

## **ADMINISTRATIVE PANEL DECISION**

### **Vero Biotech Inc. v. Pape Salif Keita, Chengdu Vero Biotechnology Case No. D2023-2097**

#### **1. The Parties**

The Complainant is Vero Biotech Inc., United States of America (“United States”), represented by Mitchell, Silberberg & Knupp, LLP, United States.

The Respondent is Pape Salif Keita, Chengdu Vero Biotechnology, Canada.

#### **2. The Domain Name and Registrar**

The disputed domain name <verobiotech.com> (the “Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 11, 2023. On May 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On May 15, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 May 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 12, 2023. The Respondent did not submit any formal response. Accordingly, the Center notified the Parties the Commencement of Panel Appointment Process email on June 26, 2023.

The Center appointed Mathias Lilleengen 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 to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

The Complainant is a biotechnology company focused on the design, development, and commercialization of nitric oxide delivery systems to address unmet medical needs of patients with cardiopulmonary conditions.

The Complainant has continuously used the word mark VERO BIOTECH since 2018. It has trademark registrations, such as United States Registration No. 6,190,160 and European Union registration No.017932780. The Complainant has registered and uses domain name <vero-biotech.com>.

According to the Complainant, the Domain Name has been registered as long back as in 2012 by a third-party from China. The Domain Name resolved to a web page in Chinese in 2018 and 2021. The Respondent appears to have registered the Domain Name in 2022. At the time of drafting the Decision, the Domain Name resolved to a web page buying and selling domain names.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant provides evidence of trademark registrations and argues that the Domain Name incorporates the Complainant's trademark, and it is confusingly similar to the Complainant's trademark.

The Complainant argues that the Respondent has no rights or legitimate interests in respect of the Domain Name. The Respondent has no authorization to register the Domain Name. The Respondent has not been commonly known by the Domain Name. The Respondent has not provided any evidence of *bona fide* use of, or demonstratable preparations to use, the Domain Name in connection with any legitimate offering of goods or services. The use of the Domain Name is rather evidence of bad faith.

The Complainant argues that the Respondent knew of the Complainant's trademarks at the time of registration of the Domain Name. The Respondent has acquired the Domain Name for the purpose of selling it to the Complainant for an illicit profit. The Domain Name has resolved to a web page advertising the sale of the Domain Name. The Complainant has received numerous emails from the purported owner of the Domain Name, a person that appears to be connected to the Respondent.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

##### **A. Identical or Confusingly Similar**

The test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

The Complainant has established that it has rights in the trademark VERO BIOTECH. The Domain Name is identical to the Complainant's trademark. For the purpose of assessing under paragraph 4(a)(i) of the Policy, the Panel may ignore the generic Top-Level Domain ("gTLD"); see [WIPO Overview 3.0](#), section 1.11.1.

Based on the available record, the Panel finds the first element of the Policy has been established.

## B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name. While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, 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. See [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Domain Name.

The Respondent is not affiliated or related to the Complainant. There is no evidence that the Respondent has registered the Domain Name as a trademark or acquired trademark rights. There is no evidence of the Respondent’s use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services. The use of the Domain Name is evidence of bad faith, see below.

Based on the available record, the Panel finds the second element of the Policy has been established.

## C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The composition and use of the Domain Name make it probable that the Respondent was aware the Complainant and its prior rights when the Respondent acquired the Domain Name. The Respondent has not submitted any *bona fide* intent in relation to the Domain Name. The use of the Domain Name makes it probable that the Respondent has registered and used the Domain Name for the purpose of selling it to the Complainant for valuable consideration in excess of documented out-of-pocket costs directly related to the Domain Name. As a final indication of bad faith, the Respondent appears to have listed some false contact details.

For the reasons set out above, the Panel concludes that the Domain Name was registered and is being used in bad faith, within the meaning of paragraph 4(a)(iii) of the Policy. The third element of the Policy has 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 the Domain Name, <verobiotech.com> be transferred to the Complainant.

/Mathias Lilleengen/

**Mathias Lilleengen**

Sole Panelist

Date: July 13, 2023