

ADMINISTRATIVE PANEL DECISION

Valero Energy Corporation, Valero Marketing and Supply Company v. Kavita Malviya

Case No. D2022-2767

1. The Parties

Complainants are Valero Energy Corporation and Valero Marketing and Supply Company, United States of America (“USA” or “United States”), represented by Fasthoff Law Firm PLLC, USA.

Respondent is Kavita Malviya, Canada.

2. The Domain Name and Registrar

The disputed domain name <valero.com> (the “Domain Name”) is registered with Hostinger, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 27, 2022. On July 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On July 29, 2022, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 Respondent of the Complaint, and the proceedings commenced on August 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 28, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on August 30, 2022.

The Center appointed Clive L. Elliott K.C. as the sole panelist in this matter on September 7, 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

Complainants are Valero Energy Corporation, a Delaware corporation whose principal place of business is located in San Antonio, Texas, and Valero Marketing and Supply Company, a subsidiary of Valero Energy Corporation (individually and jointly "Complainant").

Complainant is the owner of the following registered United States trade marks embodying the VALERO mark ("Complainant's Mark"):

Mark	Registration No.	Registration Date	Class
VALERO	1,314,004	January 8, 1985	42
VALERO	2,560,091	April 9, 2002	35
VALERO	2,656,971	December 3, 2002	35, 37
	2,656,973	December 3, 2002	35, 37
	2,927,757	February 22, 2005	4
	2,938,790	April 5, 2005	36
	3,108,715	June 27, 2006	35
	3,688,322	September 29, 2009	40
VALERO	4,216,650	October 2, 2012	36

Complainant is also the owner of the domain name <valero.com>, which it has continuously used and operated an Internet website under this domain name for company email addresses.

According to the publicly available Whois, the Domain Name was registered on May 12, 2022, and as at the date of the Complaint, the Domain Name resolved to Complainant's actual home page.

5. Parties' Contentions

A. Complainant

Complainant asserts that it has used Complainant's Mark continuously in commerce for at least 37 years and during this time it has spent tens of millions of dollars advertising, marketing and promoting its VALERO

brand under Complainant's Mark in the USA and throughout the world in a wide variety of media formats including print, television, radio, Internet, billboards and signage. As such, Complainant submits that Complainant's Mark has developed extensive goodwill and favourable consumer recognition.

Complainant submits that Complainant's Mark is both distinctive and famous, as determined in more than 50 previous panel decisions.

Complainant states that the Domain Name is confusingly similar to Complainant's Mark because it is comprised of Complainant's Mark in its entirety, with the addition of the abbreviation for the geographical region of Canada ("ca"), along with the generic Top-Level Domain extension, (".com").

Complainant also claims that Respondent has no rights or legitimate interests in the Domain Name, as Respondent has never been commonly known by the Domain Name, has not used or made demonstrable preparations to use the Domain Name, nor is making a legitimate noncommercial or fair use of the Domain Name without intent for commercial gain. Complainant asserts that it has not licensed Respondent to use Complainant's Mark and Respondent is not authorized to act on Complainant's behalf.

Complainant goes on to contend that Respondent is engaged in an elaborate, criminal scheme utilizing an advanced fee scam, in this case attempting to collect personal identifying information to defraud victims with a job offer scam, by posing as an employee of Complainant's Human Resources Department.

Complainant asserts that Respondent's actions do not constitute a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the Domain Name, and the Domain Name has been registered and is being used in bad faith. Further evidence of bad faith, Complainant continues, is Respondent has provided false contact information to the Registrar in an attempt to conceal his or her true identity.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

Complainant has been in business for 37 years and has made extensive use of Complainant's Mark in the energy industry. It has also widely registered Complainant's Mark in at least the United States.

The Domain Name reproduces Complainant's Mark, namely VALERO, in its entirety, with the addition of the letters "ca". Notwithstanding these minor differences, the VALERO mark is clearly recognizable in the Domain Name. The addition of the letters "ca" does not prevent a finding of confusing similarity. See section 1.8 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). Further, Complainant's Mark is recognizable in the Domain Name. See section 1.7 of [WIPO Overview 3.0](#).

The Domain Name is therefore confusingly similar to Complainant's Mark. The first ground under the Policy is made out.

B. Rights or Legitimate Interests

Complainant submits that Respondent is not sponsored by or affiliated with Complainant, nor has Complainant given Respondent permission to use Complainant's Mark in any manner.

In addition, Complainant contends that Respondent is using the Domain Name in a criminal scheme and is wrongly posing as an employee of Complainant's Human Resources Department. Having been given the opportunity to challenge or refute these serious allegations, Respondent has chosen to remain silent. In the

absence of any response, it is difficult to see how Respondent's activities can be considered as a *bona fide* offering of good and services.

In the absence of any attempt by Respondent to challenge these allegations, the Panel infers that Respondent is unable to refute the allegations. Further, the Panel infers that Respondent's website is being used for improper purposes and that in the present circumstances it does not represent a *bona fide* offering of goods and services or any other legitimate use or interest in the Domain Name.

Respondent has therefore failed to rebut Complainant's *prima facie* case that Respondent lacks rights or legitimate interests in the Domain Name.

Accordingly, the second ground under the Policy is made out.

C. Registered and Used in Bad Faith

For the reasons set out under B above, the Panel is minded to the view that the Domain Name has been registered and used in bad faith.

Put another way, *prima facie* Respondent's conduct appears to be questionable. Again, absent any attempt to challenge Complainant's allegations, the fact that Complainant's Mark was registered many years before the Domain Name, and the Domain Name is confusingly similar to Complainant's Mark, the Panel finds that the Domain Name was registered and used in bad faith.

Further, Complainant asserts that Respondent has provided false contact information to the Registrar in an attempt to conceal his or her true identity. That assertion supports Complainant's submission that the Domain Name was registered and is being used in bad faith.

Complainant has therefore established the third ground under 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 Domain Name <valero.ca> be transferred to Complainant.

/Clive L. Elliott/

Clive L. Elliott

Sole Panelist

Date: September 21, 2022