

ADMINISTRATIVE PANEL DECISION

VKR Holding A/S v. Anna Sakidon

Case No. D2022-3687

1. The Parties

The Complainant is VKR Holding A/S, Denmark, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Anna Sakidon, Georgia.

2. The Domain Name and Registrar

The disputed domain name <develux.tech> (the “Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 4, 2022. On October 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On October 4, 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 (Privacy Service Provided by Withheld for Privacy ehf) 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 10, 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 13, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 2, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 3, 2022.

The Center appointed Gregor Vos as the sole panelist in this matter on November 4, 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 the parent company of the VELUX Group, which was founded in 1941. Through its subsidiaries, the Complainant offers *inter alia* roof windows, decoration and sun screening products and indoor climate products. Currently, the Complainant is active in 40 countries and employs 15.400 people worldwide.

The Complainant is the owner of *inter alia* the following trademark registrations (hereinafter jointly referred to as the "Trademarks"):

- United States trademark registration No. 1091446 for VELUX registered on May 16, 1978;
- European Union trademark registration No. 000955609 for VELUX registered on March 31, 2000; and
- European Union trademark registration No. 000651869 for VELUX registered on July 16, 2004.

Further, it is undisputed that the Complainant operates *inter alia* the domain names <velux.com> and <velux.de>.

The Domain Name was registered on March 24, 2022 and resolved at the time of the filing of the Complaint to a website on which pay-per-click ("PPC") links were displayed.

5. Parties' Contentions

A. Complainant

The Complainant seeks that the Domain Name is transferred to the Complainant. The Complaint is based on the following factual and legal grounds: the Domain Name is identical or confusingly similar to the Complainant's Trademarks, the Respondent has no rights or legitimate interests in the Domain Name, and the Domain Name has been registered and is being used in bad faith.

Firstly, according to the Complainant, the Domain Name is confusingly similar to its Trademarks. The Domain Name incorporates the Trademarks in their entirety with the mere addition of the geographical term "de", which is the country code for Germany, and the generic Top-Level Domain ("gTLD") ".tech", which does not prevent a likelihood of confusion.

Secondly, according to the Complainant, the Respondent has no rights or legitimate interests in the Domain Name. The Respondent has never received a license or any other form of authorization from the Complainant to use the Trademarks. Also, the Respondent is not commonly known by the Domain Name and the Respondent used a privacy Whois service. Further, the Respondent is using the Domain Name to redirect Internet users to a website featuring links to third-party websites, some of which directly compete with the Complainant's business. Such use does not constitute a *bona fide* offering of goods or services by the Respondent.

Finally, according to the Complainant, the Respondent has registered and is using the Domain Name in bad faith. In light of the well-known character of the Complainant's Trademarks, it is inconceivable that the Respondent registered the Domain Name without knowledge of the Complainant and its Trademarks. Also, according to the Complainant, the Domain Name is being used in bad faith. The Respondent creates a likelihood of confusion with the Complainant and its Trademarks, which demonstrates that the Respondent is

using the Domain Name to mislead Internet users as to the source of the Domain Name. Further, there is no plausible good faith reason for Respondent to have registered the Domain Name and the Respondent has not responded to the Complainant's attempts to resolve the matter amicably. Finally, according to the Complainant, the Respondent has registered the Domain Name using false contact information, which further evinces bad faith.

B. Respondent

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

6. Discussion and Findings

In view of the lack of a response filed by the Respondent as required under paragraph 5 of the Rules, this proceeding has proceeded by way of default. Hence, under paragraphs 5(f), 14(a) and 15(a) of the Rules, the Panel is directed to decide this administrative proceeding on the basis of the Complainant's undisputed factual presentations.

For the Complainant to succeed, it must prove, within the meaning of paragraph 4(a) of the Policy and on the balance of probabilities that:

- i. the Domain Name is identical or confusingly similar to a trademark or a service mark in which the Complainant has rights;
- ii. the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- iii. the Domain Name has been registered and is being used in bad faith.

Only if all three elements have been fulfilled, the Panel is able to grant the remedy requested by the Complainant. The Panel will deal with each of the requirements in turn.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the Domain Name is (i) identical or confusingly similar to a trademark or service mark, (ii) in which the Complainant has rights.

