

ADMINISTRATIVE PANEL DECISION

Vente-privee.com, Vente-privee.com IP S.à.r.l. v. Privacy Protection / Giuseppe Lagioia /or Domain For Sale
Case No. D2022-2381

1. The Parties

The Complainants are Vente-privee.com and Vente-privee.com IP S.à.r.l., France, represented by Cabinet Degret, France.

The Respondent is Privacy Protection, United States of America / Giuseppe Lagioia /or Domain For Sale, Italy.

2. The Domain Name and Registrar

The disputed domain name <ventee-privee.com> is registered with Sav.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 30, 2022. On June 30, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 30, 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 Complainants on July 1, 2022, 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 amendment to the Complaint on July 13, 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 July 14, 2022. In accordance with the Rules, paragraph 5, the due date for

Response was August 3, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 8, 2022.

The Center appointed James Bridgeman as the sole panelist in this matter on August 11, 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 Complainants are associated entities and carry on business purchasing and selling various goods and services using e-commerce tools.

The Complainants are the registered owners of the registered trademark and service mark VENTE-PRIVEE in different jurisdictions around the world. They have provided evidence of the following sample of registrations within their portfolio:

- European Union Trade Mark VENTE-PRIVEE.COM (figurative), registration number 005413018, registered on December 20, 2007 for goods and services in classes, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, and 45;
- International trademark VENTE-PRIVEE (figurative), registration number 1116436, registered on February 23, 2012, for services in class 35;
- European Union Trade Mark VENTE-PRIVEE (figurative), registration number 011991965, registered on January 3, 2014, for services in class 35, 36, 38, 39, 41, 42, and 43.

The Complainants have an established Internet presence using following domain names: <vente-privee.com> registered on March 30, 2000, and <venteprivee.co> and <venteeprivee.com> which were subsequently registered. The Complainants' websites were renamed VEEPEE at the beginning of 2019. However, the VENTE-PRIVEE and VENTE-PRIVEE.COM trademarks are still operated on said websites

The disputed domain name was registered on March 29, 2022, and resolves to a web page on which it has been offered for sale for USD 199 within three months of the date on which it was registered.

There is no information available about the Respondents except for that provided in the Complaint as amended, the Registrar's Whols and the information provided by the Registrar in response to the request by the Center for verification of the registration details of the disputed domain name. The record shows that the first named Respondent appears to provide a privacy shield service to the second named Respondent who is the owner of the disputed domain name registration.

5. Parties' Contentions

A. Complainant

The Complainants claim rights in the VENTE-PRIVEE and VENTE-PRIVEE.COM trademarks described above and their extensive use of the marks in online marketing in particular on the website at "www.vente-privee.com".

The extent of the Complainants' business and reputation is reflected in the growth of its business. In 2011, 5.900 event sales had been organized on their website and this figure rose to 10.000 in 2013 up to 14.600 in 2015 and then to 54.000 in 2018. In 2006 these sales generated 30.000 daily shipping orders by end

consumers, in 2009 this figure exceeded 100,000. Between 2008 and 2011, the Complainants shipped more than 46 million orders and in 2018 the Complainants delivered 116,000 parcels.

In 2013, the Complainants state that they sold more than 70 million products; a figure that rose to 90 million in 2015 and to 120 million in 2018, and in twelve years, the Complainants' group has grown from 35 to 2.000 employees, with 624 recruitments in 2013 alone.

By 2008, the Complainants' website had attracted one billion visitors and in the first semester of 2018, the Complainants' website had on average 3.5 million visitors per day.

The turnover achieved through the use of the VENTE-PRIVEE and VENTE-PRIVEE.COM trademarks has grown exponentially every year and revenue has exceeded 1,6 billion euros since 2013 to reach nearly 4 billion euros in 2018.

In the Amended Complaint, filed after the identification of the second named Respondent, the Complainants add that they have a strong business and reputation in Italy where the Respondent purports to reside.

The Complainants allege that the disputed domain name <ventee-privée.com> is identical or confusingly similar to the Complainants' trademark as it obviously reproduces almost identically the verbal element of the VENTE-PRIVEE and VENTE-PRIVEE.COM marks and differs from the latter by one letter only.

The Complainants add that the generic Top Level Domain ("gTLD"), extension ".com" plays solely a technical role in the disputed domain name and need not be taken into account in making a comparison with the Complainants' marks.

Alleging that the Respondent has no rights or legitimate interests in the disputed domain name the Complainants submit that a worldwide search conducted on the denomination VENTEE-PRIVEE(.COM) through the database operated by a private group, a copy of which has been adduced as an exhibit in the annex to the Complaint, shows no existing trademark corresponding to said denomination.

