

ADMINISTRATIVE PANEL DECISION

Tecno Cover S.R.L. v. emir kurt
Case No. D2024-0895

1. The Parties

The Complainant is Tecno Cover S.R.L., Italy, represented by Studio BM&A, Italy.

The Respondent is emir kurt, Turkey.

2. The Domain Name and Registrar

The disputed domain name <vivacethestove.com> is registered with Dynadot Inc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 29, 2024. On March 7, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 7, 2024, 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 (Super Privacy Service LTD c/o Dynadot) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 8, 2024, 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 March 12, 2024.

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 March 14, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 3, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 4, 2024.

The Center appointed Adam Taylor as the sole panelist in this matter on April 11, 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

Since 2004, the Complainant has supplied stoves for heating purposes, fireplaces and related products, originally under the mark STOVE ITALY. In 2021, the Complainant's turnover was approximately EUR 7.6 million.

Following a decision by the Complainant to rebrand as VIVACE / VIVACE THE STOVE, on January 24, 2024, the Complainant filed European Union Trade Mark application no. 018978084 and Italian Trade Mark application no. 302024000011556, both for VIVACE THE STOVE, in class 11.

By at least February 16, 2024, the Complainant had rebranded its website at "www.stoveitaly.com" as VIVACE THE STOVE. At around that time, the Complainant issued a brochure with the same branding.

The disputed domain name was registered on January 24, 2024.

As of February 16, 2024, the disputed domain name resolved to a webpage offering the disputed domain name for sale at a price of USD 2,850.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for 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.

While the UDRP makes no specific reference to the date on which the holder of the trade mark or service mark acquired its rights, such rights must be in existence at the time the complaint is filed. [WIPO Overview 3.0](#), section 1.1.3. A pending trade mark application would not by itself establish trade mark rights. [WIPO Overview 3.0](#), section 1.1.4.

While the Complainant had only traded under the VIVACE THE STOVE mark for a short time before the Complaint was filed, the Panel nonetheless notes that the mark is highly distinctive and that the Complainant was already undertaking a significant level of business at the time of the rebrand, making it likely that a substantial number of its customers became aware of its new mark relatively quickly.

Accordingly, and noting that the first element is purely a threshold test, as mentioned above, the Panel finds the Complainant has established unregistered trade mark or service mark rights for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3.

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

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.

As to paragraph 4(c)(i) of the Policy, the Panel does not consider that use of the disputed domain name for a website offering the disputed domain name for sale constitutes a bona fide offering in the circumstances outlined in section 6C below where the Panel has concluded that the Respondent registered the disputed domain name for the purpose of sale to the Complainant.

Nor is there any evidence that paragraphs 4(c)(ii) or (iii) of the Policy are relevant in the circumstances of this case.

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 a domain name in bad faith.

Where a respondent registers a domain name before the complainant's trade mark rights accrue, panels will not normally find bad faith on the part of the respondent. [WIPO Overview 3.0](#), section 3.8.1. However, where the facts of the case establish that the respondent's intent in registering the domain name was to unfairly capitalise on the complainant's nascent (typically as yet unregistered) trade mark rights, panels have been prepared to find that the respondent has acted in bad faith. Such scenarios include registration of a domain name following the complainant's filing of a trade mark application. [WIPO Overview 3.0](#), section 3.8.2.

In the present case, the Panel notes that, while the Respondent registered the identical disputed domain name before the Complainant's trade mark rights had accrued, the Respondent did so on the very day that the Complainant applied for registration of its highly distinctive trade mark.

In the circumstances, the Panel has little difficulty concluding that the Respondent's sale offer on its website was directly aimed at the Complainant and, accordingly, that the Respondent registered the disputed domain name for sale to the Complainant for an amount likely in excess of the Respondent's out-of-pocket costs in accordance with paragraph 4(b)(i) of the Policy.

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 <vivacethestove.com> be transferred to the Complainant.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: April 25, 2024