

ADMINISTRATIVE PANEL DECISION

Triumph International (Vietnam) Ltd. v. hoang hoang trung
Case No. D2023-2570

1. The Parties

The Complainant is Triumph International (Vietnam) Ltd., Viet Nam, represented by BMVN International LLC, Viet Nam.

The Respondent is hoang hoang trung, Viet Nam.

2. The Domain Name and Registrar

The disputed domain name <triumphvietnam.com> is registered with Porkbun LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 14, 2023. On June 15, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 15, 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 (Whois Privacy, Private by Design, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 19, 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 June 23, 2023. The Center received two email communications from the Respondent on June 23, 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 July 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 24, 2023. The Respondent did not submit any response. The Center notified the commencement of Panel appointment process on July 25, 2023.

The Center appointed Marilena Comanescu as the sole panelist in this matter on July 31, 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 wholly owned subsidiary of Triumph Universa AG, from Switzerland, and both are part of the Triumph Group which was founded in 1886. The name "Triumph" was adopted in 1902.

The Triumph Group is one of the world's largest intimate apparel companies, with presence in over 80 countries, serving globally 20,000 wholesale customers and selling its products in more than 2,300 controlled points of sale as well as via several own online shops.

In Viet Nam, the Triumph Group's presence began in 1992 with the establishment of the Complainant. In Viet Nam the Complainant carries out activities including manufacturing and distributing its products in 68 stores through the country. On December 2, 2013 the Triumph Group and the Complainant entered into a Trademark Licence Agreement regulating, in particular, the right to use the TRIUMPH trademark.

The Triumph Group owns at least 791 trademark registrations in more than 60 countries worldwide designating, *inter alia*, Viet Nam, such as the following:

- the International trademark registration number 292135 for the word TRIUMPH, registered on December 18, 1964, and covering goods in Nice classes 5, 10, 24, 25; and
- the International trademark registration number 288516 for the word TRIUMPH, registered on September 12, 1964, and covering goods in Nice classes 1, 3, 5, 6, 7, 14, 16, 17, 18, 19, 20, 21, 22, 23, 25, 25, 26, and 27.

To maintain an active and strong presence online, the Triumph Group operates numerous websites incorporating the TRIUMPH mark such as the following: "www.triumph.com", "www.triumph.com.vn", "www.triumph.de", or "www.triumph.ch".

The disputed domain name was registered on February 28, 2023, and at the time of filing the Complaint, according to Annex 4 to the Complaint, it was connected to a commercial website having the same look-and-feel as the Complainant's e-commerce website allegedly offering products marked TRIUMPH, and displaying the Complainant's TRIUMPH trademarks, photographs, and product images. Furthermore, on the page under the disputed domain name there was also displayed the name and the contact information of the Complainant in Viet Nam, without any disclaimer.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to its distinctive and well-known for many years trademark TRIUMPH, trade name, and domain names; that the Respondent has no rights or legitimate interests in the disputed domain name as it is not one of its authorized agents; and that the Respondent registered and is using the disputed domain name in bad faith.

B. Respondent

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

On June 23, 2023 the Center received two email communications from the Respondent stating in particular that, in fact, it was an error on an IT responsible person, whom accidentally took the Complainant's company

images and “the fact that I installed the demo web and forgot to delete is my personal fault (...) I promise not to use any images or web code from you again. Hope the refereee and you consider helping because I don't intentionally want to take your pictures and products to damage your reputation”.

6. Discussion and Findings

In view of the absence of a formal Response, the discussion and findings will be based upon the contentions in the Complaint and any reasonable position that can be attributable to the Respondent. Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) the respondent has no rights or legitimate interests in the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Panel will further analyze the potential concurrence of the above circumstances.

A. Identical or Confusingly Similar

The Panel finds that the Complainant holds rights in the TRIUMPH trademark.

The disputed domain name incorporates the Complainant's TRIUMPH trademark with an additional term, “vietnam”. However, such addition does not prevent a finding of confusing similarity as the Complainant's trademark is clearly recognizable within the disputed domain name.

The consensus view of UDRP panelists is that the addition of other terms (whether geographical, descriptive, pejorative, meaningless or otherwise) to trademarks in a domain name does not prevent a finding of confusing similarity, where the relevant trademark is recognizable within the domain name. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)).

Further, it is well established in decisions under the UDRP that the Top-Level-Domain (“TLD”) (e.g., “.com”, “.info”, “.net”) may typically be disregarded for the purposes of consideration of confusing similarity between a trademark and a domain name. See section 1.11 of the [WIPO Overview 3.0](#).

