

ADMINISTRATIVE PANEL DECISION

ITF v. Anonymize, Inc. / Domain Admin, Sébastien Schmitt
Case No. D2022-2196

1. The Parties

The Complainant is ITF, France, represented by Cabinet Bouchara, France.

The Respondent is Anonymize, Inc., United States of America / Domain Admin, Sébastien Schmitt, France.

2. The Domain Name and Registrar

The disputed domain name <veripro.com> is registered with Epik, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 16, 2022. On June 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 17, 2022, the Registrar transmitted by email to the Center its verification response confirming that Anonymize, Inc. is listed as the registrant and providing the contact details.

The Center verified that 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 June 21, 2022.

On June 21, 2022, the Complainant sent an informal communication to the Respondent.

In accordance with the Rules, paragraph 5, the due date for Response was July 11, 2022. The Response was filed with the Center on July 11, 2022 by Sébastien Schmitt in the name of Domain Admin.

On July 13, 2022, the Complainant requested the withdrawal of the Complaint, to which the Respondent objected on the same day.

The Center appointed Andrew D. S Lothian, Elise Dufour, and Tony Willoughby, as panelists in this matter on August 19, 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 in this administrative proceeding is the French company ITF, a franchise network providing work brokerage services in the field of renovation, extension and enlargement, interior design and thermal renovation, known under the brand “Illico Travaux”. According to the Complainant, since 2007, it and its predecessors in interest have implemented a service to check the financial and administrative health of craftsmen recommended by the agencies of the “Illico Travaux” network before recommending them to end customers. The service implemented is known as VERIPRO.

On August 28, 2017, the Complainant obtained a transfer of the French trademark VERIPRO no. 3494868 registered on April 16, 2007 in classes 35, 37, 41, and 42 from the delisted company ITI (Siren no. 529220030) Said trademark had been registered originally by the founder of “Illico Travaux” and had been transferred to ITI on January 3, 2016.

The disputed domain name was originally registered on June 15, 1998, by a corporation based in the United States of America. Said corporation appears to have gone out of business in 2006 and the disputed domain name was allowed to expire. The Respondent is a French citizen who acquired the disputed domain name in an expired domain auction on July 23, 2007.

The disputed domain name resolves to a single landing page displaying the word VERIPRO in bold with the baseline “©1998-2022 Veripro.com [...]@veripro.com”.

5. Parties’ Contentions

A. Complainant

The Complainant contends that (i) the disputed domain name is confusingly similar to the Complainant’s trademark; (ii) the Respondent has no rights or legitimate interests in the disputed domain name; and (iii) the Respondent registered and is using the disputed domain name in bad faith. The Complainant requests the transfer of the disputed domain name.

Identical or confusingly similar

The Complainant claims that the disputed domain name reproduces in its entirety, in the same order and rank, all the letters of its VERIPRO trademark, establishing confusing similarity for purposes of the UDRP. The Complainant finally highlights the fact that it is well accepted that a generic Top-Level Domain (“gTLD”) suffix, in this case “.com”, may be ignored when assessing the similarity between a trademark and a domain name.

Rights and legitimate interests

The Complainant states that the Respondent has no rights or legitimate interests in respect of the disputed domain name: the Respondent is not commonly known by the disputed domain name and there is no relationship whatsoever between the Parties as the Respondent is not related in any way to the Complainant, has never conducted legitimate business under the name “VERIPRO”, has never used nor prepared to use the disputed domain name for any *bona fide* offering of goods or services, and is not making a legitimate noncommercial or fair use of thereof. Finally, the Complainant points out that MX records are configured in connection with the disputed domain name such that the Respondent could use it for sending

fraudulent emails and receiving corresponding replies.

Registered and used in bad faith

With reference to various screenshots from the Internet Archive “Wayback Machine”, the Complainant claims that the disputed domain name was acquired by the Respondent more than 6 years after the Complainant has acquired trademark rights in its VERIPRO mark, noting that the current landing page was first archived on July 18, 2013. For the Complainant, the Respondent could not have ignored that it was reproducing, in a strictly identical manner, the Complainant’s VERIPRO trademark inasmuch said trademark does not have any meaning in any language and is therefore highly distinctive. The Complainant also claims that the disputed domain name does not resolve to any active website, which is evidence of the registration and exploitation in bad faith by the Respondent, considering that such a lack of activity strongly suggests that one of the main purposes of the registration of the disputed domain name is to serve as a tool in an email scam.

B. Respondent

General

The Respondent requests that the Complainant be denied, submitting that it is not in the construction business, is not a competitor of the Complainant, does not want to sell the disputed domain name to the Complainant, never profited from any mark, never tarnished any mark and never impersonated anyone. The Respondent claims that it does not know the Complainant.

