

ADMINISTRATIVE PANEL DECISION

Victron Energy B.V. v. Lukas Matuska, SWPOWER Innovation A.S.
Case No. D2024-3948

1. The Parties

The Complainant is Victron Energy B.V., Netherlands (Kingdom of the), represented by Leopold Meijnen Oosterbaan advocaten, Netherlands (Kingdom of the).

The Respondent is Lukas Matuska, SWPOWER Innovation A.S., Czech Republic.

2. The Domain Name and Registrar

The disputed domain name <victron.solar> (the “Disputed Domain Name”) is registered with Ascio Technologies Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 26, 2024. On September 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 27, 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 September 27, 2024, providing some additional registrant and contact information disclosed by the Registrar. The Complainant filed an amended Complaint on September 30, 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 October 1, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 21, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 29, 2024.

The Center appointed Nick J. Gardner as the sole panelist in this matter on November 7, 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 was founded in 1975. It designs and produces pure sine wave inverters and inverter/chargers, battery chargers, DC/DC converters, circuit breakers, charge current distributors, gel batteries, AGM batteries, lithium batteries, battery monitors, solar charge controllers, solar panels, complete network solutions, and other independent energy supply solutions. The Complainant's products are sold worldwide. It does not appear to be disputed that the Complainant has an excellent reputation for technical innovation, reliability, and quality and that it is a world leader in the field of independent electrical energy supply. Its products are designed for use in the most demanding situations.

The Complainant is the owner of numerous trademark registrations for the word "VICTRON" (the "VICTRON trademark") – see for example European Union trademark VICTRON with registration No. 009730045, registered on November 9, 2012 for goods in International Class 9 and International trademark VICTRON with registration No. 1268076, registered on July 20, 2015 for goods in International Class 9.

The Complainant's principle website is linked to the domain name <victronenergy.com>.

The Disputed Domain Name was registered on November 16, 2022. It resolves to a website (the "Respondent's Website") which is in Czech and which promotes a range of the Complainant's products. In terms of layout and colour schemes the Respondent's Website displays a similar look and feel to the Complainant's official website. It is not clear to the Panel whether the Respondent's Website offers for sale products (i.e. it is an online shop) or whether it is promoting a business where the Respondent supplies and installs those products. The Complainant appears to suggest the former is the case whilst the Respondent's correspondence with the Complainant's advisers (see below) seems to suggest the latter is the case. As the Respondent's Website is in Czech, which the Panel does not read, the Panel is unable to reach a conclusion on this issue. Ultimately however the point does not matter. The Panel's reasoning would be the same in either case.

The Complainant's advisers sent a cease and desist letter to the Respondent on March 21, 2024. There followed an ongoing but inconclusive exchange of correspondence. This is discussed below.

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 states that the Disputed Domain Name is identical to the VICTRON trademark, because it incorporates the entirety of this trademark without any other elements. The Complainant submits that the VICTRON trademark is registered in many jurisdictions and is widely known around the world and is inherently distinctive, without being descriptive or having a specific meaning. The Complainant also submits that a Google search carried out on September 24, 2024, for the countries, France, Germany, Spain, France, Italy, United States, United Kingdom, Slovakia and the Czech Republic with the key word "victron" shows that all search results on the first page relate to the Complainant.

According to the Complainant, the Respondent has no rights or legitimate interests in the Disputed Domain Name, because it is not affiliated with the Complainant and has not been licensed by the Complainant to use the VICTRON trademark, is not commonly known by the Disputed Domain Name, and has not acquired any trademark rights in it. The Complainant adds that the Respondent does not use the Disputed Domain Name

in connection with a bona fide offering of goods or services and is not making a legitimate noncommercial or fair use of it. The Disputed Domain Name is being used to offer Victron products for resale. The Respondent has no license or agreement with the Complainant to distribute its products or act on its behalf or use its trademarks. The Respondent's use of the Disputed Domain Name as a principal identifier of its business on the Internet implies that the Respondent is affiliated with the Complainant or is otherwise acting with the consent of the Complainant. There is nothing in the Disputed Domain Name to suggest in any way that the Respondent is independent of the Complainant. Instead, the Respondent has used the VICTRON trademark in the Disputed Domain Name in a manner directly comparable with the way that the Complainant uses its VICTRON trademark in domain names identifying its websites.

