

ADMINISTRATIVE PANEL DECISION

Varian Medical Systems, Inc. v. Big Wako
Case No. D2023-2070

1. The Parties

Complainant is Varian Medical Systems, Inc., United States of America (“United States”), represented by Sideman & Bancroft LLP, United States.

Respondent is Big Wako, United States.

2. The Domain Name and Registrar

The disputed domain name <varlans.com> (“Disputed 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 May 10, 2023. On May 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On May 10, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on May 16, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on May 16, 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 Respondent of the Complaint, and the proceedings commenced on May 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 13, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on June 19, 2023.

The Center appointed Colin T. O'Brien as the sole panelist in this matter on July 4, 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

Complainant is a manufacturer of medical devices for treating cancer, including linear accelerators. Complainant was founded in 1948 and employs over 7,100 people throughout the world and offers medical and scientific devices and software under the VARIAN mark. Complainant owns the trademark VARIAN, which it has registered in many countries, including the United States (Registration No. 0828,848, registered in relation to International Classes 5, 8, 10, and 12, on May 16, 1967).

Complainant also owns the domain name <varian.com>.

Respondent registered the Disputed Domain Name on April 24, 2023.

5. Parties' Contentions

A. Complainant

The Disputed Domain Name appears identical to the VARIAN mark when in lower case form. Indeed, when the Disputed Domain Name is written out in lowercase, the "L" appears identical to the "I" in the VARIAN mark. Additionally, the Disputed Domain Name is a plural of Complainant's <varian.com> domain name.

Respondent's intent in using the Disputed Domain Name is to confuse third parties by a scheme it orchestrated to divert to Respondent a substantial payment by Complainant's customers for Complainant's goods. In April 2023, Respondent intercepted an email communication from Complainant's employee to a customer and began representing itself as Complainant's employee in the continuation of that communication. While the email address is slightly altered, Respondent included what looked to be authentic Varian signature blocks in the communication. These blocks included VARIAN trademarks and purported to be from individuals employed by the company in an effort to make the fraudulent scheme more believable.

Respondent is well-aware of Complainant's decades-long prior rights in the distinctive and well-known VARIAN mark and registered the Disputed Domain Name and have the intent to confuse users into believing that the Disputed Domain Name and the related "@varlans.com" email address are being used by Complainant.

The VARIAN mark is distinctive and has no meaning apart from acting as a source indicator for Complainant, indicating that Respondent selected the Disputed Domain Name specifically to trade off and cause confusion with Complainant's VARIAN mark.

There is no indication that Respondent is commonly known as "Varlans" or that Respondent therefore has any rights or legitimate interest in the Disputed Domain Name on that basis. There is also no relationship between Complainant and Respondent, and Complainant has not licensed the VARIAN mark to Respondent or authorized Respondent to register the Disputed Domain Name or associate email address. Respondent is neither using the disputed domain name for the *bona fide* offering of goods and services, nor making a legitimate noncommercial or fair use of the Disputed Domain Name.

Respondent is making malicious use of the Disputed Domain Name and associated email addresses, by disguising an email address, sender names, phone numbers, and websites to try to convince third parties they are interacting with a trusted source. These malicious communications attempt to manipulate third parties into believing that these spoofed communications are real, which could lead them to download malicious software, send money, goods, provide services, or disclose personal, financial, or other sensitive information.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

Complainant has demonstrated it owns long-standing registered and common law trademark rights in the VARIAN mark. The Disputed Domain Name incorporates a misspelling of the VARIAN mark, namely with the mere substitution of the letter "I" with the letter "L" as well as an additional "S" which does not prevent a finding of confusing similarity between the mark and the Disputed Domain Name. See sections 1.7 and 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions Third Edition ("[WIPO Overview 3.0](#)").

Accordingly, the Disputed Domain Name is confusingly similar to the mark in which Complainant has rights.

B. Rights or Legitimate Interests

Complainant has presented a *prima facie* case that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and has not been commonly known by the Disputed Domain Name. The fact that Respondent used the Disputed Domain Name in connection with an email address in a fraudulent scheme to impersonate Complainant's employees indicates that Respondent sought to piggyback on the mark for illegitimate reasons.

After a complainant has made a *prima facie* case, the burden of production shifts to a respondent to present evidence demonstrating rights or legitimate interests in the domain name. See, e.g., *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

Here, Respondent has provided no evidence of any rights or legitimate interests in the Disputed Domain Names. In the absence of any evidence rebutting Complainant's *prima facie* case indicating Respondent's lack of rights or legitimate interests in respect of the Disputed Domain Names, the Panel finds that Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Disputed Domain Name was registered many years after Complainant first registered and used its VARIAN mark. Considering the evidence on the record provided by Complainant with respect to the extent of use of its VARIAN mark, the typosquatting of Complainant's mark in the Disputed Domain Name, combined with the absence of any evidence provided by Respondent to the contrary, it is sufficient to satisfy the Panel that, at the time the Disputed Domain Name was registered, Respondent undoubtedly knew of Complainant's VARIAN mark, and knew that it had no rights or legitimate interests in the Disputed Domain Name. Prior UDRP panels have held that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

There is no benign reason for Respondent to have registered the Disputed Domain Name. Further, the use by Respondent is clearly in bad faith. Complainant provided evidence Respondent used the Disputed Domain Name in a scheme to embezzle money from a customer of Complainant. Prior UDRP panels have held that the use of a domain name for purposes other than to host a website may constitute bad faith. See section 3.4 of the [WIPO Overview 3.0](#).

Accordingly, the Panel concludes that Complainant has satisfied 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 <varlans.com> be transferred to Complainant.

/Colin T. O'Brien/

Colin T. O'Brien

Sole Panelist

Date: July 18, 2023