

ADMINISTRATIVE PANEL DECISION

Veolia Environnement SA v. Registration Private, Domains By Proxy, LLC /
Name Redacted
Case No. D2022-2518

1. The Parties

The Complainant is Veolia Environnement SA, France, represented by IP Twins, France.

The Respondent is Registration Private, Domains By Proxy, LLC, United States of America ("United States") / Name Redacted.

2. The Domain Name and Registrar

The disputed domain name <vcolia.com> (the "Domain Name") is registered with Wild West Domains, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 11, 2022. On July 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On July 12, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on July 15, 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 July 18, 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 July 19, 2022. In accordance with the Rules, paragraph 5, the due date for

Response was August 8, 2022. The Respondent's informal communications were received on July 19 and August 5, 2022, respectively. The Center notified the Commencement of Panel Appointment Process to the Parties on August 9, 2022.

The Center appointed Jon Lang as the sole panelist in this matter on August 17, 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 has a world-wide presence and is the holding company of the Veolia group (the Group) which has revenues of EUR 26.010 billion and 220,000 employees. The Group has three core businesses: Water, Waste, and Energy. The Complainant helps cities and industries manage and optimize their resources. The Complainant designs and deploys specialist solutions to provide, protect, and replenish resources while increasing their efficiency from an environmental, economic, and social standpoint. Such initiatives are all part of the Complainant's mission of "Resourcing the World".

Apart from these the core activities, the Complainant also has other key growth areas e.g. decommissioning services for oil rigs, ships, aircraft, and nuclear plants, and creating innovative solutions to improve indoor air quality.

The Complainant is the owner of the following trademark registrations, amongst others: International trademark number 919580 for VEOLIA, registered on March 10, 2006; International trademark number 910325 for VEOLIA, registered on March 10, 2006; European Union trademark number 0910325 for VEOLIA, registered on March 10, 2006; and United States trademark number 3543738 for VEOLIA, registered on December 9, 2008. In addition, the Complainant operates, among others, the <veolia.com> domain name (registered on December 30, 2002) to promote its services.

The Complainant was actively involved in COP 21 and has launched various advertising campaigns over the past years.

The Domain Name <vcolia.com> was detected after its registration on May 23, 2022. It has been used for phishing attempts using email addresses such as "[...]"@vcolia.com". The purpose was to defraud the Complainant through fake change of payment data. The senders of these phishing emails used the name of employees working in the Complainant's Group.

A cease and desist letter was sent to the Registrar and host of the Domain Name to which no response was received, despite a reminder.

5. Parties' Contentions

A. Complainant

The Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant is the holder of various trademark registrations for VEOLIA, which is a well-known trademark, protected worldwide particularly in relation to Water, Waste, and Energy.

The only difference between the trademark VEOLIA and the word “vcolia” is the letter “c”, which happens to be quite similar to the letter “e”.

The VEOLIA trademark has been deemed “a well-known and long established trademark” (*Veolia Environnement SA v. Hartford Vehicle*, WIPO Case No. [D2021-3821](#)).

The generic Top Level Domain (“gTLD”) such as “.com” is irrelevant and insufficient to avoid a finding of confusing similarity.

By registering the Domain Name, the Respondent has created a likelihood of confusion with the Complainant’s well-known trademark and it is very likely that the Domain Name could mislead Internet users into thinking that it is at least associated with the Complainant.

The Domain Name is confusingly similar to the VEOLIA trademark in which the Complainant has rights.

The Respondent has no rights or legitimate interests in respect of the Domain Name.

It is very unlikely that the Respondent has prior rights or legitimate interests in the Domain Name. The registration of several trademarks of the Complainant preceded registration of the Domain Name by a number of years.

The Domain Name is similar to the Complainant’s well-known trademark VEOLIA and the Respondent cannot reasonably pretend that it was intending to develop a legitimate activity by its use.

It is unlikely that the Respondent is commonly known by the name “Veolia”. It is not in any way affiliated with the Complainant, nor authorized or licensed to use the VEOLIA trademark. In the absence of any license or permission from the Complainant to use such a widely-known trademark, no actual or contemplated *bona fide* or legitimate use can reasonably be claimed.

As mentioned earlier, the Complainant attempted to contact the Respondent by sending a cease and desist letter but no response was received despite a reminder. If the Respondent had a right or legitimate interest in the Domain Name, it would have vigorously defended its rights and replied.

