

ADMINISTRATIVE PANEL DECISION

Valero Energy Corporation, Valero Marketing and Supply Company v.
Name Redacted
Case No. D2022-4308

1. The Parties

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

The Respondent is Name Redacted.¹

2. The Domain Name and Registrar

The disputed domain name <valero.com> is registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 11, 2022. On November 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 14, 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 (Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainants on November 15, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint on November 22, 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”).

¹ The Respondent appears to have used the name of a third party (*i.e.*, an employee of the Complainant) when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted the Respondent’s name from this Decision. However, the Panel has attached as Annex 1 to this Decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this Decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on November 23, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 13, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 15, 2022.

The Center appointed Steven Auvil as the sole panelist in this matter on December 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 Valero Energy Corporation is a Delaware corporation and the other Complainant, Valero Marketing and Supply Company, is a wholly owned subsidiary of Valero Energy Corporation (both Complainants will be referred to herein as "the Complainant"). According to the Complainant, it is the 37th largest company in the United States. The Complainant has continuously used the VALERO mark for over 31 years, spending millions of dollars on advertising, marketing, and promoting the VALERO brand worldwide through print, television, radio, Internet, billboards, and signage. The Complainant owns the domain name <valero.com> for the VALERO brand and utilizes the domain name for company email addresses to communicate internally, with customers, vendors, and the public.

The Complainant also owns registered marks for the VALERO brand, including United States Registration No. 1314004 (registered January 8, 1985), United States Registration No. 2656971 (December 3, 2002), and United States Registration No. 3108715 (registered June 27, 2006) for VALERO, and United States Registration No. 2656973 (registered December 3, 2002), United States Registration No. 2927757 (registered February 22, 2005), United States Registration No. 2938790 (registered April 5, 2005), United States Registration No. 3688322 (registered September 29, 2009) for V VALERO and VALERO V.

The disputed domain name was registered on October 27, 2022. Both at the time of submitting the Complaint and at the time of writing this Decision, the disputed domain name resolved to an inactive website and the web browser returned a message "Safari can't open page 'vaelro.com' because Safari can't find the server 'vaelro.com'".

5. Parties' Contentions

A. Complainant

The Complainant alleges that the disputed domain name is confusingly similar to its VALERO mark because the disputed domain name incorporates the Complainant's entire VALERO mark, only with a typographical error where the "l" and "e" are transposed, along with the generic Top Level Domain ("gTLD"), .com.

The Complainant also asserts that the Respondent has no rights or legitimate interests in the disputed domain name because the Respondent has never been commonly known by the disputed domain name; has not used or made demonstrable preparations to use the disputed domain name; and is not making a legitimate noncommercial or fair use of the disputed domain name. Additionally, the Complainant has not licensed to the Respondent the right to use the VALERO mark.

Furthermore, the Complainant alleges that the Respondent has engaged in a scheme to commit wire fraud by sending emails purported to come from an employee of the Complainant's to convince customers that the Complainant changed its banking relationship in an attempt to cause the customer to wire money based on of fake invoices. Additionally, the Complainant asserts that the disputed domain name resolves to a parking page where it is not being used for any purpose, and as such is not a *bona fide* offering of goods or services or a legitimate noncommercial or fair use.

Finally, the Complainant asserts that the Respondent registered the disputed domain name in bad faith because the Respondent knew or should have known of the Complainant's prominence in the business world when it registered the disputed domain name. Further, the Respondent 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.

The Complainant requests that the disputed domain name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules: "[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable". Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following to obtain relief:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or a service in which the Complainant has rights;
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

In view of the Respondent's failure to submit a Response, the Panel renders this Decision based on the Complainant's undisputed allegations, pursuant to paragraphs 5(f), 14(a), and 15(a) of the Rules, and draws such inferences it considers appropriate, pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept as true allegations set forth in the Complaint, unless the evidence is clearly contradictory, and to derive reasonable inferences from the evidence presented. See *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#).

Based on the foregoing guidance, the Panel makes the following findings and conclusions based on the undisputed allegations and evidence contained in the Complaint and reasonable inferences drawn from the evidence.

A. Identical or Confusingly Similar

As noted above, the Complainant is the owner of several registered trademarks for the well-known VALERO brand. The Panel therefore finds that the Complainant has rights in the VALERO, VALERO V, and V VALERO marks.

