

ADMINISTRATIVE PANEL DECISION

British American Tobacco (Brands) Limited v. Contact Privacy Inc. /
alejandra garcia, NEOVAPER
Case No. D2022-2861

1. The Parties

The Complainant is British American Tobacco (Brands) Limited, United Kingdom, represented by Demys Limited, United Kingdom.

The Respondent is Contact Privacy Inc., Canada / alejandra garcia, NEOVAPER, Spain.

2. The Domain Name and Registrar

The disputed domain name <neovaper.com> is registered with Tucows Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 3, 2022. On August 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 3 through August 12, 2022, the Registrar transmitted by emails 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 August 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 August 16, 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 August 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 11, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 14, 2022.

The Center appointed Kiyoshi Tsuru as the sole panelist in this matter on September 23, 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 British publicly traded multinational company founded in 1902 that manufactures cigarettes and other tobacco products.

The Complainant operates in 180 countries, employs over 95,000 persons, and in 2021 it reported revenue of around GBP 25 billion.

The Complainant is the owner of several trademark registrations around the world, among others, the following:

Trademark	No. Registration	Jurisdiction	Date of Registration
NEO	017360322	European Union	June 27, 2018
NEO	UK00917858291	United Kingdom	August 7, 2018
NEO	M3685507	Spain	March 5, 2018

The disputed domain name was registered on May 3, 2022. According to the evidence submitted by the Complainant, which was not refuted by the Respondent, at the time when the Complaint was filed, the disputed domain name resolved to a website that sold products of third parties, competitive of the Complainant and its products. Currently, the disputed domain name resolves to an inactive webpage.

5. Parties' Contentions

A. Complainant

The Complainant argued the following:

I. Identical or Confusingly Similar

That the Complainant is the owner of several trademark registrations for NEO in different jurisdictions, which predate the registration of the disputed domain name.

That the disputed domain name incorporates the Complainant's trademark in its entirety, with the addition of the phrase "vaper" which does nothing to distinguish the disputed domain name, but, on the contrary, increases the likelihood of confusion.

That the addition of the generic Top-Level-Domain ("gTLD") ".com" to the disputed domain name is required for technical reasons, which can therefore be ignored for the purpose of comparing the disputed domain name to the Complainant's trademark.

That the disputed domain name is confusingly similar to the Complainant's trademark in terms of the Policy.

II. Rights or Legitimate Interests

That the Complainant has sought to make a *prima facie* case to demonstrate that the Respondent does not have rights to or legitimate interests in the disputed domain name.

That the Complainant has found no evidence that the Respondent has been commonly known as “neo vaper” or “neo” prior to or after the registration of the disputed domain name.

That the Complainant has found no evidence that the Respondent owns any trademarks incorporating the terms “neo vaper” or “neo”, nor has the Respondent traded legitimately under the business name “neo vaper” or “neo”.

That the Respondent is not a licensee of the Complainant and has not received any permission or consent from the Complainant to use its trademark NEO.

That, given the confusing similarity of the disputed domain name to the Complainant’s trademarks, there is no conceivable use thereof that would confer any legitimate interest to the Respondent.

That the Respondent cannot claim fair use as a reseller or distributor of the Complainant.

That the Respondent has made no demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods and services in terms of paragraph 4(c)(i) of the Policy.

That the Respondent is using the disputed domain name to impersonate the Complainant or imply endorsement of the Respondent or sponsorship by the Complainant.

That the Respondent did not reply to the communication sent by the Complainant.

That the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name since the website to which the disputed domain name resolves falsely suggests an affiliation or other commercial connection with the Complainant.

That the Respondent is using the Complainant’s well-known trademark to divert Internet users to its website.

III. Registered and Used in Bad Faith

That it is well established under the Policy that in most circumstances where a respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s trademark, is sufficient to find that the disputed domain name was registered and is being used in bad faith.

That the disputed domain name in and of itself is confusing to Internet users.

That an initial interest confusion is inevitable given that the disputed domain name fully incorporates the Complainant’s trademark. That, therefore, Internet users would assume that the disputed domain name is operated by, connected with, or endorsed by the Complainant.

That the Respondent’s website lacks any disclaimers that would dispel the confusion regarding the disputed domain name and the website associated thereto.

