

## **ADMINISTRATIVE PANEL DECISION**

Wanavit Manufacturing Co., Ltd v. Phan Van Thong  
Case No. D2023-3198

### **1. The Parties**

The Complainant is Wanavit Manufacturing Co., Ltd, Thailand, represented by BMVN International LLC, Viet Nam.

The Respondent is Phan Van Thong, Viet Nam.

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

The disputed domain name <hatarico.com> (the “Domain Name”) is registered with Mat Bao Corporation (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 25, 2023. On July 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On July 26, 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 August 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 22, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 23, 2023. On August 23, 2023, the Center received an email from the Respondent.<sup>1</sup>

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<sup>1</sup> The Panel notes the email was sent from the email address on the website to which the Domain Name resolves. Thus, it is appropriate to consider that the email was sent by the Respondent.

The Center appointed Ian Lowe as the sole panelist in this matter on September 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. For the reasons set out below, the Panel is prepared to admit in evidence the email from the Respondent dated August 23, 2023 and the attached document.

#### 4. Factual Background

The Complainant is a company based in Thailand, founded in 1980. It now employs more than 1,200 people and is a leading Thailand manufacturer of electronic fan products. The Complainant group owns the fan manufacturer Hatari Electric Co. Ltd founded in 1990 that claims profits of over USD 4.65 million from the export of HATARI products to Viet Nam in 2021.

The Complainant is the proprietor of a number of trademark registrations around the world in respect of HATARI, including Malaysian trademark registration No. 96005443 for **Hatari**, registered on May 23, 1996, in international class 11.

The Domain Name was registered on September 4, 2020. It resolves to a website at the Domain Name which prominently features in the header of the home page the following mark (the “Hatari logo”):



The website, as auto translated by Google into the English language from Vietnamese, offers for sale a number of electronic products including fans, water purifiers, air purifiers, and a range of other household electronic products all apparently carrying the HATARI brand. The Contact Info gives the name “CÔNG TY CỔ PHẦN HATARI” (which may be translated as “Hatari Joint Stock Company”).

#### 5. Parties' Contentions

##### A. Complainant

The Complainant contends that the Domain Name is confusingly similar to its HATARI trademark, that the Respondent has no rights or legitimate interests in respect of the Domain Name, and that the Respondent registered and is using the Domain Name in bad faith.

So far as trademark rights are concerned, the Complainant exhibits a WIPO Global Brand Database report listing 11 registrations of the HATARI trademark owned by the Complainant. These include Lao People's Democratic Republic trademark number 4441 for HATARI registered on June 6, 1996, and Malaysia trademark number 96005443 in respect of the Hatari logo registered on May 24, 1996 in international class 11. The report does not include a Viet Nam trademark registration. However, the Complainant separately exhibits a copy of a certificate for Viet Nam trademark number 24015-001 and what purports to be a letter from the Intellectual Property Office of Viet Nam certifying that trademark number 24015-001 was amended to record the new owner as the Complainant on November 11, 2016 and that the trademark registration was renewed on that date to May 8, 2026.

The Complainant states that the Respondent does not have any connection with the Complainant and has never been licensed or authorised by the Complainant to use the HATARI trademark. It asserts that the Respondent did not register the Domain Name for any legitimate purpose but rather to appropriate the fame and reputation of the HATARI trademark.

The Complainant argues that the Respondent registered and is using the Domain Name in bad faith because it was clearly aware of the Complainant and its HATARI mark when it registered the Domain Name. The Complainant further asserts that although the Respondent's website offers a wide range of products bearing

the Complainant's HATARI trademark, most of the products offered are not the Complainant's genuine products. It repeats that the Respondent is not authorized by the Complainant to use the word HATARI with product names.

## **B. Respondent**

The Respondent did not formally reply to the Complainant's contentions. However, on the day on which the Respondent was notified that it was in default by failing to comply with the deadline for filing a response to the Complaint, the Respondent sent an email to the Center stating that the Respondent was not good at English and had to rely on Google translate and did not understand why there was a domain name dispute. The Respondent stated that HATARI was its trademark and attached a copy of a Viet Nam trademark certificate with registration number 394656, although it is not apparent what mark it relates to.

In order to consider all the circumstances of the case, the Panel has decided to admit the Respondent's email and attachment in evidence.

## **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the Domain Name the Complainant must prove that:

- (i) the Domain Name is identical or confusingly similar to 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 Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

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

The Complainant has uncontested rights in the HATARI mark by virtue of the 11 trademark registrations cited in its evidence, and as a result of the goodwill and reputation acquired through its use of the mark for a number of years. Ignoring the generic Top-Level Domain ("gTLD") ".com", the Domain Name comprises the entirety of the mark together with the letters "co", a common abbreviation for "company". In the Panel's view, the addition of these letters does not prevent a finding of confusing similarity between the Domain Name and the mark. Accordingly, the Panel finds that the Domain Name is confusingly similar to a mark in which the Complainant has rights.

