

ADMINISTRATIVE PANEL DECISION

Valero Energy Corporation and Valero Marketing and Supply Company v.
Trey Day, workmello
Case No. D2024-3021

1. The Parties

The Complainants are Valero Energy Corporation and Valero Marketing and Supply Company, United States of America, represented by Fasthoff Law Firm PLLC, United States of America.

The Respondent is Trey Day, workmello, United States of America.

2. The Domain Name and Registrar

The disputed domain name <vaelero.com> 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 24, 2024. On July 25, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 25, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainants on August 10, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint on August 10, 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 August 13, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 2, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 6, 2024.

The Center appointed Gregory N. Albright as the sole panelist in this matter on September 17, 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

Complainants are Valero Energy Corporation and its wholly owned subsidiary Valero Marketing and Supply Company (“Valero Marketing”), both based in San Antonio, Texas.

Complainants claim ownership of VALERO, V VALERO, and VALERO V marks, and registrations for those mark. For example, Complainant Valero Marketing is the owner of the following trademark registrations, issued by the United States Patent and Trademark Office:

U.S. Reg. No. 1,314,004 for the VALERO mark in International Class 42, issued in January 1985;

U.S. Reg. No. 3,688,322 for the V VALERO mark in International Class 40, issued in September 2009; and

U.S. Reg. No. 2938,790 for the V VALERO mark in International Class 36, issued in April 2005.

Complainants together claim continuous use of the VALERO marks in commerce for at least 41 years. Complainants have spent tens of millions of dollars advertising, marketing, and promoting the VALERO brand under marks in the United States and throughout the world, in a wide variety of media formats, including print, television, radio, Internet, billboards, and signage, among others. As a result, Complainants’ marks have developed extensive goodwill and favorable consumer recognition. More than 50 Panels have found the Complainants have rights in certain of their VALERO marks. The marks are both distinctive and famous within the meaning of United States trademark law.

Complainants have also continuously owned and operated an Internet website under the domain name <valero.com> for many years. Complainants use that domain name for company email addresses through which they communicate internally and with customers, vendors and the public.

The disputed domain name was registered on July 18, 2024. The disputed domain name resolves to an inactive landing page.

5. Parties’ Contentions

A. Complainant

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainants contend that the disputed domain name is confusingly similar to the Complainants’ marks because it is comprised of the VALERO mark in its entirety with a common typographical error – addition of the letter “e” after the letter “a.”

The Complainants also contend that the Respondent has no rights or legitimate interests in respect to the disputed domain name because the Respondent has never been commonly known by the disputed domain name; has not used or made demonstrable preparations to use the disputed domain name; and it not making a legitimate noncommercial or fair use of the dispute domain name without intent for commercial gain. Complainants have not licensed the right to use the VALERO marks to Respondent, and have not otherwise authorized the Respondent to act on Complainants’ behalf.

Moreover, the Respondent is engaged in an elaborate, criminal scheme to defraud. The Respondent has used an email address associated with the disputed domain name to impersonate one of Complainants' employees, attaching to the email a document called "Valero chargeback" in which the Respondent seeks to defraud the targeted victim. The Complainants have not authorized any of these communications by the Respondent.

Finally, the Complainants assert that the Respondent registered and is using the disputed domain name in bad faith. The Respondent was aware of the Complainants' prominence in the business world when the Respondent registered the disputed domain name; Complainants have owned and continually used the VALERO marks in commerce for more than 41 years. The Respondent's non-use of the disputed domain name for anything other than impersonation and fraud constitutes bad faith use. And the Respondent provided false contact information to the Registrar in an attempt to conceal his or her true identity – both of which are evidence of bad faith use 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 Complainants have shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Among other things, Complainant Valero Marketing is the owner of the U.S. trademark registrations described in Section 4, above.

The Panel finds the mark is recognizable within the disputed domain name, despite the apparently intentional misspelling of the Complainants' VALERO mark. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.9 ("A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element.").

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.

Moreover, Panels have held that the use of a domain name for illegal activity – here, claimed impersonation in connection with fraud – 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

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.

In the present case, the Panel notes that the Respondent likely was aware of the Complainants' VALERO marks and registered the disputed domain name – with its misspelling – for improper purposes.

First, Panels have found that the non-use of a domain name does not prevent a finding of bad faith use under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness and reputation of the Complainant's marks, and the composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Second, use of a domain name for illegal activity – like the impersonation and fraud evidenced here – constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Complainants have 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 <vaelero.com> be transferred to Complainants.

/Gregory N. Albright/

Gregory N. Albright

Sole Panelist

Date: October 1, 2024