

## **ADMINISTRATIVE PANEL DECISION**

Vitamin Well AB v. Privacy service provided by Withheld for Privacy ehf / Wen Batiz vegas

Case No. D2022-2148

### **1. The Parties**

The Complainant is Vitamin Well AB, Sweden, represented by SILKA AB, Sweden.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Wen Batiz vegas, United States of America (“United States”).

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

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 13, 2022. On June 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 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 June 16, 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 the Complaint on June 16, 2022.

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, and the proceedings commenced on June 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 19, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 3, 2022.

The Center appointed Andrea Jaeger-Lenz as the sole panelist in this matter on August 8, 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 Swedish company that develops, produces and markets vitamin and mineral enriched beverages (functional drinks) under the trademark VITAMIN WELL.

VITAMIN WELL is a global brand. Products under the brand VITAMIN WELL are available in more than 30,000 stores across 35 countries.

The Complainant owns, amongst others, the following trademark registrations:

- Icelandic trademark registration No. V0108761 VITAMIN WELL, filed on April 29, 2018, registered on January 15, 2019 for goods in Classes 25, 30, and 32.
- United States trademark registration No. 79137679 VITAMIN WELL, filed on September 10, 2013, registered on January 13, 2015 for goods in Classes 30, and 32.
- European Union trademark registration No. 006896831 VITAMIN WELL, filed on May 8, 2008 registered on January 28, 2009 for goods in Classes 25, 30, and 32.

The Complainant is the owner of several domain names containing the word combination VITAMIN WELL including <vitaminwell.com>, <vitaminwell.info> and <vitaminwell.org> (Annex 5 of the Complaint).

The disputed domain name was registered on April 13, 2022. The website available under the disputed domain name is inactive (Annex 6 of the Complaint). It is, however, used for an email address as in [...@vitarninwell.com].

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that each of the conditions of paragraph 4(a) of the Policy is established in the present case:

The Complainant argues that the disputed domain name is confusingly similar to the earlier VITAMIN WELL trademark registrations, as it consists of an intentional misspelling of the VITAMIN WELL marks. The sole difference between the signs is that the letter "m" of VITAMIN is replaced by the letter combination "rn" within the disputed domain name. To this extent, it must be noted that the letter combination of "r" and "n" visually resembles the replaced letter "m".

It further argues that a generic Top-Level Domain ("gTLD"), such as ".com" is not sufficient do distinguish signs.

Further, the Complainant is of the opinion that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant puts forward that the Respondent is not commonly known by the disputed domain name, nor that the Respondent would have any relevant prior rights of its own. The Respondent is not a licensee of

the Complainant and has also not received any other permission or authorization to use the VITAMIN WELL trademarks.

Moreover, the Complainant has also found no evidence that the Respondent has used the disputed domain name in the past or intends to use it in the future in order to market goods and services. Instead, the Respondent uses the disputed domain name as an email domain of fraudulent emails to obtain sensitive information as well as money from email recipients, which are the Complainant's customers. The annexes of such emails show the mark VITAMIN WELL and also the address in the signature includes the website "www.vitaminwell.se" (Annex 7.1 and Annex 7.2 of the Complaint). The Complainant argues that such use is a fraudulent behavior, which does not confer any right or legitimate interest in the disputed domain name.

The Complainant finally contends that the disputed domain name was registered and is being used in bad faith.

The Complainant argues that it is highly likely that the Respondent was aware of the VITAMIN WELL trademarks, as they all predate the registration of the disputed domain name. All the more, as the disputed domain name clearly consists of an intentional misspelling of the VITAMIN WELL trademarks, which is also a factor supporting bad faith.

The Complainant contends that even if there is no active website available under the disputed domain name, this does not prevent from finding a use in bad faith of a domain name.

Furthermore, the fact that the Respondent takes advantage of the VITAMIN WELL marks by using a confusingly similar email address to send fraudulent emails portraying itself to be the Complainant in order to obtain payments from the Complainant's customers proves that the Respondent's intention is clearly to mislead the recipients of those emails. The Complainant concludes that such behavior cannot constitute *bona fide* use of a domain name.

## **B. Respondent**

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

## **6. Discussion and Findings**

Pursuant to paragraph 4 (a) of the Policy, the Complainant must prove that each of the following three elements is present:

- (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.

In the following, the Panel will discuss in consecutive order whether all of these requirements are met.

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

The test of identity or confusing similarity under the Policy, paragraph 4(a)(i) is limited in scope to a direct comparison between the Complainant's trademark and the textual string which comprises the disputed domain name.

In this case, the Complainant has demonstrated registered trademark rights in the mark VITAMIN WELL which predate the registration of the disputed domain name. The disputed domain name consists of the

term “vitarninwell” plus the gTLD “.com”.

