

ADMINISTRATIVE PANEL DECISION

CommVault Systems, Inc. v. Lucas Gates, Kroll Cyber Team
Case No. D2023-4518

1. The Parties

Complainant is CommVault Systems, Inc., United States of America (“United States”), represented by Wood, Herron & Evans, LLP, United States.

Respondent is Lucas Gates, Kroll Cyber Team, United States.

2. The Domain Name and Registrar

The Disputed Domain Name <commvaultcloud.com> is registered with Amazon Registrar, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 30, 2023. On October 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On November 1, 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 (Not Available from Registry/On behalf of commvaultcloud.com owner/Identity Protection Service) and contact information in the Complaint. The Center sent an email communication to Complainant on November 13, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on December 12, 2023.

The Center verified that the Complaint [together with the amendment to the Complaint/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 Respondent of the Complaint, and the proceedings commenced on December 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 2, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on January 5, 2024.

The Center appointed Richard W. Page as the sole panelist in this matter on January 10, 2024. 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

Complainant has used the COMMVAULT Mark in various formats since at least as early as January 1990 with a wide variety of computer and Internet-related goods and services, including without limitation computer hardware; computer software for information document and data storage; and for back-up and retrieval, namely, to access retrieve, manage, and recover data stored on magnetic disk, tape and other forms of electronic storage of data.

The Complainant is the owner of numerous registrations for the COMMVAULT Mark, including without limitation,

- United States for COMMVAULT Registration No. 1,650,465 dated July 9, 1991, in Class 9;
- European Union for COMMVAULT Registration No. 001638642 dated August 7, 2001, in Class 9; and
- United Kingdom for COMMVAULT Registration No. UK009001638642 dated August 7, 2001, in Class 9.

Respondent has no association with Complainant and has not been licensed or authorized to use the Disputed Domain Name or the COMMVAULT Mark.

The Disputed Domain Name was registered January 21, 2021, and does not resolve to an active website. The Disputed Domain Name is inoperable and returns the error message: "This site can't be reached."

5. Parties' Contentions

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name.

A. Complainant

Complainant contends that the Disputed Domain Name incorporates the entirety of the COMMVAULT Mark. The additional term "cloud" is generic and confusing when used with the Disputed Domain Name. Complainant further contends that the term is commonly used in connection with enterprise software and cloud-based services, so the inclusion of this term in the Disputed Domain Name is insufficient to obviate the likelihood of confusion with the COMMVAULT Mark.

Complainant further contends that the term "cloud" is intended to increase the likelihood of confusion with the COMMVALUT Mark, since it is used in connection with Complainant's cloud-based software products and cloud-based services. Complainant further contends that it is a leader in the cloud-based data storage market and consumers associate the COMMVAULT Mark with software, software-as-a-service, and cloud-based software products.

Complainant asserts that it is not aware of any evidence of Respondent's use of, or demonstrable preparations to use, the Disputed Domain Name or a name corresponding to the Disputed Domain Name with a bona fide offering of good or services, nor of any legitimate use of the Disputed Domain Name by Respondent.

Complainant further asserts that Respondent has not at any time been commonly known by the Disputed Domain Name.

Complainant alleges that Respondent registered the Disputed Domain Name well after registration of the COMMVALUT Mark, and thus had actual and constructive knowledge of Complainant's rights in the COMMVALUT Mark.

In addition, Complainant alleges that Respondent has engaged in passive holding of the Disputed Domain Name, because the Disputed Domain Name does not resolve to an active website.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: "A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules, and any rules and principles of law that it deems applicable."

Even though Respondent has failed to file a Response or to contest Complainant's assertions, the Panel will review the evidence proffered by Complainant to verify the essential elements of the claims. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3.

Paragraph 4(a) of the Policy directs that Complainant must prove each of the following three elements:

- i) that the Disputed Domain Name registered by Respondent is identical or confusingly similar to the COMMVAULT Mark in which Complainant has rights; and,
- ii) that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and,
- iii) that the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between Complainant's COMMVAULT Mark and the Disputed Domain Name. [WIPO Overview 3.0](#), section 1.7.

Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the Disputed Domain Name. Accordingly, the Disputed Domain Name is confusingly similar to the COMMVAULT Mark the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The addition of other terms here, "cloud," does not prevent a finding of confusing similarity between the Disputed Domain Name and the COMMVAULT Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Although the overall burden of proof in UDRP proceedings is on Complainant, panels have recognized that proving Respondent lacks rights or legitimate interests in the Disputed Domain Name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of Respondent. As such, where Complainant makes out a prima facie case that Respondent lacks

rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name (although the burden of proof always remains on Complainant). If Respondent fails to come forward with such relevant evidence, Complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the Disputed Domain Name. Respondent has not rebutted Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name such as those enumerated in the Policy or otherwise.

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 the Disputed Domain Name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether Respondent's registration and use of the Disputed Domain Name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the Disputed Domain Name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of complainant's mark, and (ii) the failure of respondent to submit a response or to provide any evidence of actual or contemplated good-faith use. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness and reputation of Complainant's COMMVAULT Mark, and the composition of the Disputed Domain Name, and finds that in the circumstances of this case the passive holding of the Disputed Domain Name does not prevent a finding of bad faith under the Policy.

The Panel also finds that Respondent knew or should have known of Complainant's rights in the COMMVAULT Mark.

The Panel finds that Complainant has established the third element of the Policy.

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 <commvaultcloud.com> be transferred to Complainant.

/Richard W. Page/

Richard W. Page

Sole Panelist

Date: January 23, 2024