

ADMINISTRATIVE PANEL DECISION

Valero Energy Corporation, Valero Marketing and Supply Company v. Burkina Ronald

Case No. D2022-3660

1. The Parties

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

The Respondent is Burkina Ronald, Singapore.

2. The Domain Name and Registrar

The disputed domain name <valero-ng.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 1, 2022. On October 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 4, 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 (Registration Private, Domains By Proxy, LLC, United States of America) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 5, 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 October 5, 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 October 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 6, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 7, 2022.

The Center appointed Ian Blackshaw as the sole panelist in this matter on November 9, 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 Fortune 500 international manufacturer and marketer of transportation fuels, other petrochemical products, and power, and is headquartered in San Antonio, Texas, United States of America.

The Complainant is the owner of the following registered trademarks in United States of America:

Mark	Class	Goods & Services	Reg. No.	Reg. Date	First Use
VALERO	42	Oil and Gas Exploration, Production, Processing, and Distribution Services	1,314,004	January 8, 1985	February 7, 1983
VALERO	35	Retail store services featuring convenience store items, food products, toiletries, fuels, and lubricants	2,560,091	April 9, 2002	June 15, 2000
VALERO	35, 37	Convenience store services; Automobile Service Station services and car wash services	2,656,971	December 3, 2002	August 15, 2000
VALERO V	35, 37	Convenience store services; Automobile Service Station services and car wash services	2,656,973	December 3, 2002	August 15, 2000
V VALERO	40	Chemical processing services, namely, processing of petroleum feedstocks and chemicals, namely, mixed xylenes, benzene, toluene, propylene; petroleum refining; production of lubricant basestocks for others	3,688,322	September 29, 2009	September 1, 2005
V VALERO	36	Credit card services	2,938,790	April 5, 2005	December 6, 2002
VALERO	36	Credit card services	4,216,650	October 2, 2012	December 6, 2002
V VALERO	4	Gasoline and diesel fuel; lubricant base oil	2,927,757	February 22, 2005	August 15, 2000
VALERO	35	Retail store services featuring gasoline and diesel fuel and convenience store items	3,108,715	June 27, 2006	November 20, 2002

The Panel has been provided with copies of the certificates of registration for the trademarks and, where applicable, acknowledgments from the United States Patent & Trademark Office acknowledging the continued use and incontestability of the trademarks.

More than 50 previous UDRP panels have determined that the Complainant has rights in certain of the Trademarks.

For example: *Valero Energy Corporation and Valero Marketing and Supply Company v. Domain Admin, Privacy Protect, LLC (PrivacyProtect.org) / Name Redacted*, WIPO Case No. [D2019-1708](#); *Valero Energy Corporation and Valero Marketing and Supply Company v. David Wayne*, WIPO Case No. [D2016-1461](#); *Valero Energy Corporation, Valero Marketing and Supply Company v. Bargin Register, Inc. - Client Services, URLBrokeringcom, and Telecom Tech Corp.*, WIPO Case No. [D2012-2399](#); *Valero Energy Corporation, Valero Marketing and Supply Company v. ICS INC. / Contact Privacy, Inc. Customer 0131720907*, WIPO Case No. [D2012-2398](#); *Valero Energy Corporation and Valero Marketing and Supply Company v. Privacy Protect.org/Maying Joe*, WIPO Case No. [D2012-0939](#); *Valero Energy Corporation, Valero Marketing and Supply Company v. Domain Name Proxy, LLC, Navigation Catalyst Systems, Inc.*, WIPO Case No. [D2011-1227](#); *Valero Energy Corporation, Valero Marketing and Supply Company v. Transure Ent., Ltd / Above.com Domain Privacy*, WIPO Case No. [D2011-0920](#); *Valero Energy Corporation, Valero Refining and Marketing Company v. Linkz Internet Services*, WIPO Case No. [D2008-0479](#); *Valero Energy Corporation, Valero Refining and Marketing Company v. Web Advertising Corp.*, WIPO Case No. [D2008-0407](#); *Valero Energy Corporation, Valero Refining and Marketing Company v. Rare Names, Web Reg*, WIPO Case No. [D2006-1336](#); *Valero Energy Corp. v. American Distribution Systems, Inc. D/B/A Default Data.Com And Brian Wick*, WIPO Case No. [D2001-0581](#).

Furthermore, the Complainant has continuously owned and operated an Internet website under the domain name <valero.com> for many years and utilizes that domain name for company email addresses through which it communicates internally, with customers, vendors, and the public in general.