The Complainants further submit that the Respondent is not known under the denomination VENTEE-PRIVEE.COM, because otherwise, it would have filled the Whois database accordingly instead of masking its identity through a Whois privacy service.

The disputed domain name was registered on March 29, 2022, long after the beginning of the Complainants' activities in 2001.

The Complainants further assert that they have not authorized the Respondent to register and to use the disputed domain name, neither by a license agreement or otherwise, adding that the Respondent has never been granted authorization, license, or any right whatsoever to use the Complainants' VENTE-PRIVEE(.COM) trademarks, in the disputed domain name or in any capacity whatsoever.

The Complainants additionally submit that the Respondent has never reacted against the Complainants' filing, registration and use of the VENTE-PRIVEE and VENTE-PRIVEE.COM marks and since the Complainants first used VENTE-PRIVEE and VENTE-PRIVEE.COM as distinctive signs 21 years ago, no third party has invoked prior rights against them.

The Complainants continue, arguing that the Respondent is in no way related with the trademarks and domain names VENTE-PRIVEE and VENTE-PRIVEE.COM.

Alleging that the disputed domain name was registered and is being used in bad faith, the Complainants submit firstly that when the Respondent registered the disputed domain name, he necessarily had the Complainants' names and their rights in mind, because the registration of a domain name must be done with a minimum of carefulness and a mere search conducted among prior existing rights or on Internet would have immediately detected the Complainants' trademarks that are known worldwide.

To illustrate this point, the Complainants refer to a search on the "ventee-privee" denomination conducted with the Google search engine, which is exhibited in an annex to the Complaint. The Complainants submit that the search results show that the search term is automatically corrected by the engine for "vente-privee" and the first results mostly concern the Complainants.

The Complainants add that the denomination "ventee-privee", as such, bears no meaning. It is obviously a misspelling of the French denomination "vente-privee" and consequently, the Complainants consider that they are facing a typical situation of typosquatting.

It is further contended the disputed domain name was registered anonymously, which, it is argued, indicates that the registration was made in bad faith.

The Complainants refer to a screen capture of the web page to which the disputed domain name redirects, which is exhibited in an annex to the Complaint. The screen capture shows that the disputed domain name was offered for sale for USD 199, only three months after its registration. The Complainants submit that it is obvious that the disputed domain name has been registered for the sole purpose of reselling it for a cost exceeding the Respondent's out-of-pocket costs for the registration.

The Complainants argue that the asking price of USD 199 can certainly not be justified by its attractiveness, since it consists in a misspelled expression which, as such, bears no meaning and considering the proximity between the denominations "ventee-privee" and "vente-privee", the asking price of USD 199 cannot be explained otherwise but by the Respondent's will to unduly capitalize on the reputation of the Complainants' brands in order to make profit.

The above is further evidenced by the previous decisions of UDRP panelists in similar cases, ruling in favour of the Complainants. See *Vente-privee.com and Vente-privee.com IP S.à.r.l. v. Sarah Hampton*, WIPO Case No. [DCO2020-0073](#) (the disputed domain name <venteprive.co> was registered by an American citizen and put for sale at USD 688) and *Vente-Privee.com v Anass Haial Litige*, WIPO Case No. [D2020-1221](#) (the domain name at issue <veepee.com> was put for sale at USD 300).

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy requires the Complainants to establish that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainants have 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

The Complainants have provided strong, uncontested evidence to prove that they have rights in the VENTE-PRIVEE and VENTE-PRIVEE.COM marks, established by the Complainants' ownership of trademark registrations described above and extensive use of the marks in their online business.

The Complainants' VENTE-PRIVEE and VENTE-PRIVEE.COM marks are clearly recognizable within the disputed domain name, <ventee-privee.com> which is identical to both marks except for the addition of the letter "e" to the first element "VENTE" in each of the marks. Notably the disputed domain name even contains a hyphen separating the two elements, which is present in both of the Complainants' marks relied upon.

In the context of making a comparison with the disputed domain name, which is registered on the ".com" gTLD, the disputed domain name is confusingly similar to both VENTE-PRIVEE and VENTE-PRIVEE.COM.

The additional letter "e" in the second-level portion of the disputed domain name is a misspelling of the Complainants' trademark.

The gTLD extension ".com" is considered as a standard technical requirement for a domain name and therefore does not prevent a finding of confusing similarity between the disputed domain name and either of the Complainant's VENTE-PRIVEE and VENTE-PRIVEE.COM marks.