The Respondent has no rights or legitimate interests in the Domain Name.

The Domain Name was registered and is being used in bad faith.

Registration in bad faith – the Complainant is well-known throughout the world and given the reputation of its VEOLIA trademark, it is implausible that the Respondent was unaware of the Complainant when the Domain Name was registered, particularly given the Respondent’s reproduction of the mark in its entirety in the Domain Name.

Where a domain name is so obviously connected with a well-known trademark, its very use by someone with no connection to the trademark suggests opportunistic bad faith.

Knowledge of a corresponding mark at the time of registration of a domain name suggests bad faith. Even if unaware of the possibility of a trademark search, a simple search via online search engines using the keyword “Veolia” shows that all of the initial results relate to the Complainant’s trademark. The Respondent’s failure to do so is a contributory factor to its bad faith.

The registration of the Domain Name in furtherance of cyber attacks or for the purpose of selling it at a high price supports a finding of bad faith registration and proof that the Respondent clearly knew of the VEOLIA trademark at the time of registration.

Use in bad faith – it is more likely than not that the Respondent's primary motive in registering and using the Domain Name was to capitalize on or otherwise take advantage of the Complainant's trademark rights through the creation of initial interest of confusion.

Bad faith use can be found where the Respondent “knew or should have known” of the Complainant's trademark rights.

The Domain Name now resolves to an inactive page. Various factors are usually considered relevant in applying the passive holding doctrine, characterizing bad faith registration and use. They include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good faith use, (iii) the respondent concealing its identity, and (iv) the implausibility of any good faith use to which the domain name may be put. Here, the reputation of the VEOLIA trademark is high; the Respondent failed to provide evidence of actual or contemplated good faith use; there is concealment of the registrant identity on the Whois database; and any good faith use is implausible because of the phishing attempts.

The Respondent both registered and used the Domain Name in bad faith.

B. Respondent

No formal Response to the Complainant's contentions was submitted. However, the person named as registrant of the Domain Name by the Registrar did send two emails to the Center on July 19 and August 5, 2022, the thrust of which were that neither he nor his company had registered the Domain Name, that the recording of him as the registrant was a mistake but that he did not want to spend the time investigating how the mistake arose.

6. Discussion and Findings

Paragraph 4(a) of the Policy requires a complainant to prove that a respondent has registered a domain name which is: (i) identical or confusingly similar to a trademark or service mark in which the complainant has rights; and (ii) that the respondent has no rights or legitimate interests in respect of the domain name; and (iii) that the domain name has been registered and is being used in bad faith. A complainant must prove each of these three elements to succeed.

Preliminary point

Given the assertions made by the registrant in his two e-mails referred to above, and given that the purpose of this UDRP proceeding is to decide whether a transfer of the Domain Name should be granted, a decision which can be made without the naming of the registrant, the Panel has decided to redact the registrant's name.

A. Identical or Confusingly Similar

The Complainant is the owner of the VEOLIA trademark and thus clearly has rights for the purposes of the Policy.

Ignoring the gTLD “.com” (as the Panel may do for comparison purposes), the Domain Name comprises the VEOLIA trademark except that the letter “c” has substituted for the letter “e” to form the word “vcolia”. Accordingly, the VEOLIA trademark and the Domain Name are not identical and thus the issue of confusing

similarity must be considered. Application of the confusing similarity test under the UDRP typically involves “a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name” (section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). Section 1.7 of the [WIPO Overview 3.0](#) goes on to provide “[...] in cases where a domain name incorporates the entirety of a trademark, [...] the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing”.

The substitution of the letter “c” for the letter “e” does little to diminish the visual impression created by the Domain Name, *i.e.* that it is identical to, or very closely similar to the Complainant’s VEOLIA trademark such that it could be mistaken for being identical. The VEOLIA trademark is thus recognizable within the Domain Name. The letters “c” and “e” are of similar shape. To create such a visual impression (of identity) was no doubt the very purpose of the Domain Name. Given the substitution of letters (“e” to “c”), the Domain Name and mark cannot be said to be identical, but the Domain Name is certainly confusingly similar to the Complainant’s VEOLIA trademark.

