

ADMINISTRATIVE PANEL DECISION

VKR Holding A/S v. Whayasda, Lias Saad
Case No. D2022-4389

1. The Parties

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

The Respondent is Whayasda, Lias Saad, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <veluxcq.com> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 17, 2022. On November 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 18, 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 (Domain Administrator, See PrivacyGuardian.org) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 21, 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 November 24, 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 November 25, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 15, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 16, 2022.

The Center appointed C. K. Kwong 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, VKR Holding A/S, is the owner of numerous trademarks consisting of or comprising the word "Velux". These registrations include:

- (a) United States Trademark Registration No. 1091446 for the word mark VELUX, registered on May 16, 1978, in respect of goods under International Class 19;
- (b) United States Trademark Registration No. 1492904 for the word mark VELUX registered on June 21, 1988, in respect of goods under International Classes 6, 19, and 20.

[Annex 1 to the Amended Complaint].

The evidence produced by the Complainant shows its first registration for the mark VELUX was well before the registration of the disputed domain name on August 29, 2022 [Annex 2 to the Amended Complaint].

The disputed domain name resolves to a gambling and pornographic website [Annex 3 to the Amended Complaint].

Other than the particulars shown in the printout of the database searches conducted by the Complainant on the Whois Database (as provided in Annex 2 to the Amended Complaint), and the screenshot of website to which the disputed domain name resolves as shown in Annex 3 to the Amended Complaint, there is no evidence concerning the background of the Respondent and its potential businesses or activities.

The Complainant uses the domain name <velux.com> to provide information and promote its VELUX brand and products.

5. Parties' Contentions

A. Complainant

The Complainant has made the following contentions:

The Complainant is the parent company of the Velux Group based in Denmark with international presence in 40 countries. Its products range includes roof windows, skylights, vertical windows and systems, thermal solar energy systems, decoration and sun screening products, ventilation, and indoor climate products.

The mark VELUX was invented by the founder of the Complainant, Villum Kann Rasmussen, by combining the prefix "-ve" from the word "ventilation" and "lux" from the Latin word which means "light".

The Complainant and its subsidiaries have spent substantial time, effort, and money advertising the promoting the trademark VELUX which has become distinctive and uniquely associated with the Complainant and its products and services.

The disputed domain name has incorporated the Complainant's VELUX trademark entirely. Addition of the letters "cq" at the end of the Complainant's trademark does not distinguish the disputed domain name from the Complainant's trademark VELUX which remains the prominent and distinctive elements in the disputed domain name.

The Respondent has no affiliation or sponsorship relationship with the Complainant. The Complainant has not licensed, authorized, or permitted the Respondent to register any domain name incorporating the Complainant's trademark.

The Respondent's name "Whayasda" does not resemble the disputed domain name. The Respondent is not commonly known by the disputed domain name and the fact that it was using a privacy Whois service showed that there was a lack of legitimate interests or use of the disputed domain name to make the Respondent commonly known by that name.

The Respondent is using the disputed domain name to divert Internet users to a website which features adult contents and redirect links to websites of other third party services for commercial gain.

The Complainant used and registered its trademark VELUX well before the registration of the disputed domain name on August 29, 2022, when the Complainant had already established a worldwide reputation for its trademark VELUX.

The Respondent has no rights or legitimate interests in the disputed domain name. It is inconceivable for the Respondent to choose the domain name which is so closely similar to the Complainant's fanciful trademark (which has no generic or descriptive meaning) for any reason other than to exploit the Complainant's trademark.

The registrant who was holding the disputed domain name on behalf of the Respondent failed to respond to a cease and desist letter issued by the Complainant on September 27, 2022 [Annex 11 to the Amended Complaint].

The Respondent has provided wrong contact details to shield its identity.

The Respondent has registered and used the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

A. The naming of party and notice of proceedings

The Whois Lookup search results provided in Annex 2 to the Amended Complaint showed the Registrant Name/Admin Name/Tech Name of the original registrant as Domain Administrator, See Privacyguardian.org.

The answers provided by the Registrar to the Center on November 18, 2022, in response to the Center's request for Registrar Verification disclosed the identity of the current registrant of the disputed domain name as Whayasda, Lias Saad, reportedly of the United States.

The Complainant accordingly filed an Amended Complaint to identify and replace the former registrant with Whayasada as the Respondent on November 24, 2022, following the said verification particulars provided by the Registrar.

On November 25, 2022, the Center forwarded the Notification of Complaint and Commencement of Administrative Proceedings to the contact details of the Respondent, including those found in the Amended Complaint, Whois, and Registrar Verification. The said notification was sent by post/courier and email as per the contact particulars so provided with copies to the Registrar.

In the circumstances, the Panel finds that the proper Party to these proceedings has been named and notified. As long as the Complainant or the Center as the case may be communicated with the Respondent using the contact information which the Respondent have chosen to provide to the Registrar as reflected in the above contact details, their respective notice obligations will be discharged and the Respondent is bound accordingly.

