

ADMINISTRATIVE PANEL DECISION

Nammo Vihtavuori Oy v. Mason Wood
Case No. D2023-5072

1. The Parties

The Complainant is Nammo Vihtavuori Oy, Finland, represented by Heinonen & Co., Attorneys-at-Law Ltd., Finland.

The Respondent is Mason Wood, United States of America.

2. The Domain Name and Registrar

The disputed domain name <vihtavuoripowdersusa.com> is registered with NameSilo, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 5, 2023. On December 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 6, 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 (Private Registrant, PrivacyGuardian.org llc) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 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 an amended Complaint on December 18, 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 January 4, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 24, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 1, 2024.

The Center appointed Peter Burgstaller as the sole panelist in this matter on February 6, 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

The Complainant is a producer of high-quality gunpowder and is part of the Nammo Group, one of the world's largest suppliers of ammunition and rocket motors (Annex 15 – 16 to the Complaint).

The Complainant owns trademark registrations containing the mark VIHTAVUORI around the word, inter alia:

- United States of America trademark V VIHTAVUORI (figurative), Registration No 4223845, registered on October 16, 2012;
- European Union trademark V VIHTAVUORI (figurative), Registration No 1102746, registered on September 22, 2011;
- European Union trademark V VIHTAVUORI (figurative), Registration No 1732601, registered on November 22, 2001;
- United Kingdom trademark V VIHTAVUORI (figurative), Registration No UK00801102746, registered on November 14, 2012 (Annex 6 – 15 to the Complaint).

Further, the Complainant owns the domain name <vihtavuori.com>, which addresses its main business website (Annex 15 – 16 to the Complaint).

The disputed domain name was registered on January 1, 2023 (Annex 1 to the Complaint). It resolves to a website which shows the Complainant's products and uses the Complainant's logo as well as identical model images and product names. (Annex 17 - 19 to the Complaint; Panel's independent research on February 2, 2024).

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.

Notably, the Complainant contends that the V VIHTAVUORI trademark is distinctive and well-known and notes that the disputed domain name contains the V VIHTAVUORI trademark almost in its entirety, simply omitting the letter "V" at the beginning and adding the descriptive terms "powder" and "usa". The Complainant submits that it is therefore inconceivable that the Respondent would not have been aware of the Complainant's trademark when registering the disputed domain name, or that there would be any legitimate use for the disputed domain name. Further, the Complainant has never authorized the Respondent to register or use the V VIHTAVUORI trademark in any manner.

The Complainant notes that the disputed domain name is actively used for allegedly selling the Complainant's branded products through a webshop, available on the website to which the disputed domain name resolves, branded with the Complainant's distinctive and well-known trademark.

Hence, the Complainant contends, that based on the totality of these factors, it is clear that the Respondent is acting in bad faith with the intent to create a likelihood of confusion with the Complainant's mark and its legitimate e-commerce website.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove that:

- (i) the disputed 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 with respect to 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

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 trademark 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 submitted evidence, which incontestably and conclusively establishes rights in the mark V VIHTAVUORI.

In the present case, the disputed domain name <vihtavuoripowdersusa.com> is confusingly similar to the V VIHTAVUORI mark in which the Complainant has rights since the Complainant's mark is clearly recognizable in the disputed domain name.

It has long been established under UDRP decisions that where the relevant trademark is recognizable within the disputed domain name the mere addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) will not prevent a finding of confusing similarity under the first element of the Policy. [WIPO Overview 3.0](#), section 1.8.

This is the case at present: The omission of the letter "V" and the addition of the terms "powder" and "usa" in the disputed domain name does not prevent a finding of confusing similarity, since the trademark VIHTAVUORI is recognizable in the disputed domain name.

Finally, it has also long been held that generic Top-Level Domains are generally disregarded when evaluating the confusing similarity under the first element.

Based on the available record, 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.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible 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. 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 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 Complainant focuses on the fact that its trademark is distinctive, well known, registered in a variety of jurisdictions around the world and provides suitable evidence of its reputation, adding that it is inconceivable that the Respondent would not have been aware of this when registering the disputed domain name. The Respondent did not reply to the Complainant's contentions and hence has not rebutted the Complainant's prima facie showing.

Furthermore, the nature of the disputed domain name, comprising the Complainant's mark almost in its entirety together with a geographic and descriptive term, cannot be considered fair use as it falsely suggests an affiliation with the Complainant that does not exist. [WIPO Overview 3.0](#), section 2.5.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

As stated in many decisions rendered under the Policy, both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainant must show that:

- the disputed domain name was registered by the Respondent in bad faith, and
- the disputed domain name is being used by the Respondent in bad faith.

(i) The Complainant has established rights in the registered trademark V VIHTAVUORI, long before the registration of the disputed domain name. Further, the trademark V VIHTAVUORI is distinctive and is well-known for gunpowder. The Respondent offers the Complainant's products and uses the Complainant's logo as well as identical model images and product names on its website addressed by the disputed domain name.

It is therefore inconceivable for this Panel that the Respondent registered and used the disputed domain name without knowledge of the Complainant's rights, which leads to the necessary inference of bad faith. This finding is supported by the fact that the disputed domain name incorporates the Complainant's distinctive registered trademark almost entirely, together with the suffix "powder" and "usa" which clearly refers to the Complainant's business. All of which in fact indicate that the Respondent must have been aware of the Complainant's business and trademark when registering the disputed domain name.

Therefore, the Panel is convinced that the disputed domain name was registered in bad faith by the Respondent.

(ii) The Complainant put forward evidence that the disputed domain name resolves to a website which contains the Complainant's registered trademark and logo, and where the Respondent offers the Complainant's products for sale. Furthermore, the Respondent copied products, product names combined with identical model images from the Complainant and uses on its website addressed by the disputed domain name together with the Complainant's Logo and registered trademark.

In doing so, the Respondent intentionally attempted to attract Internet users to its website for commercial gain, by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation or endorsement of its website according to paragraph 4(b)(iv) of the Policy – this constitutes bad faith use of the disputed domain name.

Based on the available record, 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 <vihtavuoripowdersusa.com> be transferred to the Complainant.

/Peter Burgstaller/

Peter Burgstaller

Sole Panelist

Date: February 16, 2024