

ADMINISTRATIVE PANEL DECISION

Vitol Holding B.V. v. Inc Explicit
Case No. D2022-0107

1. The Parties

The Complainant is Vitol Holding B.V., Netherlands, represented by NLO Shieldmark B. V., the Netherlands.

The Respondent is Inc Explicit, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <vitols-group.com> (the “Disputed Domain Name”) is registered with Registrar of Domain Names REG.RU LLC (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on January 12, 2022. On January 13, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On January 14, 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 January 19, 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 amendment to Complaint on January 19, 2022.

On January 19, 2022, the Center transmitted an email in English and Russian regarding the language of the proceeding to the Parties. On January 30, 2022, the Center received the Complainant’s response in which it confirmed its request for English to be the language of the proceedings. The Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint together with the amendment to 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 in both English and Russian, and the proceedings commenced on February 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 23, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 3, 2022.

The Center appointed Mariya Koval as the sole panelist in this matter on March 25, 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, being founded in 1966, is an energy and commodity trading company with 40 offices worldwide and revenues of USD 279 billion in 2021. The Complainant extracts crude oil, refines petroleum products, blends gasoline, stores oil products, produces and markets liquefied petroleum gas and natural gas, trades in non-ferrous metals, smelts zinc, and trades sugar. It ships more than 350 million tonnes of crude oil per year and controls 250 supertankers and other vessels to move it around the world; it handles more than 7 million barrels a day of oil and products. The Complainant also supplies jet fuel from the industry's leading brands, from oil majors and national oil companies to the world's largest airlines and military customers, as well as its own aviation division.

The Complainant is the owner of a number of VITOL trademark (the "VITOL Trademark") registrations throughout the world, among which are:

- International Trademark Registration No. 1202452, registered on September 11, 2013, in respect of goods and services in Classes 1, 4, 6, 30, 35, 36, 37, 39;
- European Union Trademark Registration No. 017865708, registered on January 24, 2019, in respect of goods and services in Classes 1, 4, 36, 39, 40, 42;
- United States Trademark Registration No. 4,442,614 registered on December 3, 2013, in respect of goods and services in Classes 1, 4, 35, 36, 39.

The Complainant operates a domain name <vitol.com> reflecting its VITOL Trademark for sale and promotion of its goods and services.

The Disputed Domain Name was registered on October 12, 2021. At the date of this Decision, the website under the Disputed Domain Name contains an indication "The site is temporarily suspended". However, according to the evidence presented by the Complainant (Annex 4 to the Complaint) before the filing of the Complaint the Disputed Domain Name resolved to a website offering the same services as the Complainant under the Complainant's VITOL Trademark.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Disputed Domain Name contains the identical name Vitol, for which the Complainant holds prior rights in multiple jurisdictions. The addition of word "group" is merely descriptive.

The Complainant further asserts that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Respondent has no prior rights, such as trademark or tradename rights, in the name Vitol.

The Complainant claims that the Disputed Domain Name was registered and is being used in bad faith. The Disputed Domain Name was used for an infringing website, that is aimed to look as if it is the official website of the Complainant. This is an obvious confirmation that the Respondent was acting in bad faith. Also, the Complainant's attempts to take the domain down, using the email address provided by the Whois data, remained unanswered despite reminders. The website uses the name Vitol and the terms "drop device", to which the Complainant also has prior rights.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, in order for the complainant to succeed it must satisfy the panel that:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which 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 was registered and is being used in bad faith.

6.1. Preliminary Issue: Language of Proceedings

The Registrar confirmed that the language of the Registration Agreement for the Disputed Domain Name is Russian.

The Complainant has filed the Complaint in English and requests that English be the language of this proceeding due to the following reasons:

- English is a language spoken and understood worldwide;
- the Respondent is from the United Kingdom;
- the Disputed Domain Name referred to a website in the English language.

In accordance with paragraph 11(a) of the Rules unless otherwise agreed by the Parties, the language of the administrative 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.

The Complainant and its representative are both Dutch companies. The Panel takes into account that neither the Complainant nor its representative are able to understand and to communicate in Russian and therefore forcing the Complainant to translate the Complaint and annexes thereto, would result in unfair additional expenses for the Complainant and would delay this UDRP proceeding.

The Disputed Domain Name and generic Top-Level domain ("gTLD") comprise Latin script. The Respondent is a resident of the United Kingdom where English is an official language. Furthermore, the Respondent, having received the Center's communication regarding the language of the proceeding, also in both English and Russian, did not make any submissions regarding the language of the proceeding.

Paragraph 10(c) of the Rules sets out that the Panel shall ensure that the administrative proceeding takes place with due expedition.

Having considered all circumstances of this case, the Panel concludes under paragraph 11(a) of the Rules that English shall be the language of the proceeding.

6.2. Substantive Issues

A. Identical or Confusingly Similar

The Complainant has properly asserted its rights in the VITOL Trademark due to the long use and number of registrations globally.

The Disputed Domain Name reproduces the VITOL Trademark in its entirety with addition of letter “s” in combination with a hyphen and the dictionary term “group”, and the gTLD “.com”. According to section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements. The Panel finds that in view of the fact that in this case the Disputed Domain Name incorporates the entirety of the Complainant’s VITOL Trademark, the addition of letter “s”, hyphen and the dictionary term “group” does not prevent a finding of confusing similarity between the Disputed Domain Name and the Complainant’s Trademark.