Rights and legitimate interests

The Respondent stresses that it has rights and legitimate interests in respect of the disputed domain name, which it acquired a long time ago, on July 23, 2007.

For the Respondent, the Complainant does not have a monopoly over the VERIPRO trademark, which is in substantial use by others. The Respondent identifies 15 VERIPRO registered trademarks, 11 live companies going by the VERIPRO name, and 53 domain names starting with “veripro”. In addition, the Respondent states that the VERIPRO trademark is not highly distinctive as it is the combination of the two descriptive words “VERI” and “PRO”. The Respondent claims that it had the right to register this non-exclusive term for its high potential as a possible corporate moniker.

Registered and used in bad faith

The Respondent denies that the disputed domain name was registered in bad faith, since the Respondent had never heard of the Complainant before notification of the Complaint. The Respondent acquired the disputed domain name in an expired domain auction on July 23, 2007. The Respondent asserts that the Complainant’s appendixes show that the Complainant started its rating activity under the name VERIPRO in 2010, three years after the Respondent acquired the disputed domain name.

The Respondent contends that as it had received several unsolicited purchase offers when the disputed domain name was parked, the Respondent created a logo and built a specific landing page with an email address in 2013, asserting that said landing page in no way harmed the Complainant.

As regard to MX records, the Respondent claims that these were configured to increase domain authority and to assess whether the presence of such records had any influence on search engine ranking, adding that not one email has been sent to impersonate anyone.

Reverse Domain Name Hijacking

The Respondent requests the corresponding finding because the Complainant has tried to mislead the Panel with “false statements”, namely:

1. The assertion of a false acquisition date for the disputed domain name in 2013.
2. The Complainant's statement that it has implemented its VERIPRO service since 2007 is contradicted by the Complainant's Annex 4 that states the service started only in 2010.
3. The Complainant states that VERIPRO trademarks belong exclusively to the Complainant while there are 15 other VERIPRO trademarks which do not belong to the Complainant.
4. The Complainant states that the disputed domain name was exploited by the company Network Solutions from 2007 to 2013 as a parking page while the Respondent is the owner yet finds nothing objectionable during this timeframe.
5. The Complainant asserts that its VERIPRO trademarks do not have any meaning in any language”, yet this is proved wrong by the Respondent's various translations of the words “veri” and “pro”.
6. The Complainant asserts that its VERIPRO trademarks are highly distinctive” yet the Respondent found 15 other VERIPRO trademarks, 11 companies doing business as VERIPRO and 139 domain names incorporating “veripro”.
7. The Complainant accuses the Respondent of “typosquatting” [*sic*] yet its domain name is <illico-travaux.com> and no “veripro” domain name is exploited by the Complainant.
8. The Complainant's assertion that the disputed domain name has been set up with MX records for use with fraudulent emails is unsupported by any evidence.
9. The Complainant claims twice there is an email address on the website associated with the disputed domain name but failed to add this email address to the Complainant's contact details.
10. The Complainant's assertion that the Respondent acquired the disputed domain name in 2013 to resell it to the Complainant or to a competitor of that Complainant is unsupported and false.
11. The Complainant has forfeited any rights to the disputed domain name by reason of its delay, having waited 15 years to file the Complaint.

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied:

- (i) the disputed 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 disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Preliminary issue: Complainant's request to withdraw Complaint

On July 13, 2022, the Complainant's representative wrote to the Center stating that it regretted the fact that the Complainant did not have information relating to the Respondent before the Respondent itself transmitted this, namely the fact that the Respondent is French and "accustomed to buying/registering/passive holding domain names that are surprisingly identical to trademarks". By way of illustration of the latter comment, the Complainant inserted three case citations, namely, *Brooksburnett Investments Ltd. v. Domain Admin / Schmitt Sebastien*, WIPO Case No. [D2019-0455](#) and *PATRIZIA Immobilien AG v. Domain Admin / Sébastien Schmitt*, WIPO Case No. [D2010-1495](#) (both cases in which the present Respondent was the respondent) and *GIE Batigère and SA Batigère v. Sociedad Batigere*, WIPO Case No. [D2001-0665](#) (a case in which the Respondent was apparently mentioned but to which it was not a party). In its communication, the Complainant's representative also intimated that the Complainant "is withdrawing its Complaint for financial considerations resulting from the Respondent's request to appoint a three-member panel".

