

## **ADMINISTRATIVE PANEL DECISION**

Vente-Privée.Com v. Viljami Ylönen

Case No. D2022-4087

### **1. The Parties**

The Complainant is Vente-Privée.Com, France, represented by Cabinet Degret, France.

The Respondent is Viljami Ylönen, Finland.

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

The disputed domain name <veepees.xyz> is registered with Dynadot, 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 31, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 1, 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 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 amended Complaint on November 7, 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 November 9, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 29, 2022. The Respondent requested an automatic extension of the Response due date on November 28, 2022. The Response due date was extended until December 2, 2022. The Response was filed with the Center on December 2, 2022.

The Complainant submitted supplemental files on December 7, 2022. Likewise, the Respondent submitted supplemental filings on December 8, 2022.

The Center appointed John Swinson as the sole panelist in this matter on December 16, 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 a leading e-commerce company incorporated in France that for over 20 years has operated the “Vente-Privee” website, a shopping club for all kind of goods and services.

At the beginning of 2019, the Complainant rebranded and started to use the VEEPEE trademark.

The Complainant operates its business via the website located at <veepee.com>.

According to the Complainant’s website, the Complainant operates in 10 countries, and lists the following countries on the home page of the Complainant’s website: France, Germany, Italy, England, Spain, Austria, Switzerland, Poland, Denmark, Belgium, Luxemburg, and the Netherlands. The Complaint states that the Complainant commenced operation in France, and then expanded to other countries, but closed operations in the United Kingdom (in 2019) and the United States of America (in 2014).

The Complainant is the owner of several trademark registrations for VEEPEE in different jurisdictions, including:

- European Union Trademark Registration No. 17.442.245 VEEPEE, registered on March 29, 2018; and
- International Trademark Registration No. 1.409.721 VEEPEE, registered on November 8, 2018.

In 2020, the Complainant’s turnover since its rebranding in January 2019 amounts to almost EUR 4 billion, more than half of which was generated outside of France.

The Complainant does not operate in Finland or have trademark registrations in Finland.

The Respondent is a resident of Finland. The Respondent is managing director of INTL Enterprises, which the Respondent says started in 2019 as a small digital consulting firm and has shifted its focus to investing in domain names and other digital assets.

The Respondent registered the disputed domain name on June 6, 2022.

At one time, the disputed domain name redirected a page operated by the brokerage platform “Dan.com”, on which the disputed domain name was listed for sale for USD 899.

At the present time, the disputed domain name does not resolve to an active website.

The Complainant has been a successful Complainant in approximately 20 prior cases administered by the Center.

The Respondent has been a respondent into at least two prior decisions under the Policy, having success in one of these two cases.

## 5. Parties' Contentions

### A. Complainant

In summary, the Complainant makes the following submissions:

The Complainant is the owner of rights in the trademark VEEPEE and the disputed domain name is substantially identical to that trademark.

The Complainant has quickly grown to become one of the most significant e-commerce websites, first in France and afterwards, in all the countries where it has been implemented. In term of turnover, the Complainant is one of the most important e-merchants in Europe.

The Respondent lacks rights or legitimate interests in the disputed domain name because: (1) the Respondent is not commercially linked to the Complainant; (2) the Complainant has not authorized the Respondent to register and use the disputed domain name; (3) the Respondent does not own any trademark for or comprising "veepee" or "vepees"; (4) the Respondent is not commonly known by "veepee" or "vepees"; and (5) the Respondent is not making a legitimate noncommercial use nor fair use of the disputed domain name since the Respondent has likely registered the disputed domain name for the sole purpose of selling it to the Complainant or to third parties, at a price which largely exceed the cost of registration.

If the Respondent had conducted a European trademark search on the term "veepee" (rather than "vepees") prior to registering the disputed domain name, the Respondent would have been made aware of the Complainant's VEEPEE trademark. If the Respondent had tried to register <veepee.com> which is a much more valuable domain name than the disputed domain name, the Respondent would have been made aware of the Complainant.