That the Respondent registered the disputed domain name with the intention to mislead Internet users into believing that it corresponds to a website authorized by the Complainant, which demonstrates that the Respondent registered and used the disputed domain name in bad faith.

That the disputed domain name is using the website to which it resolves to sell third-party goods unrelated to the Complainant and its products.

That the since the disputed domain name is configured with MX records, the Respondent is capable of sending potentially misleading emails to users.

That the disputed domain name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

In accordance with paragraph 4(a) of the Policy, the Complainant is required to prove that each of the three following elements is satisfied:

- (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 was registered and is being used in bad faith.

Given the Respondent's failure to submit a response, the Panel may decide this proceeding based on the Complainant's undisputed factual allegations under paragraphs 5(f), 14(a) and 15(a) of the Rules, and shall draw such inferences it considers appropriate under paragraph 14(b) of the Rules (see *Joseph Phelps Vineyards LLC v. NOLDC, Inc., Alternative Identity, Inc., and Kentech*, WIPO Case No. [D2006-0292](#), and *Encyclopaedia Britannica, Inc. v. null John Zuccarini, Country Walk*, WIPO Case No. [D2002-0487](#)).

A. Identical or Confusingly Similar

The Complainant has filed evidence showing that it owns registrations for the trademark NEO, among other places, in Spain, where the Respondent has declared to reside.

The disputed domain name is confusingly similar to the Complainant's trademark NEO, as it incorporates said trademark entirely, with the addition of the term "vaper".

Generally, panels appointed under the UDRP have found that the inclusion of additional terms in a disputed domain name does not prevent a finding of confusing similarity under the first element (see sections 1.7, and 1.8 of the "[WIPO Overview 3.0](#)"). This is so in the present case because the term "vaper" does not prevent the trademark NEO from being recognizable in the disputed domain name.

The addition of the gTLD ".com" to the disputed domain name is immaterial for purposes of assessing confusing similarity because it is a technical requirement of the Domain Name System (see *CARACOLITO S SAS v. Nelson Brown, OXM.CO*, WIPO Case No. [D2020-0268](#); *International Business Machines Corporation v. chenaibin*, WIPO Case No. [D2021-0339](#); and *Société Air France v. Registration Private, Domains By Proxy, LLC, DomainsByProxy.com / Carolina Rodrigues*, WIPO Case No. [D2019-0578](#)).

Therefore, the first element of the Policy has been met.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets forth the following examples as circumstances where a respondent may have rights or legitimate interests in the disputed domain name:

- (i) before any notice to the respondent of the dispute, the use by the respondent of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, even if it did not acquire trademark or service mark rights; or
- (iii) the respondent 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.

The Complainant has asserted that there is no relationship or affiliation between the Complainant and the Respondent, that it has not granted any permission or license to the Respondent to use its trademark NEO, and that the Respondent has not been commonly known by the disputed domain name (see *Beyoncé Knowles v. Sonny Ahuja*, WIPO Case No. [D2010-1431](#), and *Six Continents Hotels, Inc. v. IQ Management Corporation*, WIPO Case No. [D2004-0272](#)). The Respondent did not contest these allegations.

The facts of this case do not pass the Oki Data test. The Respondent used the website to which the disputed domain name resolved to sell products of third parties that are competitive to the Complainant and its products, and said website did not display a disclaimer stating that it was not related to the Complainant (see section 2.8.1 of the [WIPO Overview 3.0](#); see also *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#), *Philip Morris Products S.A. v. bprapan bpaetaa*, WIPO Case No. [D2020-3372](#), and *Philip Morris Products S.A. v. Rohan mubbashir Kahn*, WIPO Case No. [D2021-1314](#)).

In addition, the Panel notes that the composition of the disputed domain name (with the added term “vaper”) carries a risk of implied affiliation since Internet users may think that the disputed domain name belongs to the Complainant (see section 2.5.1 of the [WIPO Overview 3.0](#); see also *Self-Portrait IP Limited v. Franklin Kelly*, WIPO Case No. [D2019-0283](#)).

In sum, the Complainant made a *prima facie* case that the Respondent lacks rights to or legitimate interests in the disputed domain name. The Respondent did not submit any evidence or arguments to challenge the Complainant’s assertions.

In light of the above, the second element of the Policy has been fulfilled.