This Panel finds therefore that the disputed domain name <ventee-privee.com> is confusingly similar to the VENTE-PRIVEE and VENTE-PRIVEE.COM marks in which the Complainants have rights and the Complainants have therefore succeeded in the first element of the test in Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Complainants have made out a *prima facie* case that the Respondent has no rights legitimate interests in the disputed domain name arguing that:

- a worldwide search conducted on the denominations "ventee-privee" and "ventee-privee.com" through the database operated by a private group, a copy of which has been adduced as an exhibit in the annex to the Complaint, shows no existing trademark corresponding to said denominations;
- the Respondent is not known under the denomination "ventee-privee.com", because otherwise, it would have filled the Whois database accordingly instead of masking its identity through a Whois privacy service;
- the disputed domain name was registered on March 29, 2022, long after the beginning of the Complainants' activities in 2001;
- the Complainants have not authorized the Respondent to register and to use the disputed domain name by a license agreement or otherwise;
- the Respondent has never been granted authorization, license, or any right whatsoever to use the Complainants' VENTE-PRIVEE or VENTE-PRIVEE.COM trademarks, in the disputed domain name or otherwise;
- the Respondent has never reacted against the Complainants' filing, registration and use of the VENTE-PRIVEE and VENTE-PRIVEE.COM marks and since the Complainant first used VENTE-PRIVEE and VENTE-PRIVEE.COM as distinctive signs 21 years ago, no third party has invoked prior rights against them;
- the Respondent is in no way related with the Complainants' trademarks or domain names.

It is well established that once a complainant makes out a *prima facie* case that a respondent has no rights or legitimate interests in the domain name at issue, the burden of production shifts to the respondent to prove its

rights or legitimate interests.

The Respondent has failed to discharge that burden and therefore this Panel must find that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant has therefore succeeded in the second element of the test in Policy paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

The Complainants have adduced uncontested evidence that they have long and well established rights in the registered trademarks VENTE-PRIVEE and VENTE-PRIVEE.COM marks which are used in connection with the Complainants' online business.

The evidence is that the Complainants' business experienced enormous expansion up until 2018.

While the Complainants' evidence is that their websites were renamed VEEPEE at the beginning of 2019, they continue to use the VENTE-PRIVEE and VENTE-PRIVEE.COM trademarks on their websites.

Given that the websites were renamed so recently, that the marks continue to be used on the Complainants' websites, and the strength of the Complainants' reputation and goodwill in 2018, with revenues exceeding EUR 1,6 billion since 2013 to reach nearly EUR 4 billion in 2018, the Panel finds on the balance of probabilities, that the level of reputation and recognition which existed in 2018 continue to subsist in the VENTE-PRIVEE and VENTE-PRIVEE.COM marks.

This Panel therefore accepts the Complainants' submissions, and finds, that it is improbable that the registrant of the disputed domain name was unaware of the Complainants' names, mark and reputation when the disputed domain name was chosen and registered.

In making this finding this Panel takes into account that the term "ventee-privee" is a misspelling of the Complainants' VENTE-PRIVEE mark and the term has no obvious meaning. Furthermore the disputed domain name includes the hyphen, separating the two elements that co-exist in both the disputed domain name and the Complainants' mark. Furthermore in the Amended Complaint, the Complainants have argued that they have a strong reputation in the Italian market where the second named Respondent purports to reside.

This Panel finds therefore that the registrant of the disputed domain name chose and registered the disputed domain name in bad faith, intending that it would be confusingly similar to the Complainants' marks so as to take predatory advantage of the Complainants' goodwill and reputation to confuse and misdirect Internet users in an act of typosquatting.

The screen capture of the web page to which the disputed domain name redirects, which is exhibited in an annex to the Complaint shows that the disputed domain name was offered for sale for USD 199, only three months after its registration. The Complainants have put forward plausible arguments that the sum asked exceeds the Respondent's out of pocket costs in registering the disputed domain name.

Taken together, the circumstances, that on the balance of probabilities the disputed domain name was registered to target and take predatory advantage of the Complainants' reputation and goodwill; that the Respondent has no rights or legitimate interests in the disputed domain name and is not using the disputed domain name for any legitimate or *bona fide* commercial purpose; and that the Respondent has chosen to conceal his identity on the published Whols by availing of a privacy service; indicate that the disputed domain name was registered or acquired by the Respondent primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to the Complainants who are the owner of the VENTE-PRIVEE and

VENTE-PRIVEE.COM trademarks or to a competitor of the Complainants, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the disputed domain name, which is expressly identified in the Policy as constituting registration and use in bad faith.

This Panel finds therefore the disputed domain name was registered in bad faith.

As this Panel has found that the disputed domain name was registered and is being used in bad faith, the Complainant has succeeded in the third element of the test in Policy paragraph 4(a)(iii).

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 <ventee-privee.com> be transferred to the Complainant, Vente-privee.com.

/James Bridgeman/

James Bridgeman

Sole Panelist

Date: August 23, 2022