

ADMINISTRATIVE PANEL DECISION

Chiaro Technology Limited, v. Quentin Vert, Elvie
Case No. D2023-3107

1. The Parties

The Complainant is Chiaro Technology Limited, United Kingdom (“UK”), represented by Stobbs IP Limited, UK.

The Respondent is Quentin Vert, Elvie, France.

2. The Domain Name and Registrar

The disputed domain name <elvie-shop.com> is registered with IONOS SE (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 19, 2023. On July 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 21, 2023, 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 (Redacted) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 23, 2023 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 July 28, 2023.

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 July 31, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 7, 2023¹. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 8, 2023.

¹ The Complainant requested suspension of the proceeding to undertake settlement discussions with the Respondent. However, the Parties were unable to settle the matter, and the proceeding was reinstated.

The Center appointed Mihaela Maravela as the sole panelist in this matter on September 19, 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

According to information in the Complaint, the Complainant is a company incorporated in the UK since 2013. The Complainant produces and sells a variety of health and fitness products for pregnant women and new mothers under the ELVIE trademark. As per the Complainant, its ELVIE products have consistently won prizes and awards, such as the Deezen Awards in 2022 and 2019.

The Complainant is the owner of various registered trademarks that include ELVIE in various jurisdictions throughout the world, including the following:

- The UK trademark registration No. 00003604714 for ELVIE, registered as of November 5, 2021 for products and services in Classes 3, 5, 9-12, 14, 16, 18, 20, 21, 24, 25, 28, 35, 36, 38, 41, 42, 44;
- The European Union trademark registration No. 017558875 for ELVIE, registered as of April 18, 2018 for products and services in Classes 9, 10, 18, 25, 44.

The Complainant also owns and uses the domain name <elvie.com>, where the Complainant makes publicly available to Internet users information about its ELVIE brand and products, images of its ELVIE logo and products, and an online shop where its ELVIE products can be purchased.

The disputed domain name was registered on December 7, 2022 and does not resolve to an active website. According to evidence with the Complaint, the disputed domain name was used to resolve to an active website in December 2022, which was called 'Elvie', which did not appear as fully operational.

The Complainant's legal representatives sent a cease-and-desist message to the Respondent on May 3, 2023, to which it received no response.

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.

Notably, the Complainant contends that the disputed domain name is confusingly similar to the trademark in which the Complainant has rights, as the disputed domain name incorporates the ELVIE trademark in its entirety with the mere addition of the descriptive term 'shop' after the trademark, separated by a hyphen. The Complainant's trademark ELVIE is not a dictionary word and is the dominant and most obviously recognizable element of the disputed domain name.

As regards the second element, the Complainant argues it has not granted authorization or license to the Respondent to use the ELVIE trademark and there is no business or legal relationship between the Complainant and the Respondent. The disputed domain name does not resolve to an active website with content, therefore, the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services. The Complainant submits that the Respondent has adopted the name 'Quentin Vert, Elvie' to give a spurious air of legitimacy to its registration and use of the disputed domain name, which is otherwise questionable. Further, the Complainant contends that the disputed domain name used to resolve to an active website in December 2022, which was called 'Elvie', which did not appear as fully operational, but its content leads the Complainant to conclude that the Respondent registered and intended to use the disputed domain name for commercial purposes (*i.e.*, to sell clothing on the website).

With respect to the third element, the Complainant contends that its trademark registrations predate the creation date of the disputed domain name by nearly a decade and that the Complainant's trademarks enjoy a longstanding and extensive reputation in many jurisdictions, including France. In addition to the above, the Complainant submits that the non-use of the disputed domain name does not prevent a finding of 'bath faith' under the well-established doctrine of 'passive holding'. As regards the past use, the Respondent's website did not include a clear or sufficiently prominent disclaimer that it is not endorsed by, or associated with, the Complainant. The inclusion of the distinctive trademark ELVIE within the disputed domain name, which is an indicator of trade origin of the Complainant, leads the Complainant to conclude that the only or main reason for registration of the disputed domain name was to take advantage of the Complainant's reputation and its trademarks.

B. Respondent

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

6. Discussion and Findings

No response has been received from the Respondent in this case. Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules. The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

To succeed, the Complainant must demonstrate that all of the elements listed 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. 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 3.0](#), section 1.7.

Based on the available record, the Panel finds 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 Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. While the addition of other terms here, "shop" (and of a hyphen) may bear on assessment of the second and third elements, the Panel finds the addition of such terms do not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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 or control 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 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.

There is no evidence in the record that the Respondent is currently using the disputed domain name in connection with a *bona fide* offering of goods or services, nor does the Respondent appear to engage in any legitimate noncommercial or fair use of the disputed domain name within the meaning of paragraphs 4(c)(i) and (iii) of the Policy. Rather, the disputed domain name does not currently resolve. According to evidence with the Complaint, the website at the disputed domain name resolved at some point in time to what appeared as a work in -progress website displaying the Complainant’s trademark ELVIE, and allegedly offering for sale clothing items. Such use does not in the circumstances of this case give rise to any rights or legitimate interests on the Respondent’s part.

The Panel further notes that the Respondent’s name appears to be Quentin Vert, Elvie, which includes the dominant part of the disputed domain name. However, the Respondent did not claim it is commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy. Moreover, the Panel considers that the Respondent cannot claim to have been “commonly known” by the disputed domain name under the above-mentioned paragraph of the Policy, as the circumstances of the case indicate that the Respondent most likely adopted the name “Quentin Vert, Elvie” specifically to take advantage of the Complainant’s rights, as discussed in Section 6C below.

Furthermore, the nature of the disputed domain name carries a risk of implied affiliation and cannot constitute a fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

Based on the available record, the Panel finds 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.

According to the unrebutted assertions of the Complainant, its ELVIE trademark was widely used in commerce well before the registration of the disputed domain name. The disputed domain name is confusingly similar with the Complainant’s trademark. Under these circumstances, it is most likely that the Respondent was aware of the Complainant’s trademark at the registration date of the disputed domain name. The Respondent provided no explanations for why it registered the disputed domain name.

The disputed domain name resolved to a web shop that appeared to offer products under the name “Elvie”. However, according to the unrebutted evidence in the case file, the website did not give the impression of being operational (as the main page displayed titles where information of a shop would be added, such as a section called “Talk about your brand” where only an instruction is added from what appears to be a template webpage, saying that: “Share information about your brand with your customers. Describe a product, make announcements, or welcome customers to your store”), no contact details were displayed or any information on the company offering the products.

Therefore, given the circumstances in the case the Panel considers that the Respondent must have had knowledge of the Complainant's rights in the ELVIE trademarks when it registered the disputed domain name and it has intentionally created likelihood confusion with the Complainant's trademarks and website in order to attract Internet users for its own commercial gain, as envisaged by paragraph 4(b)(iv) of the Policy and/or to disrupt the business of the Complainant.

The disputed domain name does not currently resolve to an active website. The Panel finds that passive holding of the disputed domain name does not in the circumstances of this case prevent a finding of bad faith. There is no evidence in the record of a legitimate use of the disputed domain name. The trademark of the Complainant is distinctive and widely used in commerce as per the evidence with the Complaint. UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

Moreover, the Respondent has not formally participated in these proceedings and has failed to rebut the Complainant's contentions or provide any evidence of actual or contemplated good-faith use, and indeed none would seem plausible.

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

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, <elvie-shop.com> be transferred to the Complainant.

/Mihaela Maravela/

Mihaela Maravela

Sole Panelist

Date: September 26, 2023