

ADMINISTRATIVE PANEL DECISION

Vision Service Plan v. bush auto
Case No. D2024-2697

1. The Parties

Complainant is Vision Service Plan, United States of America (“United States”), represented by SILKA AB, Sweden.

Respondent is bush auto, United States.

2. The Domain Name and Registrar

The disputed domain name <vspvisionjobs.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 July 2, 2024. On July 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 2, 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 (PrivacyGuardian.org llc) and contact information in the Complaint. The Center sent an email communication to Complainant on July 5, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on July 8, 2024.

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 Respondent of the Complaint, and the proceedings commenced on July 11, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 31, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on August 2, 2024.

The Center appointed Timothy D. Casey as the sole panelist in this matter on August 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

Complainant is a vision care health insurance company based in California, United States, that operates in the United States, Australia, Canada, Ireland, and the United Kingdom. Complainant has operated since 1955 and offers goods and services to eye care professionals, employers and more than 80 million members.

Complainant has registrations for trademarks including “VSP” and one pending application in the United States for VSP VISION filed December 20, 2021 (the “VSP Marks”) as follows:

Mark	Jurisdiction	Class(es)	Registration No.	Registration Date
VSP	United States	36	2,324,613	February 29, 2000
VSP	Canada	36	TMA780650	October 26, 2010
VSP	Australia	35, 44	1,521,728	October 24, 2012

Complainant is also the owner of the domains <vsp.com>, for 25 years, and <vspvision.com>, for more than two years, and has an extensive social media presence.

The disputed domain name was registered April 26, 2024. At the time of filing the Complaint, the disputed domain name resolved to a website marketing pay-per-click (“PPC”) links for prescription glasses, eye doctors, and jobs. Complainant provided evidence indicating that the disputed domain name was utilized in emails and other documentation impersonating an employee of Complainant and Complainant related to employment recruiting.

5. Parties’ Contentions

A. Complainant

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

Notably, Complainant contends that it has rights in the VSP Marks, as evidenced herein, which it has used at least since 1955, and that the disputed domain name is confusingly similar to the VSP Marks because the disputed domain name incorporates the VSP Marks in its entirety and the addition of the words “vision” and “jobs” do nothing to prevent a finding of confusing similarity. Complainant further contends that the generic Top-Level Domain (“gTLD”) in the disputed domain name should be disregarded for purposes of determining confusing similarity.

Complainant contends that Respondent lacks rights or legitimate interests in the disputed domain name because Respondent has no trademark rights for, nor is it commonly known by “vsp”, “vspvisionjobs”, or any similar term. Complainant contends that Respondent is not connected or affiliated with Complainant and has not received a license or consent to use the VSP Marks. Complainant further contends that Respondent has not used nor prepared to use the disputed domain name in connection with a bona fide offering of goods or services, nor a legitimate non-commercial or fair use.

Complainant contends that Respondent’s registration of the disputed domain name was in bad faith. Complainant contends that the VSP Marks have been used by Complainant for decades, have been registered as trademarks in many jurisdictions, are used by over 80 million members, and would have been readily identifiable via the simplest degree of due diligence by Respondent. Complainant contends that it is

inconceivable that Respondent could have selected the string “vspvisionjobs” in the disputed domain name for registration without Complainant in mind.

Complainant contends that Respondent’s use of the disputed domain name to impersonate Complainant through a fraudulent email phishing scheme constitutes bad faith use. Complainant further contends that Respondent’s use of the disputed domain name in association with a website featuring PPC links is further evidence of bad faith. Lastly, Complainant contends that Respondent has used the disputed domain name for the bad faith purpose of intentionally attempting to attract Internet users to Respondent’s website for commercial gain.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

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 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.

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 Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, “vision” and “jobs”, may bear on assessment of the second and third elements, the Panel finds the addition of such terms 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 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.

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.

Panels have held that the use of a domain name for illegal activity here, claimed phishing and impersonation/passing off can never confer rights or legitimate interests on a respondent.

[WIPO Overview 3.0](#), section 2.13.1.

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.

In the present case, the Panel notes that Respondent has sought to disrupt the business of a competitor and intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with Complainant's mark.

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 and impersonation/passing off constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

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 <vspvisionjobs.com> be transferred to Complainant.

/Timothy D. Casey/

Timothy D. Casey

Sole Panelist

Date: August 27, 2024