Accordingly, on July 13, 2022, the Center requested the Respondent's comments on the Complainant's request to terminate the proceeding. On the same date, the Respondent intimated that it objected to this. The Respondent asserted that the Complainant's financial considerations were unmerited based upon the filing fee already paid by it, and the likely fees which it had incurred to its representative, adding that the Complainant more likely had noted that its Complaint was flawed and likely to fail. The Respondent also stated, in respect of the two cited previous cases in which it had been called as respondent, that it had been successful in both of these, and that in the case of *Brooksburnett Investments Ltd. v. Domain Admin / Schmitt Sebastien*, *supra*, a finding of Reverse Domain Name Hijacking had been made.

Paragraph 17(a) of the Rules provides that the Panel shall terminate the administrative proceeding in the event that the Parties agree on a settlement. Here, there is no such agreement. Paragraph 17(b) of the Rules provides that if, before the Panel's decision is made, it becomes unnecessary or impossible to continue the administrative proceeding for any reason, the Panel shall terminate the administrative proceeding, unless a Party raises justifiable grounds for objection within a period of time to be determined by the Panel. The Complainant's request to withdraw the Complaint does not render it impossible to continue. The remaining question before the Panel on this topic is therefore whether such request renders it unnecessary to continue.

The Panel considers that it is necessary to continue for two principal reasons. First, a dismissal of the Complaint without addressing the merits could leave the door open to the Complainant refiling the Complaint at some point in the future (subject to the considerations on refiling, see, section 4.18 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). It is notable that the Complainant did not request that the Complaint be terminated on a "with prejudice" basis, or subject to any other indication that it would not seek to refile this. Secondly, the Panel considers that it would be unfair to dismiss the Complaint without addressing the merits when the Respondent has already taken the time and trouble to submit a substantive Response, and particularly where it seeks a finding of Reverse Domain Name Hijacking (see the discussion in *Thomas Wang v. Privacydotlink Customer 546843 / Blue Nova Inc.*, WIPO Case No. [D2018-1316](#)).

In the above circumstances, the Panel considers that it is neither desirable nor necessary to terminate the administrative proceeding, and will proceed to a decision on the merits.

B. Identical or Confusingly Similar

The first element assessment under the Policy is typically conducted in two parts. In the first place, the Complainant is required to show that it possesses UDRP-relevant rights in a trademark. Secondly, the disputed domain name is compared to any such trademark to assess identity or confusing similarity, usually on a relatively straightforward side-by-side basis, excluding the Top-Level Domain ("TLD") as being required for technical purposes only. On the basis of such a comparison, if the Panel considers that the disputed domain name appears to be identical to the trademark, identity will generally be found. If the Panel finds that

the trademark is otherwise recognizable in the disputed domain name, confusing similarity will usually be found.

In the present case, the Panel is satisfied that the Complainant has UDRP-relevant rights in its VERIPRO registered trademark as described in the factual background section above. Turning to the comparison process, the Panel notes that the trademark is alphanumerically identical to the disputed domain name, absent the TLD. The Panel also notes that the Respondent does not contest the fact that the Complainant possesses such trademark, nor outlines any basis for concluding that the disputed domain name is neither identical nor confusingly similar to it.

In all of these circumstances, the Panel finds that the disputed domain name is identical to a trademark in which the Complainant has rights, and accordingly, that the Complainant has carried its burden in respect of paragraph 4(a)(i) of the Policy.

C. Rights or Legitimate Interests

The requirements of paragraph 4(a) of the Policy are conjunctive. A consequence of this is that failure on the part of a complainant to demonstrate one element of the Policy will result in failure of the complaint in its entirety. Accordingly, in light of the Panel's finding in connection with registration and use in bad faith, it is unnecessary for the Panel to address the issue of the Respondent's rights or legitimate interests in the disputed domain name.

D. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides four, non-exclusive, circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

"(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 online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location".

The examples listed in paragraph 4(b) of the Policy are not exhaustive of all circumstances from which bad faith registration and use may be found, but in essence a finding of bad faith requires that there is a degree of targeting of the Complainant or its mark, or at the very least that the Respondent must have had the Complainant or its trademark in mind when selecting the disputed domain name (see, for example, *Flexspace No 2 LLP v. Michael Angelo Justiniano, Flexspace AS*, WIPO Case No. [D2021-4135](#)).

In the present case, the Respondent has shown that it acquired the disputed domain name on July 23, 2007. This date is therefore the operative date on which registration in bad faith should be assessed (see section 3.9 of the [WIPO Overview 3.0](#)). As at that date, it may be surmised that the Respondent and the Complainant's predecessor were both based in France. The Complainant's French national trademark had been filed some three months earlier, on April 16, 2007 and the application was formally published on May

25, 2007, *i.e.*, some two months before the date on which the disputed domain name was acquired. However, beyond these facts, there is no basis on the record for suggesting that the Complainant's mark might have come to the Respondent's attention. There is no evidence that such mark had acquired any notoriety or was even in use by the relevant date, and the evidence on the present record as to how and when it was first used is ambiguous.