The Panel finds that the disputed domain name is confusingly similar with the VITAMIN WELL trademarks. In the disputed domain name, the letter “m” of VITAMIN is replaced by the letter combination “rn”. This is an easily-overlooked typographical variation, as the letter combination of “rn” resembles the letter “m”. Hence, the disputed domain name is virtually identical in spelling and sound to the VITAMIN WELL trademarks (see *Apex Learning Inc. v. Privacy Service Porvided by Withheld for Privacy ehf v. Family Man*, WIPO Case No. [D2022-1159](#); *SIEMENS AG v. Omur Topkan*, WIPO Case No. [D2013-1318](#)).

It is even highly likely that at least a significant part of the relevant public will not notice the exchange of letters due to the high visual similarity between the letter combination “rn” and the letter “m”. Under these aspects, the disputed domain name is also visually and phonetically identical to the VITAMIN WELL trademarks.

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

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

However, it is consistent case-law of the UDRP panels that it is sufficient for the Complainant to make a *prima facie* case showing that the Respondent has no rights or legitimate interests in the disputed domain names in order to place the burden of production on the Respondent (see e.g. *Credit Agricole S.A. v. Dick Weisz*, WIPO Case No. [D2010-1683](#); *Champion Innovations, Ltd. V. Udo Dussling* (45FHH), WIPO Case No. [D2005-1094](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#); *Belupo d.d. v. WACHEM d.o.o.*, WIPO Case No. [D2004-0110](#)).

The Panel notes that with respect to paragraph 4(c)(i) of the Policy, there is no evidence in the record that the Respondent, before any notice of the dispute, used or prepared to use the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services.

The Panel further notes that with respect to paragraph 4(c)(ii) of the Policy, there is no evidence that indicates that the Respondent has ever been commonly known by the disputed domain name or has acquired trademark rights in a name corresponding to it.

Additionally, with respect to paragraph 4(c)(iii) of the Policy, there is no evidence that the Respondent has made, and is making, a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark at issue.

On the contrary, the disputed domain name resolves to an inactive website. It is instead used as an email domain of fraudulent emails directed to the Complainant’s customers. The evidence in the record shows that the email communications give the impression that the sender is associated with the Complainant. Such use demonstrates neither a bona fide offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name (*Solvay SA v. Des Jo*, WIPO Case No. [D2021-2105](#)).

Moreover, the Complainant has not authorized, licensed or permitted in any other way the Respondent to register or use the disputed domain name or its trademarks.

Therefore, the Panel finds that the Complainant has provided sufficient evidence to hold that the disputed domain name was used for dishonest purposes incapable of conferring any right or legitimate interest in holding the domain name to the Respondent.

Therefore, the Panel finds that the Complainant has satisfied the requirements under paragraph 4(a)(ii) of the Policy.

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

Under paragraph 4 (a) (iii) of the Policy, a complainant has to establish that a respondent registered and used the disputed domain name in bad faith.

The Panel notes that the disputed domain name was registered after the Complainant's trademarks VITAMIN WELL were registered and accepts that the disputed domain name was chosen by reference to this mark.

The Panel has no doubt that the Respondent knew or should have known of the Complainant's earlier rights to the sign VITAMIN WELL and, thus, that the registration of the disputed domain name targeted the Complainant's rights.

Although there is no active website associated with the disputed domain name, the concept of a domain name "being used in bad faith" is not limited to a domain name with an active website on the Internet (*Klarna Bank AB v. WhoisGuarud, Inc. / Ben Matthews*, WIPO Case No. [D2021-1230](#); *Solvay SA v. Des Jo*, WIPO Case No. [D2021-2105](#)).

The fact that the disputed domain name incorporates the virtually identical word combination "vitarnin well", giving the impression that it is in some way related to the Complainant, and the fact that the Respondent has attempted to impersonate the Complainant through fraudulent email correspondence sent from an email address containing the disputed domain name, lead this Panel to conclude that the Respondent registered and used the disputed domain name in bad faith. As evidenced by the Annexes in the Complaint, this is all the more true because the emails, respectively the email attachments, contain the mark – correctly spelt – VITAMIN WELL (see *Solvay SA v. Des Jo*, WIPO Case No. [D2021-2105](#); *Yardi Systems, Inc. v. Abm Black*, WIPO Case No. [D2019-0057](#)).

Noting the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith and that the Complainant has satisfied the requirement of paragraph 4(a)(iii) 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, <vitarninwell.com> be transferred to the Complainant.

*/Andrea Jaeger-Lenz/*

**Andrea Jaeger-Lenz**

Sole Panelist

Date: August 22, 2022