The Respondent owns hundreds of domain names, which for the most part consist of generic terms.

On May 15, 2022 (which was a few weeks before the registration of the disputed domain name), the Respondent registered 10 domain names which are all listed for sale. These domain names "are all constituted in all or in part of generic terms".

It is unlikely that the term "vepees" has caught the attention of the Respondent because it would mean Vice-Presidents. Indeed, said term is not commonly used to refer to this position, unlike the abbreviations known by all, VP or VEEP.

The Respondent generally registers his domain names publicly (*i.e.*, without use of a privacy service). However, in respect of the disputed domain name, all information regarding the Respondent has been redacted from the Whois records.

The fact that the disputed domain name is put for sale at USD 899 is further evidence that the Respondent is deliberately targeting the Complainant.

The Respondent took down the listing for the disputed domain name on <Dan.com> after being notified of the Complaint.

The Complainant is well-known, and the Respondent necessarily had the Complainant in mind when registering the disputed domain name. "veepee" is a distinctive term. There is no plausible explanation for the Respondent's registration of the disputed domain name other than trying to benefit from the reputation of the Complainant's trademarks.

The Respondent has been unsuccessful in a prior case under the Policy involving the domain name <subzero.app>.

## B. Respondent

In summary, the Respondent makes the following submissions:

The Respondent registered the disputed domain name because of its English meaning of “vice-presidents”. The Respondent concedes that VEEPEE is an established brand. However, the Complainant’s VEEPEE trademark is an abbreviated form of the Complainant’s name “Vente-Privee.Com”, whereas the disputed domain name is a pluralization of “vice-president”. This is a case of cross language homonymy: the relationship between words with identical forms but different meanings.

The term “veepees” caught the attention of the Respondent solely due to its generic English vernacular meaning. The fact that the term is not found on Merriam Webster’s dictionary is not relevant to the issue at hand. The term is found in other dictionaries, including Wiktionary located at “<https://en.wiktionary.org>”.

When registering domain names for investment or other purposes, the Respondent is extremely cautious of not registering trademarked terms. This was also the case when the Respondent registered the disputed domain name. The Respondent did not conduct Google searches prior to registration of the disputed domain name but did conduct trademark searches for United States of America and European Union trademarks for the exact phrase “veepees”. The Complainant’s trademark was not returned in these searches.

The Respondent did not conduct searches for “veepee” (singular) because “veepee” is, in the eyes of the Respondent, a generic English word.

The Respondent did not register the disputed domain name to sell it to the Complainant, or any other person.

While the Complainant’s trademarks VENTE-PRIVEE/VEEPEE might enjoy wide recognition in the countries in which the Complainant operates, in the Respondent’s country of residence, Finland, the Complainant does not enjoy wide recognition, and the Respondent was completely unaware of the Complainant prior to this UDRP.

The Complainant’s business is not international, but country specific and localized.

When conducting a Google search with the search phrase “site:.FI “vente-privee””, and thus targeting only Finnish “.FI” namespace, only 17 unique search results are returned. Of those results, only two contains a mention of the VENTE-PRIVEE as a brand, one of which is a newspaper article behind a paywall and the other concerns a car manufacturer listing used cars on the Complainant’s website.

The listing of the disputed domain name for sale is not evidence of targeting the Complainant. The disputed domain name was listed for sale due to its generic English meaning and being clear of any known trademarks to the Respondent at the time of the registration.

Privacy was enabled on the disputed domain name to avoid spam. It is not relevant that some of the Respondent’s other domain names, registered via a different registrar, had no privacy service. The Respondent was unaware that privacy was not enabled for these domain names.

In response to the Complainant’s argument that the disputed domain name and the terms “veepees” and “vice-presidents” would no value in commerce (other than to the Complainant, the Respondent refers to the companies using “veepees” such as seen on <[veepeesgroup.com](http://veepeesgroup.com)> and <[veepeesindia.com](http://veepeesindia.com)>).