The disputed domain name was registered on September 13, 2022. At the time of filing the Complaint, it resolved to a website bearing the Complainant's trademark and collecting personal information from the visitors of the website.

5. Parties' Contentions

A. Complainant

The Complainant makes the following assertions.

The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The disputed domain name is confusingly similar to the trademarks owned by the Complainant because it is comprised of the Complainant's VALERO mark in its entirety, plus the abbreviation "ng" for the geographical region of Nigeria, along with the generic Top-Level Domain ("gTLD"), ".com".

See *Société Nationale des Chemins de Fer Français, SNCF v. Transure Enterprise Ltd / Above.com Domain Privacy*, WIPO Case No. [D2011-0447](#) ("the Panel does not consider, when analyzing the identity or similarity, the suffix, in this case ".com," because it is a necessary component of the Domain Name and does not give any distinctiveness.").

The disputed domain name is confusingly similar to the Complainant's trademark under paragraph 4(a)(i) of the Policy.

The Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Respondent has never been commonly known by the disputed domain name; has not used or made demonstrable preparations to use the domain; and is not making a legitimate noncommercial or fair use of the domain without intent for commercial gain.

The Complainant has not licensed to the Respondent the right to use the VALERO registered trademark, and the Respondent is not otherwise authorized to act on the Complainant's behalf. On the contrary, the Respondent is engaged in an elaborate, criminal investment scheme using the Complainant's trademarks and images of its refineries and personnel that have been downloaded by the Respondent from the Internet.

More specifically, on the disputed domain name site, the Respondent encourages website visitors to create an account, upload their credit card or banking information, and purchase fake "investment plans" promising daily passive income earnings with returns that would provide a return of nine to 18 times the target's original investment, as described in more detail in an Annex to the Complaint. All documents that purport to contain the signature of any employee of the Complainant, and all documents embodying the Complainant's trademarks, are fake documents that contain unauthorized, infringing uses of the Complainant's trademarks.

As set forth in the Respondent's landing page, there "is nothing on the record showing that Respondent presently is preparing to use the corresponding disputed domain name for any legitimate purpose, given the full incorporation of the Complainant's mark in the disputed domain name, and the fact that the Respondent is totally unrelated to the Complainant." See *Arkema France v. Arkema Global, Arkema Group, Arkema Corp and Arkema Cloud*, WIPO Case No. [D2014-2010](#). See also *Valero Energy Corp. and Valero Marketing and Supply Company v. Lisa Katz, Domain Protection LLC / Domain Hostmaster, Customer ID: 62520014085963*, WIPO Case No. [D2015-0787](#) (transferring domain name under similar circumstances).

The conduct described above does not constitute a *bona fide* offering of goods or services under paragraph 4(c)(i) of the Policy or a legitimate noncommercial or fair use under paragraph 4(c)(iii) of the Policy. See *Valero Energy Corporation, Valero Marketing and Supply Company v. Domain Name Proxy, LLC, Navigation Catalyst Systems, Inc.*, WIPO Case No. [D2011-1227](#); *Valero Energy Corporation, Valero Marketing and Supply Company v. Transure Enterprise Ltd / Above.com Domain Privacy*, WIPO Case No. [D2011-0920](#); *Société des Produits Nestlé S.A. v. Above.com Domain Privacy, Shu Lin, Shu Lin Enterprises Limited*, WIPO Case No. [D2010-1882](#) ("[...] there is no *bona fide* offering of goods or services where the disputed domain name resolves to a website with sponsored links."). It is, to the contrary, fraudulent and criminal conduct.

The Respondent has no rights or legitimate interests in respect of the disputed domain name.

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

The Complainant has owned and continually used the VALERO registered trademark in commerce for more than 37 years. At the time the disputed domain name was registered on September 13, 2022, the Complainant was listed as the 30th largest company in the United States of America according to Fortune magazine, evidence of which has been provided to the Panel. The Respondent must have been aware of the Complainant's prominence in the business world when the Respondent registered the disputed domain name. Notwithstanding the Respondent's presumed knowledge of the fame associated with the VALERO trademark, the Respondent intentionally registered, for commercial gain, a domain name that is comprised of the Complainant's registered trademarks.

In addition to the criminal conduct and non-use of the disputed domain name for a website as described above, it is well established that the concept of a domain name "being used in bad faith" is not limited to positive action; inaction is within the concept. That is to say, it is possible, in certain circumstances, for inactivity by the Respondent to amount to the disputed domain name being used in bad faith.