Furthermore, the Complainant says the Respondent's Website in fact also promotes the products of a number of manufacturers whose products compete with the Complainant's products. The Complainant provides screenshots from the Respondent's Website showing examples.

The Complainant also relies on the fact that the Respondent's website carried the stylised word VictronSolar™ and it says the designation "™" is untrue as no such trademark exists, but which again wrongly suggests that the Respondent's Website is operated by or approved by the Complainant. This logo was removed at some stage after the Respondent received the cease and desist letter (above).

The Complainant contends that the Respondent has registered and is using the Disputed Domain Name in bad faith. According to the Complainant, at the time of obtaining the Disputed Domain Name the Respondent knew of the existence of the Complainant's VICTRON trademark, registered earlier in many jurisdictions, and should have known that its registration would be identical to this trademark. The Complainant contends that the Respondent has obtained and registered the Disputed Domain Name primarily to use it to intentionally attract, for commercial gain, Internet users to the Respondent's Website, by creating a likelihood of confusion with the Complainant's VICTRON trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's Website and of products on the Respondent's Website, and that the Respondent acted in bad faith within the meaning of the fourth element under the UDRP.

B. Respondent

No Response has been filed. The Respondent's position has however been set out in correspondence following the Complainant's advisers sending a cease and desist letter to the Respondent. In particular in an email dated April 17, 2024 from the Respondent to the Complainant's advisers, the Respondent stated as follows: "Our website victron.solar is all about presenting a photovoltaic power plant with Victron Energy inverters. We only install photovoltaic power plants as a whole. These plants are exclusively with Victron Energy inverters. We do not sell components separately, we are not an eshop, and we do not represent ourselves as an agency, shop, or official service partner of Victron Energy B.V. "Victron.solar" is just a brand, a website that we invented for a photovoltaic unit with Victron Energy inverters at its heart, to differentiate ourselves from other brands that present themselves in the country as Solax photovoltaics and other similar competitors".

6. Discussion and Findings

Preliminary Matters

The Panel notes that no Response has been filed. However, given the Complaint and Written Notice were sent to the relevant addresses disclosed by the Registrar, then the Panel considers that this satisfies the requirement in paragraph 2(a) of the UDRP Rules to "employ reasonably available means calculated to achieve actual notice". Accordingly, the Panel considers it is able to proceed to determine this Complaint and to draw inferences from the Respondent's failure to file any Response. While the Respondent's failure to file a Response does not automatically result in a decision in favour of the Complainant, the Panel may draw appropriate inferences from the Respondent's default (see, e.g., *Verner Panton Design v. Fontana di Luce Corp*, WIPO Case No. [D2012-1909](#)).

Substantive Matters

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

- (i) the Disputed Domain Name is identical with 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;
- (iii) the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel is satisfied that the Complainant is the owner of the VICTRON trademark. The Panel notes that the alphanumeric string in the second level of the Disputed Domain Name incorporates the Complainant's trademark in its entirety with no additional elements. This is sufficient for the Panel to find identity between the Disputed Domain Name and the Complainant's trademark as the applicable top-level suffix in a domain name is usually disregarded under this test, except thus far generally in certain cases where the applicable top-level suffix may itself form part of the relevant trademark (see paragraph 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Complainant subscribes to the principle expressed in paragraph 1.11 of the [WIPO Overview 3.0](#), which it notes is well-established. The test in paragraph 4(a)(i) of the Policy is "a relatively low threshold test for a complainant, the object of which is to establish that there is a bona fide basis for the complaint" (*The Perfect Potion v. Domain Administrator*, WIPO Case No.

