

ADMINISTRATIVE PANEL DECISION

Nicoventures Holdings Limited v. Isidre Monner, Ativape, S.L
Case No. D2024-1494

1. The Parties

The Complainant is Nicoventures Holdings Limited, United Kingdom, represented by Demys Limited, United Kingdom.

The Respondent is Isidre Monner, Ativape, S.L, Spain.

2. The Domain Name and Registrar

The disputed domain name <vusego.online> is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 9, 2024. On April 9, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 10, 2024, the Registrar transmitted by email to the Center its verification response, disclosing registrant and contact information for the disputed domain name. The Center sent an email communication to the Complainant on April 15, 2024, providing the full 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 April 19, 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 April 22, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 12, 2024. The Respondent sent an email communication to the Center on May 10, 2024. On May 20, 2024, the proceeding was suspended upon the Complainant's request, and on June 28, 2024, it was reinstituted.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on July 5, 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 part of the British American Tobacco group of companies ("BAT") and acts as an investment holding company in relation to new products. In addition to that, the Complainant's portfolio of products includes non-combustible vaping product sold under the VUSE brand, as well as the VUES GO a disposable electronic cigarette with no refills or charges, available in different flavours as well as nicotine-free options.

The Complainant, in addition to several others, operates the "www.vuse.com" website and is the owner of several trademark registrations, amongst which (Annex 10 to the Complaint):

- United Kingdom registration No. UK00910885994 for the word mark VUSE, filed on May 15, 2012, registered on November 27, 2012, successively renewed, in international classes 9 and 34;
- European Union registration No. 010885994 for the word mark VUSE, filed on May 15, 2012, registered on November 27, 2012, successively renewed, in international classes 9 and 34;
- United Kingdom registration No. UK00003780687 for the word mark VUSE GO, filed on April 25, 2022, registered on July 22, 2022, in international class 34; and
- European Union registration No. 018691729 for the word mark VUSE GO, filed on April 25, 2022, registered on September 22, 2022, in international class 34.

The disputed domain name was registered on December 28, 2023, and presently does not resolve to an active webpage.

At the time of the filing of the Complaint an online shop targeting the Spanish market resolved from the disputed domain name offering the Complainant's products as well as competing tobacco products and/or accessories of other commercial origin.

The Complainant sent the Respondent a warning letter on January 30, 2024. On March 6, 2024, the Respondent replied stating that it is a small cigar shop that resells BAT products as well as VUSE products and that the purpose of having the disputed domain name was to retain the local customers, informing that no sales had taken place since its publication and welcoming any modification requests. The Complainant's representative replied on March 15, 2024, inquiring whether the Respondent would be willing to transfer the disputed domain name to the Complainant. No further communication appears to have taken place between the Parties. (Annexes 8 and 9 to the Complaint).

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 disputed domain name incorporates the Complainant's VUSE GO mark in its entirety and further argues that the Respondent's registration and use of the disputed domain name is not authorized by, endorsed by, or otherwise affiliated with the Complainant; also not having the website that used to be available at the disputed domain name a disclaimer that would clarify the lack of relationship between the Parties.

Regarding the absence of the Respondent's rights or legitimate interests, the Complainant argues that:

- (i) the Respondent is not commonly known by the disputed domain name;
- (ii) the Respondent is not a licensee of the Complainant and has not received any permission or consent from the Complainant to use its marks or to act as an authorized distributor of its goods; also not having the Respondent received any permission or consent from the Complainant to use the Complainant's trademarks, brands and copyright material on the website associated with the disputed domain name;
- (iii) the disputed domain name falsely implies affiliation between the Respondent and the Complainant and therefore the Respondent cannot have a legitimate interest in the disputed domain name; and
- (iv) given that the website that used to be available at the disputed domain name offered other third-party goods for sale alongside the Complainant's products and did not accurately and prominently disclosed the lack of relationship with the Complainant, the circumstances of the *Oki Data* test are not met in this case to characterize a bona offer of goods and services (as established in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)).

As to the registration and use of the disputed domain name in bad faith, the Complainant states that:

- (i) the Respondent knew of the Complainant's trademarks when registering the disputed domain name;
- (ii) the purpose of the Respondent's registration of the disputed domain name was to attract, for commercial gain, Internet users to the website by creating a likelihood of confusion with the Complainant's registered trademark as to the source, sponsorship, affiliation, or endorsement of its website; and
- (iii) by reproducing the Complainant's registered trademark in the disputed domain name and offering the Complainant's products at the website at the disputed domain name, the Respondent clearly sought to suggest to be an affiliated dealer of the Complainant as the source of the website which is not the case.

B. Respondent

The Respondent did not formally reply to the Complainant's contentions. On May 10, 2024, the Respondent sent an informal message to the Center, in Spanish, stating that the account for the disputed domain name had been cancelled and that it would become available on June 25, 2024.

6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth the following three requirements which the Complainant must meet in order for the Panel to order the transfer of the disputed domain name:

- (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 in respect of 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 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 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 recognized 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.

In that sense, the Complainant indeed states that the Respondent is not a licensee of the Complainant and has not received any permission or consent from the Complainant to use its marks or to act as an authorized distributor of its goods; also not having the Respondent received any permission or consent from the Complainant to use the Complainant's trademarks, brands and copyright material on the website associated with the disputed domain name.

Also, the absence of any trademarks or trade names registered by the Respondent corresponding to the disputed domain name, or any possible link between the Respondent and the disputed domain name, that could be inferred from the details known of the Respondent or the webpage relating to the disputed domain name, corroborate the absence of a right or legitimate interest.

As seen above, the Respondent has used the disputed domain name in connection with an online shop offering the Complainant's products as well as selling competing tobacco products and/or accessories of other commercial origin.

Selling other parties competing products at the online shop to which Internet users were redirected when accessing the disputed domain name does not meet the criteria for a bona fide offering of goods or services as established in *Oki Data Americas, Inc. v. ASD, Inc.*, *supra*.

Lastly, it appears that no accurate disclaimer was clear and sufficiently prominent on the website. Moreover, the Panel finds that the nature of the disputed domain name carries a risk of implied affiliation with the Complainant. See [WIPO Overview 3.0](#), section 2.5.1.

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name.

C. Registered and Used in Bad Faith

The Policy indicates in paragraph 4(b)(iv) that bad faith registration and use can be found in respect of a domain name, where a respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's website or other online location, by creating a likelihood of confusion with a

complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

In this case, both the registration and use of the disputed domain name in bad faith can be found pursuant to Policy, paragraph 4(b)(iv) in view of the redirection of the disputed domain name to a website purportedly offering the Complainant's products as well as third party related products, which creates a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement thereof.

For the reasons above, the Respondent's conduct has to be considered, in this Panel's view, as bad faith registration and use of the disputed domain name pursuant to paragraph 4(b)(iv) 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 <vusego.online> be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: July 19, 2024