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

Section 4.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([WIPO Overview 3.0](#)), notes that "it has been accepted that a Panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision". The Panel has undertaken a search of the WIPO Global Brand database which records that Viet Nam trademark number 4-0394656-000 HATARI in international classes 11 and 35, was registered on August 3, 2021 in the name of "Công ty cổ phần thiết bị công nghệ Toàn Cầu", which according to Google Translate means "Global Technology Equipment Joint Stock Company".

The WIPO Global Brand database also includes Viet Nam trademark number 4-0024015-000 in international classes 7,8, 9, and 11, in respect of the Hatari logo that was registered on March 31, 1997, and recorded as having a new owner, the Complainant, on June 12, 2006 (or possibly December 6, 2006), but expired on May 8, 2016.

Further, the WIPO Global Brand database also includes a pending application (serial number: 4-2021-36235) by Công ty cổ phần thiết bị công nghệ Toàn Cầu (Global Technology Equipment Joint Stock Company) to register the Hatari logo. These records on the WIPO Global Brand database in respect of Viet Nam trademarks also appear on the Intellectual Property Office of Vietnam database at “wipopublish.ipvietnam.gov.vn”.

The Panel notes that despite having relied on a report generated from the WIPO Global Brand database the Complainant makes no mention in the Complaint either of the database’s recording the expiry of the Viet Nam trademark the Complainant claims to be subsisting, or of the Viet Nam registration of the HATARI mark by a third party in 2021.

The website at the Domain Name purports to be operated by CÔNG TY CỔ PHẦN HATARI (Hatari Joint Stock Company). Although the Complainant makes the bare assertion that a large number of the products offered for sale under the HATARI mark on the website are not the genuine products of the Complainant, it does not provide any detail of this allegation or any support for it.

In the circumstances, the Panel is prepared to accept, on balance, that the Respondent is entitled to rely for the purposes of this Complaint on Viet Nam trademark registration number 394656. The Complainant ought clearly to have been aware of the inconsistency between the database records and the case it was advancing with the support of a letter from the Viet Nam trademark office, given its reliance on the WIPO database. This called at the very least for some explanation by the Complainant.

The Panel finds that the *prima facie* case established by the Complainant is displaced and that the Complainant has failed to establish that the Respondent does not have any rights or legitimate interests in respect of the Domain Name.

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

In light of the Panel’s finding in relation to rights or legitimate interests, the Panel does not need to consider whether the Respondent registered and is using the Domain Name in bad faith.

There is a glaring inconsistency between the case advanced by the Complainant as to its rights to a Viet Nam trademark in respect of the mark, supported by a letter from the Intellectual Property Office of Viet Nam, and the records on the WIPO Global Brand database (echoed in the database promulgated by the Intellectual Property Office of Viet Nam).

As noted above, the letter from the Viet Nam trademark office indicates that the Complainant’s trademark number 24015-001 for HATARI in international class 11 has been renewed to May 8, 2026, while the Respondent claims that it has rights in the Viet Name trademark number 394656 for HATARI in international classes 11 and 35. Due to limited information on records, the relationships among the Respondent, the trademark holder for the Viet Name trademark number 394656 Công ty cổ phần thiết bị công nghệ Toàn Cầu (Global Technology Equipment Joint Stock Company), and the company displayed on the website CÔNG TY CỔ PHẦN HATARI (Hatari Joint Stock Company), are not clear. Both Parties claim their rights in the mark HATARI in international class 11 in Viet Nam, and it appears that wider trademark disputes have been placed before the Panel in the present case. Ultimately, the Panel considers that the issues arising in this proceeding are not well suited to a proceeding under the Policy and should more appropriately be dealt with in Court proceedings.

So far as the Complaint is concerned, the Panel is conscious that its findings rely on a late informal submission filed by the Respondent, albeit supported by a search of the WIPO Global Brand database.

In those circumstances, and in light of the broader trademark issues which cannot be decided under the Policy, the Panel considers that the Complaint should be dismissed without prejudice.

## **7. Decision**

For the foregoing reasons, the Complaint is denied, but without prejudice to the matter being refiled should the Complainant be able to present evidence resolving the inconsistency as to the trademark position in Viet Nam.

*/Ian Lowe/*

**Ian Lowe**

Sole Panelist

Date: September 18, 2023