The Panel is satisfied that the Center has discharged its responsibility under paragraph 2(a) of the Rules to employ reasonably available means calculated to achieve actual notice to the Respondent of the Complaint and that the failure of the Respondent to furnish a reply is not due to any omission or inadequate communication by the Center.

B. The Three Elements

In rendering its decision, the Panel must adjudicate the dispute in accordance with paragraph 15(a) of the Rules which provides that, “the 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 14(b) of the Rules further provides that, “[i]f a Party, in the absence of exceptional circumstances, does not comply with any provisions of, or requirement under, these Rules or any requests from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate”. Paragraph 5(e) of the Rules further provides that, “if a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint”.

The failure of the Respondent to respond does not automatically result in a favourable decision for the Complainant, which is specifically required under paragraph 4(a) of the Policy to establish each of the three elements as provided therein. See *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#) and *Berlitz Investment Corp. v. Stefan Tincuлесcu*, WIPO Case No. [D2003-0465](#).

The said three elements are considered below.

C. Identical or Confusingly Similar

On the evidence available, the Panel has no hesitation in finding that the Complainant has rights in the trademark VELUX by reason of the trademark registrations recited in Section 4 above.

Furthermore, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademark VELUX.

The dominant or principal component of the disputed domain name is the Complainant’s VELUX trademark. The addition of the letters “cq” as suffix does not prevent the disputed domain name from being confusingly similar to the Complainant’s VELUX mark, which remains clearly recognizable in the disputed domain name.

It is well-established practice to disregard the gTLD part of a domain name, such as “.com”, when assessing whether a domain name is identical or confusingly similar to the mark in issue. *Société Anonyme des Eaux Minérales d’Evian and Societe des Eaux de Volvic v. Beroca Holdings B.V.I. Limited*, WIPO Case No. [D2008-0416](#).

Accordingly, the Panel finds that the first element of paragraph 4(a) of the Policy is established.

D. Rights or Legitimate Interests

The Complainant needs to establish a *prima facie* case showing that the Respondent has no rights or legitimate interests in respect of the disputed domain name. See *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#). Once such *prima facie* case is made, the burden will shift to the Respondent to prove that it has rights or legitimate interests in the disputed domain name.

The Complainant has confirmed that it has not authorized, licensed, or permitted the Respondent to use the mark VELUX.

There is no explanation on the record as to why it was necessary for the Respondent to adopt the word “veluxcq” as its domain name.

The Panel also notes that the names of the Respondent and the original of the disclosed registrant of the disputed domain name do not correspond in any way with the disputed domain name.

There is no evidence before the Panel to suggest that the Respondent is commonly known as <veluxcq.com>.

There is also no evidence available to demonstrate any legitimate noncommercial or fair use of the disputed domain name by the Respondent. The Complainant has put forward a very strong *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which has not been rebutted by the Respondent. The composition of the disputed domain name carries a risk of implied affiliation to the Complainant, contrary to the fact, which cannot constitute fair use. Moreover, given the likely commercial revenue derived from the links found at the disputed domain name, the Respondent cannot claim to be using the confusingly similar disputed domain name for a noncommercial or *bona fide* offering of goods or services.

Accordingly, the Panel is satisfied that the Respondent has no rights or legitimate interests in the disputed domain name.

E. Registered and Used in Bad Faith

The Complainant has registered its VELUX trademark since at least 1978 as detailed in Section 4 above and has been using it long before the registration of the disputed domain name by the Respondent in 2022.

The incorporation of the rather unique distinctive invented word “velux” entirely letter by letter as part of the disputed domain name without any explanation and the prior substantial use of the Complainant’s VELUX mark, lead to the conclusion that the Respondent must have been aware of the existence of the Complainant and its trademark VELUX at the time of the registration of the disputed domain name.

Prior panels have held that failure to respond to a cease and desist letter can be evidence of bad faith. Such bad faith is compounded when the original domain name owner, upon receipt of notice [see Annex 11 to the Amended Complaint] that the disputed domain name is identical to a registered trademark and alleging illegitimate use of such trademark, fails to respond. Such conduct is not consistent with what one would reasonably expect from a good faith registrant when accused of cybersquatting.

The Respondent’s lack of response to the cease and desist letter sent by the Complainant and the false contact information provided by the Respondent when registering the disputed domain name, are further indications of the Respondent’s bad faith registration and use of the disputed domain name.

The use of the website to which the disputed domain name resolves will result in the public being misled into believing that the products and/or services offered there were associated or otherwise connected with the Complainant. The Respondent has intentionally attempted to attract, for commercial gain, Internet users to go to the said website, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the website or products on the said website. Moreover, the nature of the content at the disputed domain name will also likely tarnish the Complainant’s reputation, further reinforcing a finding of bad faith conduct on part of the Respondent.

In this Panel’s view, it is not possible to foresee any plausible, genuine use of the disputed domain name by the Respondent on the evidence available.

The Panel finds that the circumstances under paragraph 4(b)(iii) and (iv) of the Policy have been established. Accordingly, the Panel finds that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) of 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 disputed domain name, <veluxcq.com>, be transferred to the Complainant.

/C. K. Kwong/

C. K. Kwong

Sole Panelist

Date: January 6, 2023