The website at the disputed domain name was taken down by the Respondent once the Respondent received the Complaint in the present case. This was because the Respondent could not honestly sell the disputed domain name while this case was pending.

The decision against the Respondent in a prior case is not evidence of bad faith in the present case.

In respect of the prior decisions cited by the Complainant where the Complainant was successful, these decisions can be distinguished because in each case, the relevant respondent did not file a response and the respondent had targeted the Complainant's brand. That is not the case here.

## 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, namely:

- (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.

The onus of proving these elements is on the Complainant.

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

The fact that the Complainant has won, and that the Respondent has both lost and won, prior cases involving domain names is not taken into account by the Panelist in respect of this decision. A Respondent losing in a prior UDRP or court case would not mean one is always in bad faith and prevailing in a prior UDRP or court case does not immunize a respondent from a bad faith finding in a later case. The facts of each case must be considered on their own. See *TranScrip Partners LLP, TranScrip Limited v. Abstract Holdings International Ltd, Domain Admin*, WIPO Case No. [D2021-2220](#); and *So Bold Limited v. TechOps, VirtualPoint Inc.*, WIPO Case No. [D2022-1100](#).

### 6.1 Procedural Issues

Before deciding the merits of the case, the Panel addresses the issue of the unsolicited supplemental filings submitted by both the Complainant and the Respondent.

No provision concerning supplemental filings is made in the Rules or Supplemental Rules, except at the request of the panel according to paragraph 12 of the Rules, which states the panel, in its sole discretion, may request any further statements or documents from the parties it may deem necessary to decide the case.

According to paragraph 10 of the Rules, the panel has the authority to determine the admissibility, relevance, materiality, and weight of the evidence, and to conduct the proceedings with due expedition, ensuring that the Parties are treated with equality and that each Party is given a fair opportunity to present its case.

As stated in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.6, unsolicited supplemental filings are generally discouraged – unless specifically requested by the panel – and the party submitting an unsolicited supplemental filing should clearly show its relevance to the case and why it was unable to provide the information contained therein in its Complaint or Response.

Accordingly, UDRP panels generally accept supplemental filings only when they provide material new evidence or a fair opportunity to respond to arguments that could not reasonably have been anticipated.

See, for example, *Welcomemat Services, Inc. v. Michael Plummer Jr., MLP Enterprises Inc.*, WIPO Case No. [D2017-0481](#).

The supplemental submissions of the Complainant addressed issues raised by the Respondent that could not have reasonably been anticipated. The supplemental submissions of the Respondent was limited to addressing the Complainant's supplemental submissions.

The Panel found both the Complainant's and the Respondent's supplemental submissions to be helpful. The Panel has decided to consider both supplemental submissions.

Nevertheless, the Panel notes that, should the Panel not have admitted supplemental submissions, the outcome of the case would have been the same.

## **6.2 Substantive Issues**

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

Paragraph 4(a)(i) of the Policy provides that the Complainant must establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant owns a trademark registration for VEEPEE.

Previous UDRP panels have consistently held that domain names are identical or confusingly similar to a trademark for purposes of the Policy when the domain name includes the trademark, or a confusingly similar approximation. See, for example, *Consumer Reports, Inc. v. Wu Yan, Common Results, Inc.*, WIPO Case No. [D2017-0371](#); and *Captain Fin Co. LLC v. Private Registration, NameBrightPrivacy.com / Adam Grunweg*, WIPO Case No. [D2021-3279](#).

The disputed domain name includes the trademark VEEPEE in its entirety and adds an "s" at the end of "veepee".

The Panel concludes that the disputed domain name is confusingly similar to the Complainant's VEEPEE trademark.

The Complainant succeeds on the first element of the Policy.

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

The Complainant's allegations to support the Respondent's lack of rights or legitimate interests in the disputed domain name are outlined above in section 5A. The Panel finds that the Complainant has made a *prima facie* showing that the Respondent lacks rights or legitimate interests in the disputed domain name.

