

## **ADMINISTRATIVE PANEL DECISION**

Vente-privee.com v. FosterWilliam

Case No. D2023-4999

### **1. The Parties**

The Complainant is Vente-privee.com, France, represented by Cabinet Degret, France.

The Respondent is FosterWilliam, China.

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

The disputed domain name <vp-mall.xyz> is registered with Dynadot Inc (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 30, 2023. On December 1, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 3, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 4, 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 December 8, 2023.

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 December 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 3, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 9, 2024.

The Center appointed Adam Taylor as the sole panelist in this matter on January 12, 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

For some 20 years, the Complainant has sold a range of discounted goods and services online, particularly through “flash sales”. In 2019, the Complainant rebranded itself from VENTE-PRIVEE to VEEPEE. The Complainant has over 6,000 employees and, in 2021, its turnover exceeded EUR 4 billion.

The Complainant’s registered trade marks include figurative European Union trade mark No. 006386197 for VP, registered on March 24, 2013, in classes 9, 16, 35, 38, 41 and 42.

The Complainant operates a website at “www.veepee.com”.

The disputed domain name was registered on July 24, 2023.

On August 16, 2023, the Respondent was found to have registered and used the domain name <veepeemail.cc> in bad faith in another UDRP case. See *Vente-Privee.Com v. Foster William*, WIPO Case No. [DCC2023-0008](#).

As of November 22, 2023, the disputed domain name resolved to a website branded “Veepee Mall” including the Complainant’s distinctive pink logo. The home page comprised a login/account creation form plus some introductory text that sought to give the impression that the Complainant was the operator of the website.

As of November 29, 2023, the Respondent’s website was blocked by Firefox (a browser) and Bitdefender (antivirus software) on grounds of suspected phishing or other malicious activity.

#### 5. Parties’ Contentions

##### A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

##### B. Respondent

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

#### 6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- 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 the Complainant’s trade mark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“[WIPO Overview 3.0](#)”), section 1.7.

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

The entirety of the Complainant's VP mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the Complainant's VP mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, "-mall") may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the 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**

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognised that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the 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.

In particular, panels have held that the use of a domain name for illegal activity (here, claimed phishing, distribution of malware and impersonation) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. See further under the third element below.

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

## **C. Registered and Used 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 a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have held that the use of a domain name for illegal activity (here, claimed phishing, distribution of malware and impersonation) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Furthermore, the Panel notes that, as mentioned in section 4 above, the Respondent has been found to have registered and used a very similar domain name in bad faith in *Vente-Privee.Com v. Foster William*, WIPO Case No. [DCC2023-0008](#). The Panel also notes that the Respondent had used that domain name for a very similar website to that of the disputed domain name.

The Panel finds that the 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, <vp-mall.xyz>, be transferred to the Complainant.

*/Adam Taylor/*

**Adam Taylor**

Sole Panelist

Date: January 26, 2024