See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). Here, the Respondent registered a disputed domain name that prevents the Complainant from registering a domain name that embodies the VALERO trademark owned by the Complainant. Previous UDRP panels have concluded "lack of

respondent's rights or legitimate interests in the domain name is undoubtedly indicative of registration in bad faith." See *Puerto 80 Projects SLU v. Domains By Proxy, LLC, DomainsByProxy.com and Jupiter Miguel Tarrero Gallo*, WIPO Case No. [D2012-1563](#) (citing *J. García Carrión, SA v. José Catalán Frías*, WIPO Case No. [D2000-0239](#)).

Furthermore, the Respondent has provided false contact information to the registrar in an attempt to conceal his or her true identity, both of which constitute bad faith under the UDRP. See *Home Director, Inc. v. Home Director*, WIPO Case No. [D2000-0111](#) (finding bad faith use and registration where Respondent used "false and misleading information in connection with the registration of the Domain Name"); and *Yahoo!, Inc. v. Eitan Zviely*, WIPO Case No. [D2000-0273](#) (finding that "[Respondent's] registrations under phony names" is evidence of bad faith registration and use).

The conduct set forth above is evidence of bad faith under paragraph 4(b)(ii) of the Policy.

B. Respondent

The Respondent, having been duly notified of the Complaint and of these proceedings, did not reply to the Complainant's contentions or take any part in these proceedings.

6. Discussion and Findings

To qualify for cancellation or transfer of the disputed domain name, the Complainant must prove each of the following elements of paragraph 4(a) of the Policy, namely:

- (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 accordance with paragraph 15(a) of the Rules, the Panel shall decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

In accordance with paragraph 14(a) of the Rules, in the event that a party, in the absence of exceptional circumstances, does not comply with any of the time periods established by the Rules or the Panel, the Panel shall proceed to a decision on the Complaint; and under paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules or any request from the Panel, the Panel shall draw such inferences as it considers appropriate.

In accordance with paragraph 10(d) of the Rules, the Panel shall determine the admissibility, relevance, materiality and weight of the evidence.

In previous UDRP decisions in which the respondents failed to file a response, the panels' decisions were based upon the complainants' reasonable assertions and evidence, as well as inferences drawn from the respondents' failure to reply. See *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#); and *Köstritzer Schwarzbierbrauerei v. Macros-Telekom Corp.*, WIPO Case No. [D2001-0936](#).

Nevertheless, the Panel must not decide in the Complainant's favor solely based on the Respondent's default. See *Cortefiel, S.A. v. Miguel García Quintas*, WIPO Case No. [D2000-0140](#).

In the present case, the Panel must decide whether the Complainant has introduced elements of proof, which allow the Panel to conclude that its allegations are true.

A. Identical or Confusingly Similar

It is well established in previous UDRP decisions that, where the disputed domain name incorporates a complainant's registered trademark, this may be sufficient to establish that the disputed domain name is identical or confusingly similar for the purposes of the Policy. See *Magnum Piering, Inc. v. The Mudjacks and Garwood S. Wilson, Sr.*, WIPO Case No. [D2000-1525](#).

In the present case, the disputed domain name incorporates the Complainant's well-known and widely used VALERO registered trademark and this makes the disputed domain name confusingly similar to the Complainant's well-known and widely used VALERO registered trademark.

The Panel finds that the addition of the letters "ng" does not prevent a finding of confusing similarity. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8.

Furthermore, the addition of the gTLD ".com" is typically irrelevant in determining whether the disputed domain name is confusingly similar to the Complainant's well-known and widely used VALERO registered trademark; this being a standard registration requirement of domain names. See *Blue Sky Software Corp. v. Digital Sierra Inc. and Abdullah Khan*, WIPO Case No. [D2000-0165](#).

In view of the above, the Panel finds that the disputed domain name is confusingly similar to the Complainant's well-known and widely used VALERO registered trademark, in which the Complainant has demonstrated, to the satisfaction of the Panel, prior rights in and prior commercial use of the same.

The first element of the Policy, therefore, has been met.

B. Rights or Legitimate Interests

In order to determine whether the Respondent has any rights or legitimate interests in respect of the disputed domain name (paragraph 4(c) of the Policy), attention must be paid to any of the following circumstances, in particular, but without limitation:

- whether there is any evidence of the Respondent's use of, or demonstrable preparations 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 before any notice to the Respondent of the dispute;
- whether the Respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, even if the Respondent has acquired no trademark or service mark rights;
- whether the Respondent 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 or service mark at issue.

