

ADMINISTRATIVE PANEL DECISION

Ecovacs Robotics Co., Ltd. v. Mai Trung Dung
Case No. D2022-2968

1. The Parties

The Complainant is Ecovacs Robotics Co., Ltd., China, represented by Beijing Chofn Intellectual Property Agency Co., Ltd, China.

The Respondent is Mai Trung Dung, Viet Nam.

2. The Domain Name and Registrar

The disputed domain name <vnecovacs.com> (the “Disputed Domain Name”) is registered with iNET Corporation (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on August 11, 2022. On August 11, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 12, 2022, 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.

On August 18, 2022, the Center sent an email in English and Vietnamese to the Parties regarding the language of proceedings. The Complainant confirmed its request that English be the language of proceedings on August 20, 2022. The Respondent did not comment on the language of the proceeding.

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 in English and Vietnamese the Respondent of the Complaint, and the proceedings commenced on September 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 27, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default October 4, 2022.

The Center appointed Pham Nghiem Xuan Bac as the sole panelist in this matter on November 8, 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 renowned China-based company founded in 1998. Its main business scope is the research and development, design, production, and sales of intelligent household equipment, such as home service robots, cleaning home appliances, and related parts. The Complainant operates in more than 60 countries and regions worldwide, including Viet Nam. The Complainant is listed on the Shanghai Stock Exchange under the stock short name ECOVACS and in 2020 had an annual turnaround concerning the ECOVACS brand of RMB 7.234 billion.

The Complainant holds registered trademarks for ECOVACS (the “ECOVACS trademark”) in many jurisdictions worldwide, including, but not limited to the United States of America ECOVACS Registration No. 3537599 registered on November 25, 2008, for goods in the international Class 7; European Union Trade Mark ECOVACS (design) Registration No. 018101392 registered on January 9, 2020, for goods in the international Classes 7, 9, and 11; International Registration ECOVACS (design) No. 1496794 registered on August 5, 2019, for goods in the international Classes 7, 9, and 11, and designating ,*inter alia*, Viet Nam, where the Respondent resides.

The Disputed Domain Name was registered on May 14, 2022. The Disputed Domain Name resolved to a website reproducing the Complainant’s website with the title “Robot hút bụi lau nhà Ecovacs Deebot chính hãng – VNEcovacs” (in English: “Genuine Ecovacs Deebot vacuum cleaner robot – VNEcovacs”) and purportedly offering the Complainant’s products. At the date of drafting this Decision, the Disputed Domain Name is redirecting to an active website at “www.robouthutbuilaunha.net” displaying the mark “ZL, device”, which offers home service robots and related parts under the brand ECOVACS.

5. Parties’ Contentions

A. Complainant

The Complainant contends that each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case, as follows:

(i) The Disputed Domain Name is identical or confusingly similar to a trademark or service mark, in which the Complainant has rights.

First, the Complainant contends that the Complainant is the registered owner of the ECOVACS trademark in Classes 3, 7, 9, 21, and 25 in many jurisdictions around the world, including International Trademark Registration No. 1496794 designating Viet Nam.

Second, the Complainant contends that the Disputed Domain Name is confusingly similar to the trademark owned by the Complainant as the Disputed Domain Name incorporates the Complainant’s ECOVACS trademark in its entirety, and the addition of an abbreviation of the English name of Viet Nam, *i.e.*, “vn”, could not alleviate the confusion.

Finally, the Complainant submits that the addition of the generic Top-Level Domain (“gTLD”) suffix “.com” in the Disputed Domain Name does not add any distinctiveness to the Disputed Domain Name.

(ii) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

First, the Complainant argues that the Respondent has acquired no trademark incorporating the term ECOVACS which could have granted the Respondent with rights in the Disputed Domain Name. Further, there is no evidence that the Respondent has been able to enjoy the relevant name rights for ECOVACS.

Second, the Complainant contends that the Complainant has never licensed or otherwise authorized the Respondent to use the ECOVACS trademark and the Disputed Domain Name in any form. Further, the Respondent is neither a distributor nor partner of the Complainant.

(iii) The Disputed Domain Name has been registered and is being used in bad faith.

First, the Complainant contends that the Complainant and its trademarks enjoy a high global profile on a worldwide basis, including Viet Nam, where the Respondent resides. In addition, the content of the website under the Disputed Domain Name is the same as that of the Complainant's official website. Thus, the Respondent necessarily had the Complainant's name and its trademarks in mind when registering the Disputed Domain Name. Further, the Complainant's trademark registrations significantly predate the registration date of the Disputed Domain Name. Accordingly, the Complainant asserts that the Disputed Domain Name was registered in bad faith.