D2004-0743). There is no doubt in the Panel's mind that the Complainant's case on this element of the Policy more than meets this threshold. See *Canyon Bicycles GmbH v. Domains By Proxy, LLC / Rob van Eck*, WIPO Case No. [D2014-0206](#) (<canyon.bike>) for a similar approach.

Accordingly, 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.

Paragraph 4(c) of the Policy non-exhaustively lists three circumstances that demonstrate a right or legitimate interest in the domain name:

- i. before any notice to you of the dispute, your use of, or demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- ii. you (as an individual, business or other organisation) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- iii. you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

As the Panel understands it the Respondent's position is in effect that (i) applies. It says that it sells or supplies genuine Victron products. The Panel will initially approach this issue by assuming this is true (but see further below). The question that arises is whether the Respondent can claim to have a legitimate interest in using a domain name that is identical to the Complainant's trademark in order to sell or supply the Complainant's products.

The Panel considers that the starting point in addressing this question is what is known as the Oki Data test arising from the decision in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#). The substance of the test is set out in paragraph 2.8 of [WIPO Overview 3.0](#):

"2.8 How do panels assess claims of nominative (fair) use by resellers or distributors?

While the following section primarily concerns cases involving 'bait and switch' or other related unfair trade practices, many of the principles outlined above, especially at section 2.5 with respect to fair use, underpin the following section.

2.8.1 Panels have recognized that resellers, distributors, or service providers using a domain name containing the complainant's trademark to undertake sales or repairs related to the complainant's goods or services may be making a bona fide offering of goods and services and thus have a legitimate interest in such domain name. Outlined in the 'Oki Data test', the following cumulative requirements will be applied in the specific conditions of a UDRP case:

- (i) the respondent must actually be offering the goods or services at issue;
- (ii) the respondent must use the site to sell only the trademarked goods or services;
- (iii) the site must accurately and prominently disclose the registrant's relationship with the trademark holder; and
- (iv) the respondent must not try to "corner the market" in domain names that reflect the trademark.

The Oki Data test does not apply where any prior agreement, express or otherwise, between the parties expressly prohibits (or allows) the registration or use of domain names incorporating the complainant's trademark.

2.8.2 Cases applying the Oki Data test usually involve a domain name comprising a trademark plus a descriptive term (e.g., 'parts', 'repairs', or 'location'), whether at the second-level or the top-level. At the same time, the risk of misrepresentation has led panels to find that a respondent lacks rights or legitimate interests in cases involving a domain name identical to the complainant's trademark. [See section 2.5.1 above.]

Panels have found that PPC websites do not normally meet the Oki Data requirements as they do not themselves directly offer the goods or services at issue"

In the present case the Panel notes that (1) the Respondent is not an authorised reseller of the Complainant's products and (2) the Disputed Domain Name is identical to the Complainant's VICTRON trademark. Members of the public searching for the Complainant's products are likely to search using the

VICTRON trademark and some will as a result inevitably encounter the Respondent's Website. Some such customers will no doubt visit the site and some will no doubt go on to obtain products or services. They have been attracted by the Respondent using the VICTRON trademark.

In this regard it is in the Panel's view important to note that the Oki Data case was concerned with the activities of authorised distributors and resellers who, by definition, will be in a contractual relationship with the complainant and where the complainant can if it wishes regulate the respondent's activities accordingly. So the Panel in that case observed: "If trademark owners wish to prevent the use of their marks by authorized sales and repair agents in domain names, they should negotiate such protections through appropriate contractual language or, when permitted under the relevant law, seek recovery in classic trademark infringement or dilution litigations. In the absence, however, of some element of illegitimacy, they should not use the Policy to prevent uses that ICANN deemed to be legitimate, including the use of domain names in connection with the bona fide offering of goods and services". The present case concerns an unauthorized distributor where no such contractual nexus exists. Panels have extended the Oki Data principles to unauthorized distributors as well, but in the opinion of this Panel whether it is appropriate to do so will depend on all of the facts including the nature of the business concerned and the domain name in question.