With respect to having rights pursuant to paragraph 4(a)(i) of the Policy, it is noted that the Complainant is registered as the owner of the Trademarks. Consequently, the Panel finds that the Complainant has proven that it has rights in the Trademarks.

With regard to the assessment of identity or confusing similarity of the Domain Name with the Trademarks, it is generally accepted that this test involves a reasoned but relatively straightforward comparison between the Trademarks and the Domain Name (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark (see section 1.7 of the [WIPO Overview 3.0](#)).

In the present case, the Trademarks are incorporated in their entirety in the Domain Name. The addition of the geographical term "de", referring to Germany, and the gTLD ".tech" does not prevent a finding of confusing similarity with the Trademarks (see sections 1.7 and 1.11.1 of the [WIPO Overview 3.0](#) and *Andrey Ternovskiy dba Chatroulette v. On behalf of chatroulette.de.com OWNER, c/o whoisproxy.com / Domain Admin, High Tech Investments LTD*, WIPO Case No. [D2019-0649](#)). Consequently, the Panel finds that the requirement under paragraph 4(a)(i) of the Policy has been satisfied.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the Domain Name. The onus of proving this requirement, like each element, falls on the Complainant. Given the difficulty in proving a negative, however, it is usually sufficient for a complainant to make out a *prima facie* case that a respondent lacks rights or legitimate interests. If a complainant does establish a *prima facie* case, the burden of production shifts to the respondent (see, e.g. [WIPO Overview 3.0](#), section 2.1; *Sanofi v. Cimpress Schweiz GmbH*, WIPO Case No. [D2017-0522](#)).

Paragraph 4(c) of the Policy lists three non-limitative examples of instances in which a respondent may establish rights or legitimate interests in the disputed domain name.

The Complainant has substantiated that none of these circumstances apply in this case. By defaulting, the Respondent has failed to rebut the *prima facie* case established by the Complainant. Furthermore, based on the record before it, the Panel does not see an indication that any of the circumstances of paragraph 4(c) of the Policy is present.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name. Paragraph 4(a)(ii) is thereby fulfilled.

C. Registered and Used in Bad Faith

Under paragraph 4(a)(iii) of the Policy, a complainant must show that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy lists four non-limitative circumstances which may be considered as evidence of registration and use in bad faith of a domain name.

In the present case, the Trademarks are registered by the Complainant and have been used for many years. The Complainant's rights to the Trademarks predate the registration date of the Domain Name. In light of the well-known character and the worldwide reputation of the Trademarks, the Panel agrees with the Complainant that it is not conceivable that the Respondent chose the Domain Name without knowledge of the Complainant's activities and its Trademarks under which the Complainant is doing business. The well-known character of the Trademarks of the Complainant has been confirmed by earlier UDRP panels (see e.g. *VKR Holding A/S v. Wang Xiao Qin*, WIPO Case No. [D2018-1553](#); *VKR Holding A/S v. YangZhiChao, YangZhiChao*, WIPO Case No. [D2022-2198](#)).

Further, the Panel has found that the Respondent lacks any rights to or legitimate interests in the Domain Name and finds that the Respondent is taking unfair advantage of the Domain Name by diverting Internet users to a website that includes PPC links of a commercial nature that compete with the Complainant's activities. Therefore, the Panel finds from the present circumstances that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's Trademarks as to the source, sponsorship, affiliation or endorsement (see e.g., *"Dr. Martens" International Trading GmbH / "Dr. Maertens" Marketing GmbH v. Joan Mitchell*, WIPO Case No. [D2018-0226](#)).

In addition, the Respondent has not responded to the cease-and-desist letter that the Complainant has sent prior to this procedure in an attempt to resolve the matter amicably (see e.g. *WhatsApp LLC v. Registration Private, Domains By Proxy, LLC / shalih irshad*, WIPO Case No. [D2022-2236](#)).

Accordingly, the Panel finds that the Domain Name has been registered and is being used in bad faith and that the third element of paragraph 4(a)(iii) of the Policy is fulfilled.

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 <develux.tech> be transferred to the Complainant.

/Gregor Vos/

Gregor Vos

Sole Panelist

Date: November 9, 2022