Given the above, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark TRIUMPH, pursuant to the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Complainant asserts that the Respondent does not hold any trademark rights, license, or authorization whatsoever to use the mark TRIUMPH, that the Respondent is not commonly known by the disputed domain name, and that the Respondent has not used the disputed domain name in connection with a legitimate noncommercial or fair use or a *bona fide* offering of goods and services.

In line with the consensus view of UDRP panelists, “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 section 2.1 of the [WIPO Overview 3.0](#).

The Complainant has put forward a *prima facie* case that the Respondent does not have any rights or legitimate interests in the disputed domain name.

The Respondent has not substantially replied to the Complainant's contentions and has not come forward with relevant evidence to rebut the Complainant's *prima facie* case.

In this case, in its informal communications sent to the Center, the Respondent claims to be a sort of technical error or oversight, as it installed a demo and forgot to remove it, which is a defense very unlikely to accept for this Panel having in view all the circumstances in this case.

According to the records before it, the Respondent has used the disputed domain name in connection with a page providing goods similar to those offered by the Complainant, and was displaying the Complainant's trademarks, products images, and contact details along with the Respondent's details.

In certain cases, panels have recognized that resellers or service providers using a domain name containing the complainant's mark to undertake sales or repairs related to the complainant's goods and services may have a legitimate interest in such domain name. Relevant UDRP panel decisions in relation to this issue are helpfully summarized in section 2.8 of the [WIPO Overview 3.0](#) as follows:

Normally, a reseller, distributor or service provider can be making a *bona fide* offering of goods and services and thus have a legitimate interest in the domain name if its use meets certain requirements. These requirements normally include the actual offering of goods and services at issue, the use of the site to sell only the trademarked goods, the site's accurately and prominently disclosing the registrant's relationship with the trademark holder, and the respondent not trying to "corner the market" in domain names that reflect the trademark.

This summary stems from the UDRP panel decision *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#). At least one condition that is outlined has clearly not been satisfied by the Respondent in this case: at the time of filing the Complaint, on the website under the disputed domain name there was no accurate and clear information regarding the Respondent's rights and its (lack of) relationship with the Complainant and no disclaimer. Further, images of the Complainant's trademarks and official pictures were displayed without any consent from the Complainant, thus generating a likelihood of confusion for the Internet users accessing the Respondent's website and suggesting a false commercial relationship between the website under the disputed domain name and the Complainant.

Furthermore, and without prejudice to the above, the nature of the disputed domain name, comprising the Complainant's trademark in its entirety together with a geographical designation, carries a high risk of implied affiliation. See section 2.5.1 of the [WIPO Overview 3.0](#).

For all these reasons, the Panel finds that the second element of the Policy is established, and the Respondent has no rights or legitimate interests in respect of the disputed domain name, pursuant to the Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

The Complainant holds registered trademarks for TRIUMPH since at least 1964, adopted the name "Triumph" back in 1902 and the trademark TRIUMPH is well-known internationally for several decades.

The disputed domain name was registered in February 2023 and incorporates the Complainant's mark with an additional term "vietnam", which designates a territory where the Complainant is present for two decades and has acquired substantial reputation. Furthermore, it is used to provide purportedly TRIUMPH -branded goods.

For the above reasons, the Panel finds that the disputed domain name was registered in bad faith, with knowledge of the Complainant, its business and particularly targeting the Complainant's trademark.

At the time of filing the Complaint, the disputed domain name resolved to a page providing goods similar to those of the Complainant; at present it resolves to a site with information about women's undergarments.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt "to attract, for commercial gain, Internet users to [the respondent's] website or other online location, by creating a likelihood of confusion with the complainant's 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" is evidence of registration and use in bad faith.

Given that the disputed domain name incorporates the Complainant's trademark and the website operated under the disputed domain name copied the look-and-feel of the Complainant's website, displayed the Complainant's trademarks, product images and the contact details of the Complainant in Viet Nam, indeed in this Panel's view, the Respondent intended to attract Internet users accessing the website corresponding to the disputed domain name who may be confused and believe that the website is held, controlled by, or somehow affiliated or related to the Complainant, for its commercial gain.

Further on, the informal communications sent by the Respondent to the Center may be considered an acknowledgement of the fact that the Respondent was well aware of the Complainant and its rights, and that it is not entitled to hold and use a domain name comprising and displaying a third party's trademark and product images. Having in view the other circumstances of this case, the Panel considers such facts a further evidence of bad faith.

Previous UDRP panels have found that the mere registration of a domain name that is identical or confusingly similar to a third party's well-known trademark can, by itself, constitute a presumption of bad faith for the purpose of Policy. See section 3.1.4 of the [WIPO Overview 3.0](#).

For all the above reasons, the Panel finds that the Respondent registered and is using the disputed domain name in bad faith, pursuant to the Policy, paragraph 4(a)(iii).

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 <triumphvietnam.com> be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: August 11, 2023