It seems to the Panel that these cases each depend on their specific facts. In this regard the more recent case of *Eli Lilly and Company and Novartis Tiergesundheits AG v. Manny Ghumman / Mr. NYOB / Jesse Padilla*, WIPO Case No. [D2016-1698](#), is in the opinion of the Panel helpful in assessing the approach to be adopted in assessing whether to apply the Oki Data principles to cases involving unauthorized resellers. In that case the Panel explained its approach in the following manner:

"The Oki Data approach acknowledges certain scenarios relating to the potential legitimacy of using another's trademark in a domain name, often referred to as "nominative fair use". An overarching principle of the Oki Data approach is that a use of a domain name cannot be "fair" if it suggests affiliation with the trademark owner; nor can a use be "fair" if it is pretextual. See *201 Folsom Option JV, L.P. and 201 Folsom Acquisition, L.P. v. John Kirkpatrick*, WIPO Case No. [D2014-1359](#) (Oki Data approach considers and applies nominative fair use principles with reference to the limited scope of the Policy, and specifically with respect to the respondent's use of the complainant's mark in a domain name); *Project Management Institute v. CMN.com*, WIPO Case No. [D2013-2035](#) ("[It] is critical to the establishment of rights or legitimate interests under Oki Data, and to a claim of nominative fair use, that the [r]espondent take steps to avoid using of the [c]omplainant's mark in a manner likely to cause consumer confusion as to source, sponsorship, affiliation or endorsement").

Generally speaking, UDRP panels have found that domain names identical to a third-party trademark carry a high risk of such affiliation. In the present case the Panel considers that the fact that the Disputed Domain Name is identical to the Complainant's VICTRON trademark, and the top-level domain "solar" is used which references an area the Complainant's technology is aimed at, clearly suggests either affiliation with the Complainant, or that the Respondent's Website is operated by the Complainant. Neither is true. Accordingly, the Panel is satisfied that application of the Oki Data principles is inappropriate because of the overarching principle that the Respondent's use is not fair, because of the manner in which it adopts the Complainant's trademark and in addition because of the fact that it does so in combination with the top-level domain "solar".

The Panel would also observe that even if the Oki Data principles were applied to the present case, this would not assist the Respondent. The Panel does not read Czech but it has not been suggested there is any accurate disclosure on the Respondent's Website of the Respondent's relationship to the Complainant. To the contrary the Respondent's use of a website where the design elements have a look and feel element clearly modelled on the Complainant's website inaccurately suggest an affiliation where none exists. In addition the Complainant has placed in evidence extracts from the Respondent's Website which appear to show the Respondent is also promoting products made by the Complainant's competitors. This evidence has not been challenged. Accordingly two of the specific tests which allow the Oki data principles to be applied are not satisfied.

The Panel therefore finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name and paragraph 4(a)(ii) of the Policy has been satisfied.

C. Registered and Used in Bad Faith

Under paragraph 4(b) of the Policy a non-exhaustive list of factors evidencing registration and use in bad faith comprises:

(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration 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 your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

In the present circumstances, the distinctive nature of the VICTRON trademark, and the evidence as to the extent of the reputation the Complainant enjoys in the VICTRON trademark, and the identical nature of the Disputed Domain Name to the VICTRON trademark, leads the Panel to conclude the registration and use was in bad faith. In the present case, the Panel concludes that it is inconceivable that the Respondent selected the Disputed Domain Name independently and without knowledge of the Complainant or its products. The website operated by the Respondent at the Disputed Domain Name is clearly promoting a business which supplies VICTRON products and the Panel has no doubt the Respondent was by use of the Disputed Domain Name seeking to suggest it had a connection with the Complainant in the course of trade, by suggesting that it was the Complainant's business, or it was an authorised distributor of the Complainant's products. It is neither. As such its behaviour clearly amounts to that specified in paragraph 4(b)(iv) of the Policy as being evidence of registration and use in bad faith, namely "by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location".

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 <victron.solar> be transferred to the Complainant.

/Nick J. Gardner/

Nick J. Gardner

Sole Panelist

Date: November 21, 2024