Section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") states that "[a] domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. This stems from the fact that the domain name contains sufficiently recognizable aspects of the relevant mark". See also *Equifax Inc. v. Domain Admin, Whois Privacy Corp.*, WIPO Case No. [D2022-3929](#) (finding that the transposition of the letters "f" and "a" in the disputed domain name <equifax.com> does not negate the finding of confusing similarity); *Alfa Laval Corporate AB v. Withheld for Privacy Purposes, Privacy Service Provided by Withheld for Privacy ehf / Sunny Obed*, WIPO Case No. [D2021-2936](#) (finding that the transposition of the letters "l" and "f" in the complainant's mark ALFA LAVAL does not negate the finding of confusing similarity); *Hartford Fire Insurance Company v. Vicky Laster, Domain Mgr Trs Service*, WIPO Case No. [D2014-1848](#) (finding that the disputed domain name would

be identical, but for the transposition of the letters “h” and “e” in the domain name <tehhartford.com>)

Here, the disputed domain name incorporates the Complainant’s entire VALERO mark only with a typographical error where the letters “h” and “e” are transposed, followed by the gTLD “.com”. As noted, the transposition of the letters “h” and “e” in the disputed domain name do not prevent a finding of confusing similarity. See [WIPO Overview 3.0](#), section 1.9.

Additionally, as set forth in section 1.11.1 of the [WIPO Overview 3.0](#), the applicable gTLD (e.g., “.com”, “.site”, “.info”, “.shop”) “is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test”.

Therefore, the Panel finds that the Complainant has proven that the disputed domain name is confusingly similar to the Complainant’s marks. As such, the first element of paragraph 4(a) of the Policy is met.

B. Rights or Legitimate Interests

From the Complainant’s allegations and evidence as well as the inferences drawn from the evidence, the VALERO, VALERO V, and V VALERO marks are distinctive and well-known marks registered by the Complainant. The Complainant has operated its business for decades and did not license or otherwise authorize the Respondent’s use of the VALERO marks, and the Complainant has no affiliation, association, sponsorship, or connection with the Respondent. Therefore, the Panel finds that the Complainant has made out a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

Section 2.1 of the [WIPO Overview 3.0](#) provides that “where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element”.

Here, the Respondent did not respond to the Complaint and thus has failed to rebut the *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. Moreover, Panels have categorically held that the use of a domain name for illegal activity (e.g., phishing, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. See [WIPO Overview 3.0](#), section 2.13. Such illicit conduct is at issue here, considering the evidenced use of the disputed domain name for a fraudulent email scheme whereby the Respondent has impersonated the Complainant in an attempt to seek undue payment from the Complainant’s clients. Accordingly, the Panel finds that the Respondent in fact has no rights or legitimate interests in the disputed domain name and that the second element of paragraph 4(a) of the Policy is satisfied.

C. Registered and Used in Bad Faith

Section 3.1.4 of the [WIPO Overview 3.0](#) provides that “[p]anel[s] have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith”. Additionally, section 3.2.1 of the [WIPO Overview 3.0](#) provides that “[p]articular circumstances panels may take into account in assessing whether the respondent’s registration of a domain name is in bad faith include: (i) the nature of the domain name (e.g., a typo of a widely-known mark, or a domain name incorporating the complainant’s mark plus an additional term such as a descriptive or geographic term, or one that corresponds to the complainant’s area of activity or natural zone of expansion); [...] (vi) a clear absence of rights or legitimate interests coupled with no credible explanation for the respondent’s choice of the domain name, or (viii) other indicia generally suggesting that the respondent had somehow targeted the complainant”.

Here, as noted above, the disputed domain name incorporates the entirety of the Complainant’s registered VALERO mark with a single misspelling of an element of the mark, namely the typographical error in the

transposition of the letters “l” and “e”. This alone is evidence of registration in bad faith. See *Klarna Bank AB v. Super Privacy Service LTD c/o Dynadot / Jeff Weller, Think 7 Inc.*, WIPO Case No. [D2021-1590](#) (stating that typo squatting through the interchange of letters is in and of itself evidence of use in bad faith); *ZB, N.A., dba Zions First National Bank v. Travis Smith, Lexq Media Inc*, WIPO Case No. [D2016-2404](#) (finding that the intentional misspelling of the complainants mark, *i.e.* typo squatting cannot be considered fair use nor a legitimate noncommercial or fair use of a domain name).

Moreover, the evidence demonstrates that the Respondent was using the disputed domain name in connection with deceptive and fraudulent activities. Indeed, the misspelled use of the Complainant’s VALERO mark in the disputed domain name was meant to impersonate the Complainant to obtain confidential information from the Complainant’s customers. This use has caused and will continue to cause some recipients of the emails to believe those emails are connected to or approved by the Complainant. Through the inclusion of the Complainant’s entire VALERO mark in a misspelled form and use of the Complainant’s employee’s actual name, the Panel finds that the Respondent had the Complainant’s mark in mind when registering the disputed domain name, evidencing bad faith. *Hostelworld.com Limited v. Manlidy, GNV*, WIPO Case No. [D2022-3641](#).

Accordingly, the Panel finds that the disputed domain name has been registered and is being used in bad faith and that the third element of paragraph 4(a) of the Policy is satisfied.

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 <vaelro.com> be transferred to the Complainant.

/Steven Auvil/

Steven Auvil

Sole Panelist

Date: January 6, 2023