

## **ADMINISTRATIVE PANEL DECISION**

Velasca S.r.l. v. Judy Lay, Judy T Lay  
Case No. D2024-2897

### **1. The Parties**

The Complainant is Velasca S.r.l., Italy, represented by DGRS, Italy.

The Respondent is Judy Lay, Judy T Lay, United States of America (“United States”).

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

The disputed domain name <velasca.shop> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 16, 2024. On July 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 16, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. The Center sent an email communication to the Complainant on July 18, 2024, providing the registrant and contact information disclosed by the Registrar.

The Center verified that 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 July 22, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 11, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 16, 2024.

The Center appointed Alistair Payne as the sole panelist in this matter on August 23, 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, based in Italy, has since 2013 manufactured and sold clothing, footwear, and accessories. Its products are promoted and sold exclusively through e-commerce channels and VELASCA single brand shops in Italy, France, the United Kingdom and the United States. It has a significant online presence on Instagram and Facebook and owns various trade mark registrations for VELASCA including European Union Trade Mark No. 011795804, registered on August 26, 2013, and United States Registration No. 5027609 registered on August 23, 2016. The Complainant operates its webshop from a website at its domain name <velasca.it>.

The disputed domain name was registered on June 23, 2023, and resolves to a website which features the VELASCA mark and markets VELASCA branded products using content and photographs published on the Complainant's website.

#### **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 wholly incorporates the Complainant's VELASCA trade mark with no addition before the generic Top-Level Domain ("gTLD") root ".shop" and is therefore identical or confusingly similar to its VELASCA registered trade mark.

The Complainant says that the Respondent has no rights in the disputed domain name and that it has not authorised use or licensed its VELASCA mark for the purpose of use by the Respondent in the disputed domain name. It says that the Respondent has knowingly used the disputed domain name and the Complainant's trade marks and website materials in order to divert Internet users to its website and that such use is neither fair nor noncommercial.

The Complainant asserts that its VELASCA trade marks are distinctive and well reputed online and the fact that the Respondent registered the disputed domain name wholly containing the VELASCA mark, reproduced that mark on its website, and reproduced photographs and content from the Complainant's own website, indicates that the Respondent was well aware of the Complainant's mark and business at the time of registration of the disputed domain name.

The Complainant submits that using the disputed domain name in this way to divert Internet users to its own website, which is calculated to look as if it belongs to the Complainant or is authorised by it, and purports to offer VELASCA products for commercial sale, amount to conduct in terms of paragraph 4(b)(iv) of the Policy, which is evidence of registration and use in bad faith under the Policy.

##### **B. Respondent**

The Respondent did not reply to the 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

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 trade mark 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.

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.

The Complainant has submitted that it has not authorised use or licensed its VELASCA mark for the purpose of use by the Respondent in the disputed domain name. Further and as described under Part C below, it appears that the Respondent has knowingly used the disputed domain name and the Complainant's trade marks and website materials in order to divert Internet users to its website for its own commercial purposes and that such use is neither fair nor noncommercial.

Furthermore, the Panel finds that disputed domain name carries a high risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

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

## **C. Registered and Used in Bad Faith**

The Panel notes that the Complainant's VELASCA trade marks were registered many years before the disputed domain name. The disputed domain name diverts to a website which includes representations of the VELASCA marks and in particular photographs from the Complainant's website, without any disclaimer of the lack of association with the Complainant. It follows that it is more likely than not that the Respondent was well aware of the Complainant's mark and business when it registered the disputed domain name.

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.

Under paragraph 4(b)(iv) of the Policy there is evidence of registration and use of the disputed domain name in bad faith where a Respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trade marks as to the source, sponsorship, affiliation, or endorsement of the website.

In this case the Respondent has used the disputed domain names to intentionally attract Internet users for commercial gain by creating a likelihood of confusion with the Complainant's VELASCA mark and diverting Internet users to a website which masquerades as if it belongs to or is authorised by the Complainant and which offers heavily discounted products that are being marketed as VELASCA products. The Complainant has asserted that it has not authorised the Respondent to use its marks or to sell its products. This assertion has not been challenged by the Respondent, and although there is otherwise no evidence on the record as to whether the goods offered from the website are fake or genuine products, the Panel finds that Respondent's conduct amounts to conduct in terms of paragraph 4(b)(iv) of the Policy which is evidence of registration and use of the disputed domain name in bad faith.

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 <velasca.shop> be transferred to the Complainant.

*/Alistair Payne/*

**Alistair Payne**

Sole Panelist

Date: September 6, 2024