The Panel finds that the Domain Name is confusingly similar to the VEOLIA trademark for the purposes of the Policy and thus paragraph 4(a)(i) of the Policy has been established.

B. Rights or Legitimate Interests

By its allegations, the Complainant has made out a *prima facie* case that whoever is behind the registrant of the Domain Name (referred to hereafter as the Respondent) lacks rights or legitimate interests in the Domain Name.

Accordingly, the burden of production shifts to the Respondent to come forward with arguments or evidence demonstrating that it does in fact have such rights or legitimate interests. The Respondent has not done so and accordingly, the Panel is entitled to find, given the *prima facie* case made out by the Complainant, that the Respondent indeed lacks rights or legitimate interests in the Domain Name. Despite the lack of any answer to the Complainant’s contentions however, the Panel is entitled to consider whether there would be anything inappropriate in such a finding.

A respondent can show it has rights to or legitimate interests in a domain name in various ways even where it is not, as here, licensed by or affiliated with a complainant. For instance, it can show that it has been commonly known by the domain name or that it is making a legitimate noncommercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. A respondent can also show that it is using a domain name in connection with a *bona fide* offering of goods or services. Here, however, there is no suggestion that the Respondent is commonly known by the Domain Name. Moreover, the use of the confusingly similar Domain Name to engage in nefarious activities, *i.e.* phishing, imitating the Complainant for such purposes cannot of course amount to legitimate noncommercial or fair use, or a *bona fide* offering of goods or services for the purposes of the Policy.

The very purpose in choosing the confusingly similar Domain Name was to deliberately create a false impression of association with the Complainant. Then it was used to sought to impersonate the Complainant for its own improper purposes.

There is no evidence before this Panel suggesting that the Respondent might have rights or legitimate interests in the Domain Name. There is only evidence suggesting the contrary. Accordingly, the Panel finds that the Complainant has fulfilled the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

There can be little doubt that the Domain Name was registered with awareness of the Complainant's VEOLIA trademark, given the composition of the Domain Name, and the use of the names of 3 employees of the Complainant's Group to use in conjunction with the Domain Name in an attempted phishing exercise.

Paragraph 4(b) of the Policy provides a number of non-exclusive scenarios which may evidence a respondent's bad faith. They include, for instance, a respondent registering a domain name in order to prevent an owner of the trademark or service mark to which it is said to be confusingly similar or identical, from reflecting the mark in question in the corresponding domain name, provided that the respondent has engaged in a pattern of such conduct. A respondent registering a domain name primarily for the purposes of disrupting the business of a competitor is another scenario, as is the respondent intentionally attempting to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation or endorsement of its website or of products or services on it.

Sometimes, it is not possible for a complainant to demonstrate literal or verbatim application of one of the paragraph 4(b) scenarios. However, given that such scenarios are non-exclusive and simply illustrative, this matters not as long as there is evidence demonstrating that a respondent seeks to take unfair advantage of, or to abuse the complainant's trademark, such behaviour being broadly understood to constitute bad faith for the purposes of the Policy.

To this end, it has been held by past UDRP panels that where a domain name has been used, or connected with phishing activities, a finding of bad faith will follow (e.g., *Confédération Nationale du Crédit Mutuel v. Daniel Delcore*, WIPO Case No. [DLC2009-0001](#)). Needless to say, use of a domain name in connection with fraud or other nefarious activities would also support a finding of bad faith registration and use.

The fact that illegitimate activities might cease by the time the Complaint falls for determination is no answer to a Complaint. The Domain Name is inherently misleading and has been used for illegitimate activities and the Panel finds that, for the purposes of the Policy, there is evidence of registration and use of the Domain Name in bad 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 Domain Name <vcolia.com> be transferred to the Complainant.

Further, the Panel is of the view that no purpose would be served by naming in this Decision the person identified as registrant of the Domain Name but who has positively disavowed the registration and, as noted above, the Panel has redacted his name from the caption and body of this Decision. The Panel has, however, attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the Domain Name that includes the named registrant, and has authorized the Center to transmit the Annex to the Registrar as part of the order in this proceeding. However, the Panel has further directed the Center, pursuant to paragraph 4(j) of the Policy and paragraph 16(b) of the Rules, that the Annex 1 shall not be published due to exceptional circumstances. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

/Jon Lang/
Jon Lang
Sole Panelist
Date: August 25, 2022