There is no evidence before the Panel to show that the Respondent was acting in pursuance of any rights or legitimate interests with respect to the disputed domain name. On the contrary, if the Respondent had any such rights or legitimate interests, the Respondent would have reasonably been expected to assert them, which the

Respondent clearly has not done so, by not replying to the Complaint or taking any part in these proceedings. See *Belupo d.d. v. WACHEM d.o.o.*, WIPO Case No. [D2004-0110](#).

There is also no evidence before the Panel that the Respondent has been authorized or licensed by the Complainant to use the Complainant's well-known and widely used VALERO registered trademark. In fact, in the view of the Panel, the adoption by the Respondent of a domain name confusingly similar to the Complainant's well-known and widely used VALERO registered trademark, which the Panel considers, as asserted above by the Complainant, would appear not to be by mere chance but by design, inevitably leads to confusion on the part of Internet users and consumers seeking information about the Complainant and its products and services.

Further, the Panel finds that the Respondent is consequentially trading unfairly on the Complainant's well-known and widely used VALERO registered trademark and also the valuable goodwill that the Complainant has established in that trademark through the Complainant's prior commercial use, without any rights or justification for doing so.

Also, the Panel finds no evidence that the Respondent has used or undertaken any demonstrable preparations to use the disputed domain name in connection with any *bona fide* offering of goods or services. The use of the confusingly similar disputed domain name to resolve website bearing the Complainant's trademark and collecting personal information does not constitute a *bona fide* offering of goods or services. Rather, such use appears intended to phish sensitive information from Internet users and impersonate the Complainant, which can never confer rights or legitimate interests on the Respondent. See [WIPO Overview 3.0](#), section 2.13.

Likewise, no evidence has been adduced that the Respondent has been commonly known by the disputed domain name; nor, for the reasons mentioned above, is the Respondent making a legitimate noncommercial or fair use of the disputed domain name.

The Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which has not been rebutted by the Respondent. Therefore, for all the above reasons, the Panel concludes that the Respondent has neither rights nor legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Regarding the bad faith requirement, paragraph 4(b) of the Policy lists four examples of acts, which constitute *prima facie* evidence of bad faith. However, this list is not exhaustive, but merely illustrative. See *Nova Banka v. Iris*, WIPO Case No. [D2003-0366](#).

Paragraph 4(b)(iv) of the Policy is particularly relevant to the present case and provides that there is evidence of bad faith in the following circumstances:

“(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] website or location or of a product or service on [its] website or location.”

Based on the evidence provided on the record, the Panel considers that the Respondent, by registering the disputed domain name confusingly similar to the Complainant's well-known and widely used VALERO registered trademark, is trading unfairly on the Complainant's valuable goodwill established in such trademark.

Also, the effect of such conduct on the part of the Respondent is to mislead Internet users and consumers into thinking that the Respondent is, in some way or another, connected to, sponsored by, or affiliated with the Complainant and its business; or that the Respondent's activities are approved or endorsed by the Complainant. None of which the Panel can find, on the basis of the evidence provided on the record, is, in fact, the situation. Such misleading consequences, in the view of the Panel, are indicative of bad faith on the part of the Respondent. See *Columbia Insurance Company v. Pampered Gourmet*, WIPO Case No. [D2004-0649](#).

Again, in the absence of any explanation to the contrary by the Respondent, of which none is forthcoming on the record, the Panel agrees with the Complainant's contention that the Respondent did not register and use the disputed domain name by chance; but, as noted above, the Respondent appears to have been – or, at least, should have been – fully aware of the notoriety of the Complainant and its worldwide activity, as well as its well-known and widely used VALERO registered trademark and its prior commercial use.

Furthermore, the use of the confusingly similar disputed domain name to resolve to a phishing and impersonating website is clear evidence of bad faith within the context of paragraph 4(b)(iv) of the Policy.

Also, the use of a privacy service by the Respondent is indicative of bad faith in the particular circumstances of this case.

Finally, the failure of the Respondent to answer the Complaint or take any part in the present proceedings, again, in the view of the Panel, is another indication of bad faith on the part of the Respondent in the circumstances of this case. See *Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. [D2002-0787](#).

Therefore, taking all these particular facts and circumstances into account, and for all the above-mentioned reasons, the Panel concludes that the Respondent has registered and is using the disputed 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 disputed domain name, <valero-ng.com>, be transferred to the Complainant.

/Ian Blackshaw/

Ian Blackshaw

Sole Panelist

Date: November 16, 2022