

ADMINISTRATIVE PANEL DECISION

Verkada, Inc. v. Registration Private, Domains By Proxy, LLC / Greg Brockbank

Case No. D2022-0281

1. The Parties

The Complainant is Verkada, Inc., United States of America (“United States”), represented by Osborne Clarke LLP, United Kingdom.

The Respondent is Registration Private, Domains By Proxy, LLC, United States / Greg Brockbank, United States.

2. The Domain Name and Registrar

The disputed domain name <verkaba.com> (the “Disputed Domain Name”) is registered with Wild West Domains, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 27, 2022. On January 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On January 28, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on February 1, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on February 7, 2022.

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 the Respondent of the Complaint, and the proceedings commenced on February 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 6, 2022. The Center notified the Respondent’s default on March 7, 2022. In reply, the Respondent submitted an informal communication on March 7, 2022.

The Center appointed Lynda M. Braun as the sole panelist in this matter on March 14, 2022. 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 company that provides security systems, including video cameras and accessories for video cameras, camera hardware systems for video surveillance, downloadable mobile applications for video surveillance, and related technical support and consultancy services.

The Complainant owns numerous registered trademarks, including, but not limited to:

VERKADA, United Kingdom Trademark No. UK00003406164, registered on August 30, 2019, in International Classes 9, 37, 42, and 45; VERKADA, European Union Trade Mark No. 018081438, registered on January 11, 2020, in International Classes 9, 37, 42, and 45; VERKADA, United Kingdom Trademark No. UK00918081438, registered on January 11, 2020, in International Classes 9, 37, 42, and 45; VERKADA, United States Registration No. 5,848,597, registered on September 3, 2019, in International Classes 9, 37, 42, and 45; and VERKADA, Australian Trademark No. 2058982, registered on September 8, 2020, in International Classes 9, 37, 42, and 45 (hereinafter collectively referred to as the "VERKADA Mark").

The Complainant owns the domain name <verkada.com>, which resolves to the Complainant's official website at "www.verkada.com" and which offers the Complainant's consumer security equipment and associated services for sale. The Complainant's website attracts an average of over 13,000 page views per day.

The Disputed Domain Name was registered on July 22, 2021, resolving to an inactive landing page with no substantive content with a message that states, "This site can't be reached".

The Complainant's attorney sent an email to the Respondent dated November 11, 2021, demanding that the Respondent cease using the Disputed Domain Name and transfer it to the Complainant. The Complainant did not receive a response to the email.

5. Parties' Contentions

A. Complainant

The following are the Complainant's contentions:

- the Disputed Domain Name is confusingly similar to the Complainant's VERKADA Mark;
- the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name;
- the Disputed Domain Name was registered and is being used in bad faith; and
- the Complainant seeks the transfer of the Disputed Domain Name from the Respondent to the Complainant in accordance with paragraph 4(i) of the Policy.

B. Respondent

The Respondent did not submit a timely formal reply to the Complainant's contentions. However, on March 7, 2022, the Respondent submitted an informal communication indicating: "I apologize! I didnt reLIZE

THERE WA A DEADLIEN ADN THAT i MISSED IT. i EMAILED SOMEONE A FEW WEESK AGO AYING THAT i AM AN INNOCENT VICTIM HERE IN THAT i WAS INADVERTETNLY OR FRUADULENTLY ASSIGHNED DAOMIN NAMES WHICH i NEVER HAD ANYTHJGN TO DO WIOTYH AND DONT' WANT. mICROSOFT IS NEGLIGENT AND BEST, AND HS FAIELD FOR MOTNHS TO SOVLE THE PROBLEM,A ND i DONT' KNOW WHAT TO DO. dO i REALL;Y HAVE TO HIRE AN ATTORNE3Y TO DEAL WITYH THIS?"

6. Discussion and Findings

In order for the Complainant to prevail and have the Disputed Domain Name transferred to the Complainant, the Complainant must prove the following (Policy, paragraph 4(a)):

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- (iii) the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a two-fold inquiry: a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the domain name is identical or confusingly similar to that trademark. The Panel concludes that in the present case, the Disputed Domain Name is confusingly similar to the VERKADA Mark.

It is uncontroverted that the Complainant has established rights in the VERKADA Mark based on its years of use as well as its registered trademarks for the VERKADA Mark in jurisdictions worldwide. The consensus view is that "registration of a mark is *prima facie* evidence of validity, which creates a rebuttable presumption that the mark is inherently distinctive". See *CWI, Inc. v. Domain Administrator c/o Dynadot*, WIPO Case No. D2015-1734. The Respondent has not rebutted this presumption, and therefore the Panel finds that the Complainant has rights in the VERKADA Mark. Moreover, the registration of a mark satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2.1. Thus, the Panel finds that the Complainant has rights in the VERKADA Mark.

The Disputed Domain Name incorporates a misspelling of the VERKADA Mark, followed by the generic Top-Level Domain ("gTLD") ".com". Here, the incorporated misspelling consists of the letter "d" in "verkada" being replaced with the letter "b". This misspelling, where the VERKADA Mark is still recognizable, does not prevent a finding of confusing similarity between the VERKADA Mark and the Disputed Domain Name. Such modification to a trademark is commonly referred to as "typosquatting", as such conduct seeks to wrongfully take advantage of errors by users in typing domain names into their web browser's location bar. See [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."); see also *Express Scripts, Inc. v. Whois Privacy Protection Service, Inc. / Domaindeals, Domain Administrator*, WIPO Case No. [D2008-1302](#).

