

ADMINISTRATIVE PANEL DECISION

B.S.A. International v. Manlidy, GNN

Case No. D2023-1165

1. The Parties

The Complainant is B.S.A. International, Belgium, represented by Inlex IP Expertise, France.

The Respondent is Manlidy, GNN, Singapore.

2. The Domain Name and Registrar

The disputed domain name <primvere.com> is registered with OwnRegistrar, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 15, 2023. On March 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 17, 2023, 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 (WhoisSecure) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 20, 2023 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 March 21, 2023.

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 March 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 12, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 13, 2023.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on April 18, 2023. 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 subsidiary of the Lactalis group which was created in 1933 and is a leader in the dairy industry.

In addition to the domain name <primevere.com>, registered on November 25, 1998, the Complainant is the owner, amongst others, of the following trademark registrations:

- French Trademark registration No. 1457714 for the word mark PRIMEVERE, filed on March 28, 1988, successively renewed, in classes 29 and 30; and
- International Trademark registration No. 349728 for the figurative mark PRIMEVERE, registered on October 16, 1968, successively renewed, in classes 29 and 30.

The disputed domain name was registered on February 20, 2023, and currently resolves to a website featuring banners displaying gambling and pornographic resources.

5. Parties' Contentions

A. Complainant

The Complainant asserts to have been widely using its PRIMEVERE trademarks for at least 30 years to promote a range of vegetable margarine and vegetable fats for cardiovascular health, having therefore built up a substantial reputation, especially in France. The Complainant submits that a market survey conducted on 2021 by Kantar showed a high consumer recognition rate for PRIMEVERE trademark in the French marketplace (Annex 13 to the Complaint).

The Complainant further asserts that the disputed domain name is confusingly similar with its PRIMEVERE trademark only differing therefrom by one letter (having the first letter "e" been suppressed), what consists an obvious misspelling of the Complainant's trademark and does not prevent the disputed domain name from being found confusingly similar to the Complainant's trademark.

In addition to that, the Complainant states that it attempted to contact the Respondent by the privacy service provider the Respondent had retained unsuccessfully (Annex 14 to the Amended Complaint).

To make matters worse, on the Complainant's view, the disputed domain name has been in use in connection with a website broadcasting pornographic and gambling content which association could be very detrimental to the Complainant's image and business.

As to the Respondent's lack of rights or legitimate interests, the Complainant contends that:

- a) the disputed domain name carries a risk of implied affiliation with the Complainant given that the disputed domain name which almost reproduces a prior trademark and is highly suspicious, being it reasonable to assume that it consists of an abusive registration;
- b) the named Respondent does not own any registration for the PRIMVERE trademark;
- c) there is no business or legal relationship between the Complainant and the Respondent; not having the Complainant authorized or licensed the Respondent to use its trademarks in any way;
- d) the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or legitimate noncommercial or fair use of the disputed domain name, rather featuring prominent banners displaying and advertising various online gambling and pornographic resources; and

e) the Respondent is not commonly known by the disputed domain name.

Lastly, the Complainant alleges that the disputed domain name was registered and is being used in bad faith given the well-known status of the Complainant's PRIMEVERE trademark and the use of the disputed domain name in connection with a pornographic and gambling website. In addition to that, the Respondent's choice to retain a privacy shield to conceal its true identity, its indication of a false/incomplete address and the fact that the named Respondent has been found guilty of cybersquatting in past UDRP Panels (*Principal Financial Services, Inc. v. Johnson Zhang, xiao long lin, and WhoisSecure / Manlidy, GNN, WIPO Case No. D2022-2479*; *Coinme Inc. v. Manlidy, GNN, WIPO Case No. D2022-3321*; *Hostelworld.com Limited v. Manlidy, GNN, WIPO Case No. D2022-3641*; *Commodity Exchange, Inc., Board of Trade of the City of Chicago, Inc., New York Mercantile Exchange, Inc., and CME Group Inc. v. cbot, comex, main main, and Manlidy, GNN, WIPO Case No. D2022-4020* and *Loft Ipco LLC v. Manlidy, GNN, WIPO Case No. D2022-4627*) further corroborate the Respondent's bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

- (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.

The Complainant must prove in this administrative proceeding that each of the aforementioned three elements is present in order to obtain the transfer of the disputed domain name.

In accordance with paragraph 14(a) of the Rules, if the Respondent does not submit a Response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint.

A. Identical or Confusingly Similar

The Complainant has established rights in the PRIMEVERE trademark.

The disputed domain name <primvere.com> omits the first vowel "e" in the Complainant's trademark, what characterizes as a misspelling of the Complainant's trademark and does not prevent a finding of confusing similarity under the Policy, as recognized by the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.9.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark. The first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a non-exclusive list of circumstances that indicate the Respondent's rights or legitimate interests in the disputed domain name. These circumstances are

- (i) before any notice of the dispute, the Respondent's use 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, in spite of not having acquired trademark or service mark rights; or
- (iii) 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.

The Respondent, in not responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights to or legitimate interests in the disputed domain name. This entitles the Panel to draw any such inferences from such default as it considers appropriate pursuant to paragraph 14(b) of the Rules. Nevertheless, the burden of proof is still on the Complainant to make a *prima facie* case against the Respondent.

In that sense, and according to the evidence submitted, the Complainant has made a *prima facie* case against the Respondent that the Respondent has not been commonly known by the disputed domain name, and neither there is a business or legal relationship between the Complainant and the Respondent; not having the Complainant authorized or licensed the Respondent to use its trademark in any way.

Also, the absence of any indication that the Respondent has rights in a term corresponding to the disputed domain name, or any possible link between the Respondent and the disputed domain name that could be inferred from the details known of the Respondent or the webpage relating to the disputed domain name, corroborate with the Panel's finding of the absence of rights or legitimate interests.

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name.

The second element of the Policy has therefore been established.

C. Registered and Used in Bad Faith

The Policy indicates in paragraph 4(b) that bad faith registration and use can be found in view of:

- (i) circumstances indicating that the Respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring it to the complainants who are the owner of a trademark relating to the disputed domain name or to a competitor of the Complainants, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) the Respondent has registered the disputed 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 disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website or other location, by creating a likelihood of confusion with the complainants' mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location.

The registration and use of the disputed domain name in bad faith can be found in the present case in view of the following circumstances:

- (i) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the disputed domain name, not having submitted a response;
- (ii) the well-known status of the Complainant's trademark;
- (iii) In the present case, the Respondent's conduct, while using the disputed domain name in connection with a website broadcasting pornographic and gambling content, creates a likelihood of confusion with the Complainant's well-known mark and potential tarnishment of such trademark.
- (iv) the Respondent's choice to retain a privacy protection service to conceal its true identity;
- (v) the lack of reply to the cease-and-desist letter sent prior to this procedure; and
- (vi) the indication of what appears to be false contact details, not having the Center been capable of delivering the written notice to the Respondent.

For the reasons stated above, the Panel finds that the disputed domain name was registered and is being used in bad faith.

The third element of the Policy has therefore been established.

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 <primvere.com> be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: April 26, 2023