

ADMINISTRATIVE PANEL DECISION

Volk Enterprises, Inc. v. Srinivas Varma
Case No. D2024-3225

1. The Parties

The Complainant is Volk Enterprises, Inc., United States of America (“United States”), represented by Smith Tempel Blaha LLC, United States.

The Respondent is Srinivas Varma, United States.

2. The Domain Name and Registrar

The disputed domain name <volkenterprises.com> is registered with Network Solutions, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 6, 2024. On August 9, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 9, 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 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 August 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 5, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 9, 2024.

The Center appointed William F. Hamilton as the sole panelist in this matter on September 26, 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 a manufacturer of temperature-indicating and poultry trussing devices. It offers temperature indicators, poultry trussing devices, flavor and product identification, and other products. The Complainant owns United States Patent and Trademark Registration No. 6,441,505, registered on August 3, 2021, for VOLK ENTERPRISES, INC. (the "Mark").

The Complainant previously owned and operated a website at the disputed domain name since 1999. However, the Complainant's disputed domain name registration expired on April 21, 2024. The Respondent registered the disputed domain name on May 30, 2024. The Respondent initially continued pointing the disputed domain name to the Complainant's website.

On July 2, 2024, the Complainant's attorneys sent the Respondent a letter demanding the Respondent transfer the disputed domain name to the Complainant and cease and desist from infringing the Complainant's Mark and intellectual property. Subsequently, the Respondent redirected the disputed domain name to resolve to an online gaming platform.

On or about June 12, 2024, the Respondent offered to sell the disputed domain name back to the Complainant for USD 10,000.

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.

The Complainant asserts the disputed domain name is confusingly similar to the Mark because the disputed domain name incorporates the Mark in its entirety and merely omits the space between the first two words of the Mark and deletes "INC.", the concluding term of the Mark. The Complainant contends that the Complainant never authorized the Respondent to use the disputed domain name, that the Respondent is not commonly known by the disputed domain name, and never engaged in any bona fide commercial activity in connection with the disputed domain name. The Complainant asserts that the Respondent knew of the Complainant's prior use of the disputed domain name and the Mark, and registered and used the disputed domain name in bad faith to disrupt the Complainant's business.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainant must satisfy the Panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was 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 the Mark for the purposes of the Policy by virtue of the Mark's registration. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's Mark because the disputed domain name incorporates the Mark in its entirety and merely omits the space between the first two words of the Mark and deletes the term "INC.". Confusing similarity may be established for the purposes of the Policy where a dominant feature of the relevant mark is recognizable in the domain name. [WIPO Overview 3.0](#), section 1.7. In this case, the Mark is clearly recognizable in the disputed domain name, notwithstanding the minor differences between the disputed domain name and the Mark.

The Top-Level Domain ("TLD") of the disputed domain name, in this case ".com", may be disregarded for the purposes of assessment under the first element, as it is viewed as a standard registration requirement. See [WIPO Overview 3.0](#), section 1.11.1 and *Monster Energy Company, a Delaware Corporation v. J.H.M. den Ouden*, WIPO Case No. [D2016-1759](#).

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.

The Panel finds on the evidence that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has expressly disavowed providing the Respondent with permission to use the disputed domain name or the Mark. There is no evidence that the Respondent has made a bona fide offering of goods or services under the disputed domain name or is commonly known by the disputed domain name. The Respondent has failed to provide evidence showing rights or legitimate interests in the disputed domain name.

Indeed, the Respondent knowingly re-registered the disputed domain after it expired with full knowledge of the Complainant's prior use. The Respondent continued pointing the disputed domain name to the Complainant's website. Such utilization of a disputed domain name is not indicative of any rights or legitimate interests.

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

C. Registered and Used in Bad Faith

Under paragraph 4(b) of the Policy, bad faith may be established by any one of the following non-exhaustive scenarios:

- (i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

The Panel finds that the disputed domain name was registered and is being used in bad faith. The Complainant contends that it previously registered and used the disputed domain name from 1999 to 2024, approximately 25 years. After the Complainant inadvertently allowed the disputed domain name registration to lapse, the Respondent promptly registered the disputed domain name – a domain name that, absent explanation otherwise, does not appear to have any inherent meaning or value other than its connection to the Complainant – on May 30, 2024. The Respondent retained the original content of the Complainant's website, misleading customers and partners into believing that it was still under the Complainant's control, thereby disrupting the Complainant's business. Subsequently, the Respondent offered to sell the disputed domain name to the Complainant for USD 10,000, an amount most likely in excess of the costs directly related to the disputed domain name and clearly attempting to take unfair advantage of the Complainant's trademark and prior use of the disputed domain name. Notably, panels have held that registering a domain name whose prior registration lapsed may indicate bad faith on the part of the respondent, depending on factors such as the length of time that the Complainant had previously registered and used the disputed domain name and subsequent actions by the new registrant. See e.g., *Accenture Global Solutions Limited v. Michael Roper*, WIPO Case No. [D2022-4201](#).

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 <volkenterprises.com> be transferred to the Complainant.

/William F. Hamilton/

William F. Hamilton

Sole Panelist

Date: October 2, 2024