of registration of the disputed domain name and had registered it in order to target the Complainant and its trademarks through impersonation or false association. [WIPO Overview 3.0](#), section 3.2.1.

Panels have held that the use of a domain name for illegal activity, here impersonation/passing off as applicable to this case, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

As mentioned above, the disputed domain name redirected to a website that extensively used the Complainant's figurative trademark and copyrighted product and marketing images until it was suspended by the host at the Complainant's request.

The fact that the disputed domain name currently does not resolve to an active website does not alter the conclusion that the disputed domain name was registered and is being used in bad faith since the bad faith act of the Respondent occurred during the period following registration of the disputed domain name. "If at any time following the registration the name is used in bad faith, the fact of bad faith use is established" (see *Ingersoll-Rand Co. v. Frank Gully, d/b/a Advcomren*, WIPO Case No. [D2000-0021](#)).

The Panel finds that the 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 <vusego.net> be transferred to the Complainant.

/Zoltán Takács/

Zoltán Takács

Sole Panelist

Date: February 20, 2024