The Respondent's denial of any prior knowledge of the Complainant or its rights accordingly carries some weight as it is not displaced by any substantive evidence put forward by the Complainant. As the Respondent points out, the Complainant's own position as to when its VERIPRO service commenced is uncertain. The Complainant states in the Complaint that the service has been implemented "since 2007", pointing to the filing/registration date of its registered trademark. At the same time, the Complainant produces an article entitled "The birth of the illiCO works concept" which contains a detailed timeline indicating that the Complainant did not develop its rating body until 2010. This discrepancy is not explained by the Complainant, which merely relies upon the conclusory allegation that it "enjoys a high reputation in its field of specialty". There is no evidence as to the Complainant's reputation at the material date. There is no evidence to suggest that the Respondent would have had any knowledge of the Complainant's field of specialty. Meanwhile, for its part, the Respondent points to the fact that there are multiple entities named "Veripro" that are not connected to the Complainant and indeed other owners of VERIPRO registered trademarks. The existence of multiple trademark registrations for VERIPRO by different trademark holders would not in itself qualify the Respondent's conduct as a *bona fide* conduct. Nevertheless, the Complainant did not provide any evidence of the disputed domain name being registered due to its significance as a trademark of the Complainant *per se*. In the circumstances of this case, the Panel finds reasonable the Respondent's case that it did not have the Complainant in mind at the time the Respondent acquired the disputed domain name at auction due to the fact that "Veripro" did not appear to be exclusive to any particular rights owner, that it was an attractive name containing two elements which can be abbreviations for multiple words, and that it could be used for a wide variety of purposes.

Turning briefly to the use of the disputed domain name, initially from 2007 to 2013, the associated website appeared to be pointing to a registrar's parking page over this period. There is no evidence before the Panel that such use exploited the trademark value of the Complainant's VERIPRO mark in any way. It is not entirely surprising that the Complainant did not address this particular period in the disputed domain name's life, given that the Complainant believed it to have been acquired in 2013. From 2013 onwards, the Respondent published the current home page on the website associated with the disputed domain name and has provided a credible explanation of why it did so, namely, that it wished to provide a point of contact for those who had previously been contacting it to express an interest in purchasing the disputed domain name. There is no advertising on this page keyed to the Complainant's line of business nor any other apparent exploitation of the Complainant's mark. Absent any evidence that this use was specifically targeting the Complainant's rights in its VERIPRO trademark, including evidence of the notoriety of such mark, the Panel does not consider that it constitutes use in bad faith within the meaning of the Policy.

In all of these circumstances, the Panel finds that the Complainant has failed to carry its burden in terms of paragraph 4(a)(iii) of the Policy in that it has not proved to the Panel's satisfaction that the disputed domain name was registered and has been used in bad faith. The Complaint accordingly fails.

E. Reverse Domain Name Hijacking ("RDNH")

RDNH is defined in paragraph 1 of the Rules as "using the Policy in bad faith to attempt to deprive a registered domain-name holder of a domain name". Paragraph 15(e) of the Rules provides that if, after considering the submissions, the panel finds that the complaint was brought in bad faith, for example in an attempt at RDNH or was brought primarily to harass the domain-name holder, the panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding. It is important to note that mere lack of success of a complaint is not itself sufficient for a finding of RDNH.

The typical circumstances in which panels will issue a finding of RDNH are set out in section 4.16 of the [WIPO Overview 3.0](#). Those which are particularly relevant in the present case are (1) facts which demonstrate that the complainant clearly ought to have known it could not succeed under any fair interpretation of facts reasonably available prior to the filing of the complaint, including relevant facts on the website at the disputed domain name or readily available public sources such as the Whois database; (2) unreasonably ignoring established Policy precedent notably as captured in this [WIPO Overview 3.0](#) – except in limited circumstances which *prima facie* justify advancing an alternative legal argument; and (3) basing a complaint on only the barest of allegations without any supporting evidence.