Finally, the Complainant argues that by deliberately including the ECOVACS trademark in the Disputed Domain Name, the Respondent registered and used the Disputed Domain Name intending to attract Internet users to the website for the sale of its products by creating a likelihood of confusion with the Complainant's ECOVACS trademark.

With the said arguments, the Complainant requests that the Disputed Domain Name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

A. Procedural issues

(i) Language of the Proceeding

The Complaint was filed in English. However, the Registrar confirmed that the language of the Registration Agreement is Vietnamese.

As the Complaint was filed in English, the Center, in its communication dated August 18, 2022, invited the Complainant to submit either (i) satisfactory evidence of an agreement between the Complainant and the Respondent to the effect that the proceeding should be in English, or (ii) the Complaint translated into Vietnamese, or (iii) a substantiated request for English to be the language of the proceeding.

On August 20, 2022, the Complainant responded to the Center confirming its request that English be the language of the proceeding. The Respondent did not respond to the Center's communication.

According to paragraph 11(a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

Similar to previous UDRP decisions, the Panel finds that the spirit of paragraph 11(a) of the Rules is to ensure fairness in the selection of language by giving full consideration to the Parties' level of comfortability with each language, the expenses to be incurred, and the possibility of delay in the proceeding in the event translations are required and other relevant factors (see, e.g., *Deutsche Messe AG v. Kim Hyungho*, WIPO Case No. [D2003-0679](#)).

In the present case, the Panel takes into account the circumstances of the proceeding, including, but not limited to:

(i) the fact that the Complainant, a Chinese business entity, does not appear to be able to communicate in Vietnamese, and therefore if the Complainant was required to have the documents translated into Vietnamese, the proceeding would be unduly delayed, and the Complainant would have to incur substantial expenses for translation;

(ii) the English language is quite popular in Viet Nam, where the Respondent is located, and the website that redirects the Disputed Domain Name at the moment of drafting this Decision contains English phrases and words, i.e., "Back to the top", "robot", "hotline"; these suggest that the Respondent appears to have knowledge of the English language and be able to communicate in English; and

(iii) the Respondent did not object to English being the language of the proceeding and did not submit a response in either English or Vietnamese, although the Center sent the language of proceedings communication and Notification of the Complaint in both English and Vietnamese.

Therefore, in the interest of fairness to both Parties as well as the Panel's obligation under paragraph 10(c) of the Rules, which provides that "the Panel shall ensure that the administrative proceeding takes place with due expedition", the Panel hereby decides, under paragraph 11(a) of the Rules, that the language of the proceeding shall be English and shall render its decision in English.

(ii) The Respondent's Failure to Respond

The Respondent's failure to file a Response does not automatically result in a decision in favor of the Complainant (see, e.g., *Tradewind Media, LLC d/b/a Intopic Media v. Jayson Hahn*, WIPO Case No. [D2010-1413](#); *M. Corentin Benoit Thiercelin v. CyberDeal, Inc.*, WIPO Case No. [D2010-0941](#)). However, the Panel may draw appropriate inferences from the Respondent's default.

B. Identical or Confusingly Similar

The Complainant is required to establish the two following elements: (i) that it has trademark rights, and, if so, (ii) that the Disputed Domain Name is identical or confusingly similar to its trademark.

First, the Panel finds that the Complainant has evidenced that it has rights in the ECOVACS trademark, which was registered well before the Disputed Domain Name. Also, the Complainant has sufficiently demonstrated that it has long used its trademarks for its commercial activities, and in particular to offer home service robots, related parts, and other products in the intelligent household equipment industry worldwide.

Second, the Disputed Domain Name comprises the Complainant's ECOVACS trademark, in which the Complainant has exclusive rights. The difference between the Disputed Domain Name and the trademark is the addition of the letters "vn", which is the common short form of "Viet Nam", the name of the country where the Respondent resides. As such, the Panel finds that the ECOVACS trademark remains recognizable in the Disputed Domain Name. It is well established that the addition of a geographical identifier such as "vn" to a trademark does not prevent confusing similarity, as it was found in previous UDRP decisions (see, e.g., *Supercell Oy v. See Privacy Guardian.org / Mediastack*, WIPO Case No. [D2017-2177](#); *Johnson & Johnson v. Tung Nguyen*, WIPO Case No. [D2017-1635](#)).