Further, the addition of a gTLD such as ".com" in a domain name is technically required. Thus, it is well established that, as here, such element may typically be disregarded when assessing whether a domain name is identical or confusingly similar to a trademark. See *Proactiva Medio Ambiente, S.A. v. Proactiva*, WIPO Case No. [D2012-0182](#) and [WIPO Overview 3.0](#), section 1.11.

Accordingly, the Panel finds that the first element of paragraph 4(a) of the Policy has been met by the Complainant.

B. Rights or Legitimate Interests

Under the Policy, a complainant has to make out a *prima facie* case that a respondent lacks rights or legitimate interests in a disputed domain name. Once such a *prima facie* case is made, the respondent carries the burden of production of evidence that demonstrates rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant may be deemed to have satisfied paragraph 4(a)(ii) of the Policy. See [WIPO Overview 3.0](#), section 2.1.

In this case, the Panel finds that the Complainant has made out a *prima facie* case. The Respondent has not submitted any arguments or evidence to rebut the Complainant's *prima facie* case. Further, the Complainant has not authorized, licensed or otherwise permitted the Respondent to use its VERKADA Mark. There is also no evidence that the Respondent is commonly known by the Disputed Domain Name or by any name similar to it nor has the Respondent made any demonstrable preparations to use the Disputed Domain Name in connection with a *bona fide* offering of goods or services. The name of the Respondent has no apparent connection to the Disputed Domain Name that would suggest that it is related to a trademark or trade name in which the Respondent has rights. Nor does the Complainant have any type of business relationship with the Respondent. Based on the use made of the Disputed Domain Name to resolve to an inactive landing page, the Panel finds that the Respondent is not making a *bona fide* offering of goods or services nor making a legitimate noncommercial or fair use of the Disputed Domain Name.

Accordingly, the Panel finds that the second element of paragraph 4(a) of the Policy has been met by the Complainant.

C. Registered and Used in Bad Faith

This Panel finds that, based on the record, the Complainant has demonstrated the existence of the Respondent's bad faith pursuant to paragraph 4(b) of the Policy as set forth below.

First, the Respondent's registration of the Disputed Domain Name that contains a misspelling of the VERKADA Mark in an effort to take advantage of a typographical error is evidence of bad faith registration and use. See *Nutricia International BV v. Eric Starling*, WIPO Case No. [D2015-0773](#). Since the Respondent misspelled the Disputed Domain Name to misdirect users from the Complainant's website to the Respondent's landing page by capitalizing on potential typing mistakes, such conduct is evidence of bad faith. See *ESPN, Inc. v. XC2*, WIPO Case No. [D2005-0444](#) ("It is well-settled that the practice of typosquatting, of itself, is evidence of the bad faith registration of a domain name.").

Second, the Panel finds it likely that the Respondent had actual knowledge of the Complainant's VERKADA Mark and targeted the Complainant when it registered the Disputed Domain Name, demonstrating the Respondent's bad faith. It can be inferred that the Respondent had actual knowledge of the Complainant and its VERKADA Mark when it registered the confusingly similar disputed domain name. UDRP panels have found that the registration of a domain name that is confusingly similar to a well-known trademark by an unaffiliated entity can create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

Third, inactive or passive holding of the Disputed Domain Name by the Respondent does not prevent a finding of bad faith. See *Advance Magazine Publishers Inc. and Les Publications Condé Nast S.A. v. ChinaVogue.com*, WIPO Case No. [D2005-0615](#); *Société pour l'Oeuvre et la Mémoire d'Antoine de Saint Exupéry – Succession Saint Exupéry – D'Agay v. Perlegos Properties*, WIPO Case No. [D2005-1085](#). It has long been held in UDRP decisions that the passive holding of a domain name that incorporates a well-known trademark without a legitimate purpose may indicate that the disputed domain name is being used in bad faith under paragraph 4(a)(iii) of the Policy. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *Jupiters Limited v. Aaron Hall*, WIPO Case No. [D2000-0574](#). Here, the Disputed Domain Name currently resolves to an inactive landing page with no content, and the Panel notes the distinctiveness of the VERKADA Mark, the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good faith use, the Respondent's use of a privacy service, and the

implausibility of any good faith use to which the typosquatting disputed domain name may be put, support a finding of bad faith.

Finally, the Respondent did not respond to the cease-and-desist email sent by the Complainant's attorney. Past UDRP panels have held that failure to respond to a cease-and-desist letter may be considered a factor in finding bad faith registration and use of a domain name. See *Encyclopaedia Britannica, Inc. v. John Zuccarini and The Cupcake Patrol a/k/a Country Walk a/k/a Cupcake Party*, WIPO Case No. [D2000-0330](#).

Accordingly, the Panel finds that the third element of paragraph 4(a) of the Policy has been met by the Complainant.

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 <verkaba.com> be transferred to the Complainant.

/Lynda M. Braun/

Lynda M. Braun

Sole Panelist

Date: March 28, 2022