

ADMINISTRATIVE PANEL DECISION

SES-IMAGOTAG v. Wayne Gao

Case No. D2023-2807

1. The Parties

The Complainant is SES-IMAGOTAG, France, represented by Domgate, France.

The Respondent is Wayne Gao, United States of America ("United States").

2. The Domain Name and Registrar

The disputed domain name <vusions.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 30, 2023. On July 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 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 DomainsByProxy.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 13, 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 amended Complaints on July 24, 2023, and on July 27, 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 31, 2023. The Respondent sent an email communication to the Center on July 31, 2023. The proceedings were suspended on August 7, 2023, for purposes of settlement discussions. The proceedings were reinstituted on September 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 8, 2023. The Center informed the parties that it would proceed to panel appointment on October 10, 2023.

The Center appointed Steven A. Maier as the sole panelist in this matter on October 25, 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 publicly listed company registered in France. It is a provider of electronic shelf labelling solutions for the retail sector.

The Complainant's products include advanced, high resolution labelling displays, offered under the brand name and trademark VUSION. The Complainant is the owner of various registrations for that trademark, including for example:

- France trademark registration number 4400470 for the word mark VUSION, registered on February 23, 2018, and
- United States trademark registration number 6231012 for the word mark VUSION, registered on December 29, 2020.

The Complainant provides evidence that, on April 27, 2023, it entered into a USD 300 million contract with Walmart for its VUSION product, which resulted in its share price increasing dramatically in the first few minutes of trading.

The disputed domain name was registered on April 30, 2023.

The Complainant provides evidence that:

- on May 10, 2023, the disputed domain name resolved to a registrar-operated "parking page", including what appear to be pay-per-click ("PPC") links to various third-party websites; and
- the disputed domain name has subsequently resolved to a registrar-operated page, offering the disputed domain name for sale and inviting enquiries as to price (although another iteration of the relevant web page appears to suggest a price of USD 1,999).

5. Parties' Contentions

A. Complainant

The Complainant submits that its VUSION trademark is widely known in the retail sector and refers, for example, to media coverage of major contracts with COOP, Coca Cola, and others.

The Complainant submits that the disputed domain name is confusingly similar to its VUSION trademark, being identical to that trademark but for the addition of the letter "s", in an obvious attempt at cybersquatting.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It states that it has never licensed or authorized the Respondent to use its VUSION trademark and that the Respondent has not commonly been known by a name corresponding to the disputed domain name. The Complainant contends that it is obvious in the circumstances that the Respondent registered the disputed domain name in order to target its VUSION trademark.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. It submits that the Respondent clearly registered the disputed domain name on April 30, 2023, in response to the press announcement of the Complainant's Walmart contract three days earlier, on April 27, 2023.

The Complainant submits that the Respondent has sought to take unfair financial advantage of its VUSION trademark, by directing Internet users to PPC links and subsequently offering the disputed domain name for sale.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

The Respondent did not file a formal Response in the proceeding. In his email communication dated July 31, 2023, the Respondent stated:

"I registered a few domains for my US-based startup focusing on visual AI, but eventually we didn't use vusions.com. Then, I listed it on the market. Thought it was easy to spell and remember, so I gave it a price with which I can get some costs back for what I spent on all domains at the beginning.

What I read from the file you sent before: "The litigious domain name vusions.com was registered in April 30, 2023, only 3 days after the big announcement of the new contract with WALMART. This cannot be a coincidence."

Actually, I didn't know that there was a company using Vusion, as well as its cooperation with Walmart. That was a coincidence because we needed to establish the company in early May.

Anyway, if anyone needs this domain, please ask him or her to reach out to me. We can negotiate."

6. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

- (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 respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has established that it has registered trademark rights in respect of the mark VUSION.

The disputed domain name is identical to that trademark, but for the addition of a letter "s", which does not prevent the Complainant's trademark from being recognizable within the disputed domain name.

The Panel finds therefore that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

The Respondent provides no explanation for his choice of the disputed domain name, save to say that "it was easy to spell and remember." Nor does he provide any evidence of preparations to use the disputed domain name, whether in connection with any *bona fide* offering of goods or services, or with any legitimate noncommercial or fair purpose.

Noting the date of registration of the disputed domain name, three days following the press announcement of the Complainant's Walmart contract, the lack of any formal Response in the proceeding, and of any credible explanation for his choice of the disputed domain name, the Panel readily infers that the Respondent registered the disputed domain name for the purpose of taking unfair commercial advantage of the Complainant's goodwill attaching to its VUSION trademark.

The Panel therefore finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The disputed domain name is virtually identical to the Complainant's VUSION trademark and was registered three days following the media announcement of the Complainant's major Walmart contract. The Respondent having provided no credible explanation for his choice of the disputed domain name, the Panel infers that the Respondent registered the disputed domain name in bad faith, with the intention of taking unfair commercial advantage of the Complainant's VUSION trademark.

The Panel finds the disputed domain name to be inherently deceptive, as inevitably misrepresenting to Internet users that it is owned or operated by, or otherwise legitimately affiliated with, the Complainant.

Further, the Panel finds that, by using the disputed domain name to direct Internet users to third-party PPC links, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of his website or of a product or service on his website (paragraph 4(b)(iv) of the Policy).

The Panel also finds, on the basis of the Respondent's subsequent offer to sell the disputed domain name, and the reference in his email to the Center to a negotiation, that the Respondent registered the disputed domain name for the purpose of selling it to the Complainant for a sum in excess of his documented out-of-pocket costs directly related to the disputed domain name (paragraph 4(b)(i) of the Policy).

The Panel therefore finds that the disputed domain name has been registered and is being used in bad faith.

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, <vusions.com>, be transferred to the Complainant.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: November 8, 2023