C. Registered and Used in Bad Faith

According to paragraph 4(b) of the Policy, the following circumstances, in particular but without limitation, shall be evidence of registration and use in bad faith:

- (i) circumstances indicating that the respondent has registered or the respondent has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent’s documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the respondent’s web site or location or of a product or service on its web site or location.

The fact that the Respondent chose to register the disputed domain name, which fully incorporates the Complainant’s trademark NEO, and which has been used to offer for sale products of third parties that are competitive to the Complainant and its products, suggests that the Respondent knew the Complainant, its trademark, and its business when registering the disputed domain name, and that the Respondent targeted the Complainant (see section 3.2.1 of the [WIPO Overview 3.0](#); see also *L’Oréal v. Contact Privacy Inc. Customer 0149511181 / Jerry Peter*, WIPO Case No. [D2018-1937](#); *Gilead Sciences Ireland UC / Gilead Sciences, Inc. v. Domain Maybe For Sale c/o Dynadot*, WIPO Case No. [D2019-0980](#); *Dream Marriage Group, Inc. v. Romantic Lines LP, Vadim Parhomchuk*, WIPO Case No. [D2020-1344](#); and *Valentino S.p.A. v. Qiu Yufeng, Li Lianye*, WIPO Case No. [D2016-1747](#)).

These facts also show that the Respondent has intentionally used the disputed domain name to attract, for commercial gain, Internet users to the website to which the disputed domain name resolves by creating the impression that said website is related to, associated with, or endorsed by the Complainant. Such conduct constitutes bad faith under paragraph 4(b)(iv) of the Policy (see section 3.1.4 of the [WIPO Overview 3.0](#); *trivago GmbH v. Whois Agent, Whois Privacy Protection Service, Inc. / Alberto Lopez Fernandez, Alberto Lopez*, WIPO Case No. [D2014-0365](#), and *Jupiter Investment Management Group Limited v. N/A, Robert Johnson*, WIPO Case No. [D2010-0260](#)).

Additionally, the fact that the disputed domain name currently resolves to an inactive webpage does not prevent a finding of bad faith. Particularly, in the present case the following facts have been found:

- That the Complainant's trademark NEO refers directly and specifically to the Complainant, which is one of the largest publicly traded tobacco companies in the world.
- That the disputed domain name incorporates the NEO trademark in its entirety.
- That the Respondent has not filed any evidence or arguments to explain why it registered the disputed domain name, and why it caused it to divert user traffic to a website where products of third parties competitive to the Complainant and its products were offered for sale.

These facts lead the Panel to infer that, notwithstanding the current inactivity of the disputed domain name, it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate under the Policy (see section 3.3 of the [WIPO Overview 3.0](#); see also *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) and "*Dr. Martens*" *International Trading GmbH and "Dr. Maertens" Marketing GmbH v. Godaddy.com, Inc.*, WIPO Case No. [D2017-0246](#)).

Moreover, the fact that the disputed domain name has active mail exchange records shows a potential situation that could derive in a fraud or a phishing scheme, which would constitute bad faith under the Policy (see section 3.4 of the [WIPO Overview 3.0](#), see also *Wärtsilä Technology Oy Ab v. Newkey Product*, WIPO Case No. [D2022-2336](#): "The Complainant also noted that Mail Exchange records are present on the disputed domain name which means that it is set up to be used as an email address. Therefore, there is a risk that the disputed domain name be used for misleading emails."; *Telefonaktiebolaget LM Ericsson v. Registration Private, Domains By Proxy, LLC / Aha Tek*, WIPO Case No. [D2021-2813](#); *PrideStaff, Inc. v. Perfect Privacy, LLC / Marcheta Bowlin, Midwest Merchant Services*, WIPO Case No. [D2021-3165](#); *Marlink S.A. v. Privacy Service Provided by Withheld for Privacy ehf / Barry Whyte*, WIPO Case No. [D2021-3878](#); *Natixis v. Felix Anderson*, WIPO Case No. [D2021-1934](#); and *Drägerwerk AG & Co. KGaA v. Domain Admin, Privacy Protect, LLC (PrivacyProtect.org) / BLACK ROSES*, WIPO Case No. [D2020-3167](#)).

Therefore, the third element of the Policy has been met.

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, <neovaper.com>, be transferred to the Complainant.

/Kiyoshi Tsuru/

Kiyoshi Tsuru

Sole Panelist

Date: October 10, 2022