Third, the Panel finds, similarly to other UDRP panels, that the gTLD “.com” does not affect whether the Disputed Domain Name is identical with or confusingly similar to the Complainant’s trademarks (see, e.g., *Volkswagen AG v. Privacy Protection Services*, WIPO Case No. [D2012-2066](#); *The Coca-Cola Company v. David Jurkiewicz*, WIPO Case No. [DME2010-0008](#); *Telecom Personal, S.A., v. NAMEZERO.COM, Inc.*, WIPO Case No. [D2001-0015](#); *F. Hoffmann La Roche AG v. Macalve e-dominios S.A.*, WIPO Case No. [D2006-0451](#); *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

Based on the foregoing findings, the Panel finds that the Disputed Domain Name is confusingly similar to the ECOVACS trademark, and paragraph 4(a)(i) of the Policy is established.

C. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists circumstances, in particular, but without limitation, which, if found by the Panel to be proved, demonstrate the Respondent’s rights or legitimate interests in the Disputed Domain Name for the purposes of paragraph 4(a)(ii) of the Policy, including:

“(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 organization) 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.”

The Panel finds that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The Respondent did not reply to the Complainant’s contentions and, therefore, did not refute them.

The consensus of previous UDRP decisions is that while the overall burden of proof in UDRP proceedings is on the complainant, once a *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating its rights or legitimate interests in the Disputed Domain Name (see, e.g., *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#); *Julian Barnes v. Old Barn Studios*, WIPO Case No. [D2001-0121](#)). In this instant case, the Panel finds that the Respondent has failed to meet that burden since no response was submitted with evidence to the contrary.

Regarding paragraph 4(c)(i) of the Policy, the Panel finds, in light of the Complainant’s asserted facts, that no license, permission, or authorization of any kind to use the Complainant’s ECOVACS trademark has been granted to the Respondent. There is no evidence available that the Respondent holds any registered or unregistered trademark rights in any jurisdiction related to ECOVACS. Thus, the Panel finds that the Respondent has no rights in the trademarks ECOVACS.

A reseller or distributor may be making a *bona fide* offering of goods and services and thus, have rights or legitimate interests in a domain name if its use meets certain requirements, which are described in the decision *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) (“Oki Data”), including:

- the respondent must actually be offering the goods or services at issue;
- the respondent must use the site to sell only the trademarked goods (otherwise, there is the possibility that the respondent is using the trademark in a domain name to bait consumers and then switch them to other goods);
- the site itself must accurately disclose the respondent’s relationship with the trademark owner; and
- the respondent must not try to “corner the market” in all relevant domain names, thus depriving the trademark owner of the ability to reflect its own mark in a domain name.

In this particular case, the Panel finds that the Disputed Domain Name comprises the ECOVACS trademark in its entirety, merely combined with the geographic identifier “vn”, evidently referring to the name of Viet Nam where the Respondent resides. Further, it is proven and evidenced by the Complainant that the Disputed Domain Name used to resolve to a website displaying the Complainant’s trademark ECOVACS and purportedly offering the Complainant’s goods, while no statement or disclaimer disclosing accurately the relationship between the Complainant and the Respondent is placed. In addition, such website contained some statements like “Robot hút bụi lau nhà Ecovacs Deebot chính hãng – VNEcovacs” (in English: “Genuine Ecovacs Deebot vacuum cleaner robot – VNEcovacs”), “VNEcovacs hiện đang là nhà phân phối các sản phẩm máy hút bụi chính hãng với giá cả phải chăng tại Việt Nam” (in English: “VNEcovacs is currently a distributor of genuine vacuum cleaner products with affordable prices in Viet Nam”), and the Complainant’s ECOVACS logo. These statements and indications may mislead consumers into believing that there is a connection or association between the Respondent and the Complainant, where such connection or association does not exist in reality.

On the date of this Decision, the Panel finds that the Disputed Domain Name is redirecting to another website at “www.robouthutbuilauha.net”, in which the Complainant’s trademark and aforesaid statements were removed. However, considering that the current website is still offering for sale home service robots without any disclaimer on the relationship between the Respondent and the trademark owner, the Panel still finds that the unauthorized use of the Disputed Domain Name does not meet the Oki Data criteria and thus, does not constitute a *bona fide* use within paragraph 4(c)(i) of the Policy.

Regarding paragraph 4(c)(ii) of the Policy, the Panel finds that there is no evidence showing that the Respondent has been commonly known by the Disputed Domain Name. Further, there is also no evidence showing that the Respondent operates any *bona fide* business or organization under the Disputed Domain Name. Therefore, it is not evidenced that the Respondent is known or identified by the term “ecovacs” or that the Respondent has any right to it.