The disputed domain name is not currently being used in connection with an active website. In the circumstances present here, absence of use does not establish rights or legitimate interests in the disputed domain name.

The Complainant has rights in its trademark which precedes the Respondent's registration of the disputed domain name.

The focus of the Response was lack of bad faith and the Respondent did not specifically address the second element of the Policy in the Response.

The Panel accepts that the business of purchasing generic term domain names for investment and resale is legitimate and that the Respondent is engaged in that business.

However, merely offering a domain name for sale – while certainly not prohibited – does not, of itself, constitute a legitimate interest under the second element of the Policy. *Khadi & Village Industries Commission v. Michael F Mann, Domain Asset Holdings, LLC*, WIPO Case No. [D2021-3242](#).

The Respondent has not presented any evidence to rebut the *prima facie* case established by the Complainant. The Complainant succeeds on the second element of the Policy.

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

Paragraph 4(a)(iii) of the Policy provides that the Complainant must establish that the Respondent registered and subsequently used the disputed domain names in bad faith.

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by the complainant. See *Fifth Street Capital LLC v. Fluder (aka Pierre Olivier Fluder)*, WIPO Case No. [D2014-1747](#).

Ultimately, the Panel concludes based on the specific facts established by the evidence, that the Complainant has carried its burden of proving the Respondent's bad faith as required by the Policy.

The Panel considers that "veepee" and "veepees" are not a common or dictionary terms. Typically, "vice-president" is abbreviated as "VP" or "VEEP". Even though "veepee" may be found in some online dictionaries, it is not a term that is found in most recognized dictionaries of the English language.

The Respondent conducted searches prior to registering the disputed domain name, but these were unduly narrow searches, and the Panel is cannot help but wonder that this was intentional on the Respondent's part. Had the Respondent conducted more reasonable or robust searches – merely by not imposing a limitation on his search parameters, the Respondent would have easily discovered the Complainant's trademarks. The Panel conducted a Google search from Australia of the term "VEEPEES" and the first and fifth results were for the Complainant. Even changing one's Google search settings to Finland (not the .FI space as was done by the Respondent), the Complainant appears as the first two results, and appears prominently on the right in a separate "see results about" field.

The Complainant is a well-known Internet business located in Europe, and due to the global nature of the Internet, the Complainant has spill-over reputation in other countries outside of its main trading areas.

It is not in dispute that the Respondent's business includes investing in domain names that are dictionary terms. The Complainant argues that the Respondent has stepped outside this business model to target the Complainant. The Respondent denies this. The Panel considers, after reviewing all the evidence, that the Respondent did in fact in this case target the Complainant.

Based on the evidence before the Panel, the Panel concludes that it is more probable than not that the Respondent was aware or should have been aware of the Complainant when selecting the disputed domain name. Contrast *Natixis Wealth Management v. Viljami Ylönen*, WIPO Case No. [D2021-1719](#).

Under these circumstances the Panel finds it likely, on the evidence before it, that, considering the confusing similarity between the Complainant's VEEPEE trademark and disputed domain name, Internet users will mistakenly expect that the dispute domain name and the site to which it resolves are connected with the Complainant. Although the website at the disputed domain name (when it was active) had no mention or reference to the Complainant's business, the Respondent could hardly have been unaware of the likelihood of such initial interest confusion when he chose to register the domain name, and the Panel infers that the Respondent registered the domain name intending to take advantage of the traffic resulting from this confusion.

Accordingly, the Panel finds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of his website. This demonstrates registration and use in bad faith to attract users for commercial gain under paragraph 4(b)(iv) of the Policy.

In reaching this decision, the Panel also carefully considered other factors and the entirety of the arguments made in the Respondent's detailed submissions. These factors and arguments do not persuade the Panel to reach a different conclusion.

The Panel wishes to clarify that this finding is not intended to suggest that speculation in domain names is always in bad faith (nor is it always legitimate and in good 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 <veepees.xyz> be transferred to the Complainant.

*/John Swinson/*

**John Swinson**

Sole Panelist

Date: January 13, 2023