It is also well established that the gTLD, in this case “.com”, does not affect the Disputed Domain Name for the purpose of determining whether it is identical or confusingly similar.

Also, pursuant to section 1.7 of the [WIPO Overview 3.0](#), in cases where a domain name incorporates the entirety of a trademark, the domain name will normally be considered identical or confusingly similar to that mark for purposes of UDRP standing.

Furthermore, the use of hyphens in the Disputed Domain Name is irrelevant in a finding of confusing similarity, see e.g. *Royale Indian Rail Tours Limited v. Divino Indian Memoirz Tours Pvt. Ltd.*, WIPO Case No. [D2010-2107](#) (“In the present case, the Panel finds that... adding a hyphen between the two words “maharaja” and “express” in the disputed domain name are insignificant modifications that do not reduce the confusing similarity between the disputed domain name and the Complainant’s mark”).

In light of the above, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant’s VITOL Trademark and that the Complainant has established the first condition of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

The Complainant alleges that the Respondent has no rights or legitimate interests in the Disputed Domain Names pursuant to paragraph 4(a)(ii) of the Policy.

In accordance with section 2.1 of the [WIPO Overview 3.0](#) while the overall burden of proof in UDRP proceedings is on the Complainant, the Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. If such *prima facie* case is made, the burden of production shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name. If the Respondent fails to come forward with such relevant evidence, the Complainant is generally deemed to have satisfied the second element.

Taking into account the facts and arguments set out above, the Panel finds that the Complainant has made a *prima facie* case. The Respondent registered the Disputed Domain Name more than eight years after the VITOL Trademark had been registered. There is no evidence that the Respondent owns any VITOL Trademarks, nor that it is commonly known by the Disputed Domain Name. Therefore, the Respondent has failed to come forward with any evidence to rebut such *prima facie* case.

The Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name in view of the Disputed Domain Name previously resolved to the website, where the same services as the Complainant were offered. Moreover, the website contained the Complainant's logo without disclosing any information about the relationship between the Complainant and the Respondent. Therefore, the Panel cannot consider such commercial use of the Disputed Domain Name as *bona fide* offering goods or services, or a legitimate noncommercial or fair use, without intent for commercial gain to misleadingly divert the Complainant's consumers.

According to the [WIPO Overview 3.0](#), section 2.8.1 panels have recognized that resellers, distributors, or service providers using a domain name containing the complainant's trademark to undertake sales or repairs related to the complainant's goods or services may be making a *bona fide* offering of goods and services and thus have a legitimate interest in such domain name. Outlined in the "*Oki Data test*", the following cumulative requirements will be applied in the specific conditions of a UDRP case:

- (i) the respondent must actually be offering the goods or services at issue;
- (ii) the respondent must use the site to sell only the trademarked goods or services;
- (iii) the site must accurately and prominently disclose the registrant's relationship with the trademark holder; and
- (iv) the respondent must not try to "corner the market" in domain names that reflect the trademark.

As is seen from the circumstances of this case, the website under the Disputed Domain Name did not disclose the relationship between the Complainant and the Respondent. On the contrary, it created an impression of official or related Complainant's website, without being the same. Thus, the Respondent does not satisfy the conditions of the *Oki Data test*.

The Panel also finds that the Respondent is not commonly known by the Disputed Domain Name.

In light of the above, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name. Therefore, the Panel finds that the second element of the UDRP has been met by the Complainant.

C. Registered and Used in Bad Faith

The Panel comes to the conclusion that the Disputed Domain Name was registered and has been used in bad faith in view of the following. The Disputed Domain Name was registered long after the Complainant registered its VITOL Trademark. The Disputed Domain Name incorporates the VITOL Trademark in its entirety, therefore the Panel finds that the Respondent was well aware of the Complainant's Trademark when it registered the Disputed Domain Name.

The Respondent obviously chose to register the Disputed Domain Name, which is confusingly similar to the Complainant's VITOL Trademark, with the intention to benefit from the Complainant's reputation.

Moreover, the Respondent's knowledge of the Complainant's Trademark is also supported by the use of the Disputed Domain Name, which previously resolved to the website offering the same services as the Complainant and containing the Complainant's Trademark.

In view of the Disputed Domain Name previously resolved to the website which displayed the Complainant's Trademark that, in its turn, gave strong impression that this website was related to or authorized by the Complainant, the Internet users most likely considered that the Disputed Domain Name referred to the one of the Complainant's or its distributor's official websites. Furthermore, the Disputed Domain Name, reproducing the Complainant's Trademark in its entirety, is evidently deceptive for consumers. The Respondent obviously chose to register the Disputed Domain Name, which is confusingly similar to the Complainant's

VITOL Trademark, for the purpose of attracting Internet users to its competing website by creating a likelihood of confusion with the Complainant's Trademark as to the source, sponsorship, affiliation or endorsement of the Respondent's website and of the products sold on it.

Finally, the Respondent, not participating in these proceedings, has failed to indicate any facts and/or evidence, which would show the good faith registration and use of the Disputed Domain Name.

In light of the above, the Panel concludes that the third element has been established by the Complainant with respect to the Disputed Domain Name.

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 <vitols-group.com> be transferred to the Complainant.

/Mariya Koval/

Mariya Koval

Sole Panelist

Date: April 8, 2022