Regarding paragraph 4(c)(iii) of the Policy, the Panel finds that there is no evidence that the Respondent is making any legitimate noncommercial or fair use of the Disputed Domain Name. In fact, as it appears following the Complainant’s assertions concerning the Respondent’s registration of the Disputed Domain Name, the Respondent had knowledge of the ECOVACS trademark and had the intention to gain profit by riding on the goodwill and reputation of the Complainant.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests regarding the Disputed Domain Name, and the second element, paragraph 4(a)(ii) of the Policy, is established.

D. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy identifies, in particular, but without limitation, four circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith, including:

“(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 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 your website or location or of a product or service on your website or location.”

The above four circumstances are not exhaustive, and the Panel may find bad faith alternatively.

The Panel finds that the Complainant has put forth evidence that the Respondent has registered and used the Disputed Domain Name in bad faith. The Respondent did not reply to the Complainant's contentions and, therefore, did not refute the Complainant's contentions.

Registration in bad faith

The Panel has considered the Complainant's assertions and evidence concerning the Respondent's bad faith registration and use of the Disputed Domain Name. In this regard, the Panel finds that the Disputed Domain Name containing the Complainant's ECOVACS trademark has been registered in bad faith. In addition, the ECOVACS trademark well predates the registration of the Disputed Domain Name.

The Disputed Domain Name comprises the ECOVACS trademark in its entirety, adding only a geographical identifier "vn" (which is the common abbreviation of "Viet Nam"). Further to this, taking into consideration of the extensive use of the ECOVACS trademark for intelligent household equipment products by the Complainant, which occurs in numerous countries including in Viet Nam where the Respondent locates, and the fact that the ECOVACS trademark, which is a coined word without any dictionary meaning, is not descriptive of anything and devoid of meaning other than its association with the Complainant, the Panel finds that it is very unlikely that the Respondent would have registered the Disputed Domain Name incorporating this trademark without knowledge of the trademark (see in the same way *Hoffmann-La Roche Inc. v. Hightech Industries, Andrew Browne*, WIPO Case No. [D2010-0240](#); *Volkswagen AG v. Swiss Recruitment*, WIPO Case No. [D2013-0534](#)) and that it defies common sense to believe that the Respondent coincidentally selected this precise domain name without any knowledge of the Complainant and its trademark, particularly noting the Respondent's use of the Disputed Domain Name (see in the same way *Asian World of Martial Arts Inc. v. Texas International Property Associates*, WIPO Case No. [D2007-1415](#); *Volkswagen AG v. Swiss Recruitment, supra*).

Given the above mentioned circumstances of this case, the Panel is satisfied that the Respondent did not register the Disputed Domain Name in a fortuity. It is therefore more likely than not that the Respondent obviously knew of the Complainant and its ECOVACS trademark before the registration of the Disputed Domain Name.

Use in bad faith

In Section 6.C. above, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name. In the Panel's view, the use of a domain name, to which one has no rights or legitimate interests, is very often a clear indication of use in bad faith.

On the date of this Decision, the Panel accesses the Disputed Domain Name <vnecovacs.com> and finds that it was redirected to another website at "www.robothutbuilunha.net". However, it is well proven and evidenced by the Complainant that the website under the Disputed Domain Name used to prominently display the Complainant's trademark ECOVACS to offer for sale allegedly the Complainant's goods for intelligent household equipment products. In addition to the adoption of the Complainant's ECOVACS trademark as a uniquely distinctive part of this Disputed Domain Name, the Respondent used the Complainant's logo on the website and falsely represented itself as an affiliate or distributor of the Complainant by the website's headlines "Robot hút bụi lau nhà Ecovacs Deebot chính hãng – VNEcovacs" (in English: "Genuine Ecovacs Deebot vacuum cleaner robot – VNEcovacs"), "VNEcovacs hiện đang là nhà phân phối các sản phẩm máy hút bụi chính hãng với giá cả phải chăng tại Việt Nam" (in English: "VNEcovacs is currently a distributor of genuine vacuum cleaner products with affordable prices in Viet Nam").

The Panel takes the view that any Internet users seeking to purchase the Complainant's ECOVACS products would likely mistakenly believe that the Respondent is either connected to or associated with the Complainant, while no such connection exists in fact. The Panel, therefore, finds that by using the Disputed

Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online locations, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of its website or location, which is indicative of bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

Taking into account all of the above and the available record, the Panel finds that the Disputed Domain Name was registered and is being used by the Respondent in bad faith, and the third element under paragraph 4(a)(iii) of the Policy is established.

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 <vnecovacs.com> be transferred to the Complainant.

/Pham Nghiem Xuan Bac/

Pham Nghiem Xuan Bac

Sole Panelist

Date: November 22, 2022