

## **ADMINISTRATIVE PANEL DECISION**

### **Vtex Brasil Tecnologia Para E-Commerce LTDA v. KEO THANG Case No. D2023-2409**

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

The Complainant is Vtex Brasil Tecnologia Para E-Commerce LTDA, Brazil, represented by Daniel Advogados, Brazil.

The Respondent is KEO THANG, Thailand.

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

The disputed domain name <vtexday.com> 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 June 2, 2023. On June 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 5, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 6, 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 amendment to the Complaint on the same day.

The Center verified that the Complaint together with the amendment to 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 June 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 6, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 10, 2023.

The Center appointed Miguel B. O’Farrell as the sole panelist in this matter on July 12, 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, Vtex Brazil Tecnologia Para E-Commerce Limitada, is involved in the e-commerce technology business.

The Complainant owns several trademark registrations in Brazil and in the United Kingdom for the stylized mark VTEX DAY and the word mark VTEX, including Brazilian trademark registration No. 917119045 VTEX DAY (Stylized), registered on December 17, 2019, in class 41, as per registration certificate attached as Annex 4 to the Complaint.

In addition, the Complainant owns the domain names <vtex.com.br>, and <vtex.com>, which predates the disputed domain name <vtexday.com>, which was registered on April 3, 2021, and resolves to a website related to gambling.

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

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

The Complainant claims that the disputed domain name is confusingly similar to the trademark VTEX DAY and VTEX in which the Complainant has rights and that the Respondent has no rights or legitimate interests in the disputed domain name, which was registered and is being used in bad faith.

More specifically, there is no evidence that Respondent uses or prepared to use the disputed domain name in connection with a *bona fide* offering of goods or services. In fact, as per the content of the website to which the disputed domain name resolves, there is no apparent service being offered, just links to what are apparently gambling.

By using the disputed domain name, the Respondent intentionally attempted to attract for commercial gain, Internet users to the Respondent's website by creating likelihood of confusion with the Complainant's marks VTEX DAY and VTEX as to source, sponsorship, affiliation, or endorsement of the Respondent's website or location or maybe just for clicks in its content (gambling) to obtain some economic gain.

Considering the content of the website, it may be assumed that using a proxy or privacy service, the Respondent has incurred in bad faith with the registration of the disputed domain name with the Complainant's worldwide registered trademark VTEX DAY.

In addition, the Complainant tried to contact the Respondent via the Registrar's services with no success, even after dozens of attempts.

Finally, the Complainant requests the Panel to issue a decision ordering the transfer of the disputed domain name to the Complainant.

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

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

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

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove each of the following, namely that:

- (i) the disputed domain name is identical or confusingly similar with 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 was registered and is being used in bad faith.

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

As set forth in section 1.7 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name to determine whether the disputed domain name is confusingly similar with the trademark. The test involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Panel considers that the Complainant has proven to have rights in the trademark VTEX DAY.

The disputed domain name incorporates the Complainant's trademark VTEX DAY in its entirety, with the only addition of the ".com" generic Top-Level Domain ("gTLD") viewed as a standard registration requirement and is generally disregarded under the first element confusing similarity test, as set forth in section 1.11.1 of [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the disputed domain name is identical to the trademark VTEX DAY in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy are fulfilled.

#### **B. Rights or Legitimate Interests**

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in a domain name by demonstrating any of the following non-exclusive defenses:

- (i) before any notice to it of the dispute, 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; or
- (ii) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established, as it is put in section 2.1 of [WIPO Overview 3.0](#), that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

There is no evidence in the present case that the Respondent has been commonly known by the disputed domain name, enabling it to establish rights or legitimate interests therein.

Furthermore, there is no evidence in the file to prove any of the circumstances mentioned in paragraph 4(c) of the Policy, nor any other circumstances to suggest that the Respondent has rights or legitimate interests in the disputed domain name.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not responded and the Panel is unable to conceive of any basis upon

which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the disputed domain name (*Telstra Corporation Limited. v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been fulfilled.

### **C. Registered and Used in Bad Faith**

The Panel is satisfied that the Respondent must have been aware of the Complainant's business and trademark VTEX DAY mentioned in section 4 above (Factual Background) and also the Complainant's websites to which its domain names <vtex.com.br> and <vtex.com> resolve when it registered the disputed domain name on April 3, 2021.

By registering the disputed domain name, the Respondent was targeting the Complainant and its business by incorporating the Complainant's trademark VTEX DAY in the disputed domain name in its entirety.

The fact that there is a clear absence of rights or legitimate interests coupled with no explanation for the Respondent's choice of the disputed domain name and the nature of the disputed domain name, are indicative of bad faith (as stated in section 3.2.1 of the [WIPO Overview 3.0](#)).

The Panel finds that the Respondent registered and is using the disputed domain name in bad faith and that the requirements of paragraph 4(a)(iii) of the Policy have been fulfilled

### **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 <vtexday.com> be transferred to the Complainant.

*/Miguel B. O'Farrell/*

**Miguel B. O'Farrell**

Sole Panelist

Date: July 20, 2023