The Complainant in this case predicated its case upon a change in the website content associated with the disputed domain name in 2013. It asserted that this change must have coincided with a change of registrant of the disputed domain name to the present registrant. This assertion was incorrect and the truth would have been readily apparent upon proper investigation of relevant public resources. The Complainant proceeded to argue that the content change came some six years after its trademark had been registered, further providing evidence that its rating system was introduced in 2010. This might have suggested to the Panel in the absence of any Response that at the point when the disputed domain name was acquired and the website content changed, the Complainant's mark had been in existence for some six years and the Complainant had been operating its rating service under the VERIPRO mark in France for some three years. In fact, as the Respondent demonstrates, the disputed domain name was acquired shortly after the Complainant's trademark had been registered in 2007. This was long before the Complainant's rating system was introduced in 2010 (at least on the evidence before the Panel). Had there been no Response, the Panel would not have known that the Complaint was based upon a false premise and might simply have accepted the Complainant's submissions as reasonable, with inevitable consequences for the Respondent.

There are two ways in which the Complainant might have become aware of the date of acquisition of the disputed domain name before it filed the Complaint. Had it issued a cease-and-desist notice, the Respondent would presumably have provided it with the same evidence of the acquisition date which it produced in the Response. Equally, and more importantly, such information is readily available from historic Whois records in the public domain, which show the Respondent's interest in the disputed domain name commencing around July 25, 2007 and remaining in continuous ownership until the record is anonymized around May 7, 2016.¹ The Complainant was aware that the disputed domain name was of apparently longstanding duration, having a registration date on the Whois record of June 15, 1998. This should have alerted the Complainant to research the record history, if available, but did not, and accordingly it based its Complaint on a supposition that was incorrect.

The Complainant makes the sweeping assertion that it "enjoys a high reputation in its field of specialty" (a very narrow field indeed) and yet produces no substantive evidence to support this. The Complainant submits that its VERIPRO service has been implemented since 2007, and likewise does not evidence this in any way. The evidence which it does produce is ambiguous, in that the timeline suggests that the ratings service began in 2010. There is no evidence of any fame or substantive reputation of the Complainant's mark either in 2007, or in 2013, when the Complainant believed that the disputed domain name had been acquired. In short, therefore, the Complainant's material factual allegations are bare and unaccompanied by any supporting evidence.

The Complainant is represented by a law firm which claims a particular specialization in intellectual property. The Complainant therefore was, or should have been, familiar with the requirements of the Policy. The Complaint was peppered with citations from the [WIPO Overview 3.0](#) and citations of no less than 24 previous cases, suggesting that the Complainant should have appreciated the importance of policy jurisprudence. Yet the Complainant failed to address the topics concerned with any degree of adequacy. This may be illustrated with a single example: The Complainant cited *Valero Energy Corporation and Valero Marketing and Supply Company v. Registration Private, Domains By Proxy LLC / Rene Rozados*,

¹ The Panel verified these details from available historic Whois records. With regard to the Panel conducting limited factual research into matters of public record, such as consulting relevant publicly available historic Whois records, see section 4.8 of the [WIPO Overview 3.0](#).

WIPO Case No. [D2020-0021](#), with reference to the Respondent's use of a privacy service. This case involved widely-known trademarks which the panel noted had been evidenced by substantial use in the respondent's country of residence. As a secondary issue, the panel noted that the respondent had hidden its identity using a privacy protection service. In light of both of those factors, the panel found that the respondent's passive holding of the domain name concerned satisfied the bad faith requirement of paragraph 4(a)(iii) of the Policy. While the Complainant cited this case in connection with its submissions regarding the use of privacy services, *i.e.*, the secondary factor in the decision concerned, the primary factor ought to have alerted the Complainant to the importance of demonstrating the fame of its VERIPRO mark in 2013, when it believed the disputed domain name was acquired and by a registrant resident in the United States of America. Accordingly, it would have appreciated the crucial importance of producing evidence demonstrating the fame of its trademark at that time in the United States. Yet it did not attempt to do so. Even on the Complainant's erroneous understanding of the facts, it must have known that the Complaint would fail.

The Panel concludes that the Complaint was not adequately researched (the core issues being the Complainant's reliance in a wrong date for the Respondent's acquisition of the disputed domain name, and a lack of demonstrated reputation in the short span of time between the trademark rights and the registration of the disputed domain name), and that the Respondent should not have been on the receiving end of this administrative proceeding.

While the Complainant cited financial reasons for seeking to withdraw the Complaint, the Panel considers it to be more likely that the Complainant's representative had reviewed the strength of the Respondent's case and hoped that it might quietly avoid a finding of RDNH. Such finding is merited in this particular case.

In all of these circumstances, the Panel declares that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Andrew D. S Lothian/

Andrew D. S Lothian

Presiding Panelist

/Elise Dufour/

Elise Dufour

Panelist

/Tony Willoughby/

Tony Willoughby

Panelist

Date: September 2, 2022