

## **ADMINISTRATIVE PANEL DECISION**

Vivalto Sante Investissement v. Ju Ji  
Case No. D2023-1275

### **1. The Parties**

The Complainant is Vivalto Sante Investissement, France, represented by LightenLaw, France.

The Respondent is Ju Ji, France.

### **2. The Domain Name and Registrar**

The disputed domain name <vialtovie-sante.com> is registered with Hostinger, UAB (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 23, 2023. On March 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (Privacy Protect, LLC) and contact information in the Complaint.

The Center sent an email communication to the Complainant on March 27, 2023 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 April 3, 2023.

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 April 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 24, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 25, 2023.

The Center appointed William Lobelson as the sole panelist in this matter on May 2, 2023. 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 Vivalto Santé Investissement, and is part of a larger group dedicated to health services. It owns the French Trademark Registration No. 3758918 VIVALTO SANTE of August 4, 2010 in classes 05, 35, 41, 42, 43 and 44.

The disputed domain name is “vivaltovie-sante.com”, registered on January 24, 2023. It does not route toward any active web page.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant claims that the disputed domain name is confusingly similar to its earlier trademark VIVALTO SANTE; that the Respondent does not have any rights or legitimate interests therein; and that the Respondent registered and passively uses the disputed domain name in bad faith, being emphasized that the Respondent is making use of other similar domain names reproducing the Complainant's trademark for scam purposes.

The Complainant requests the transfer of the disputed domain name.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

Notwithstanding the lack of formal response, it remains incumbent on the Complainant to make out its case in all respects under the rules set out in paragraph 4(a) of the Policy. Namely, the Complainant must prove that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (paragraph 4(a)(i));
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name (paragraph 4(a)(ii)); and
- (i) the disputed domain name has been registered and is being used in bad faith (paragraph 4(a)(iii)).

##### **A. Identical or Confusingly Similar**

The Complainant is the owner of a trademark registration for VIVALTO SANTE.

The disputed domain name reproduces the Complainant's trademark.

Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise), such as in the present case the French term “vie”, would not prevent a finding of confusing similarity under the first element; see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

Furthermore, the addition of the generic Top-Level Domain (“gTLD”) “.com” is viewed as a standard registration requirement and as such is disregarded for the purpose of determining whether a domain name is identical or confusingly similar to a trademark.

Consequently, the disputed domain name is confusingly similar to the Complainant's trademark and the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

## **B. Rights or Legitimate Interests**

To demonstrate rights or legitimate interests in a domain name, non-exclusive the Respondent defence under UDRP, paragraph 4(c) include the following:

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

The Panel notes that the Respondent has not filed any response and thus did not deny the Complainant's assertions, nor brought any information or evidence for demonstrating any potential rights or legitimate interests.

The Complainant has made a *prima facie* case showing that the Respondent does not have any rights or legitimate interests in the disputed domain name, particularly by asserting that the Respondent is not affiliated with it in any way and that it never authorized the Respondent to use its trademark as part of the disputed domain name.

The Complainant further contends that the Respondent does not make any *bona fide* use, neither commercial nor non-commercial, of the disputed domain name, as the same is inactive.

The Panel finds that the Complainant has met the requirement under the Policy of showing that the Respondent does not have any rights or legitimate interests in the disputed domain name.

Accordingly, the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

## **C. Registered and Used in Bad Faith**

It transpires from the Complainant's assertions and the evidence filed in support thereof that:

The Respondent has registered a domain name formed with the Trademark VIVALTO SANTE and the Corporate Name of a company affiliated to the Complainant (Vivalto Vie), which can hardly be regarded as a coincidence.

The Respondent, who initially concealed its identity at the time of registration using a Privacy Service, was later identified and the information made available by the Registrar reflects that the Respondent has declared an address in Paris that coincides with that of the Complainant, thus confirming that he could not be unaware of the Complainant's existence.

For this Panel, the above is a clear indication that the Respondent necessarily had the Complainant's trademark in mind when it registered the disputed domain name.

It is further noted by the Panel that the disputed domain name is not being actively used by the Respondent, and does not resolve to any active web page with substantive content.

It is a consensus view among UDRP panels that, with comparative reference to the circumstances set out in paragraph 4(b) of the UDRP it is deemed to establish bad faith registration and use, the apparent lack of so-called active use (*e.g.*, to resolve to a website) of the domain name, does not prevent a finding of bad faith.

The Panel must examine all the circumstances of the case to determine whether the Respondent is acting in bad faith.

UDRP panels may draw inferences about whether a domain name is used in bad faith given the circumstances surrounding registration.

As stated in [WIPO Overview 3.0](#), section 3.3, there is a consensus view about “passive holding”:

“From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or ‘coming soon’ page) would not prevent a finding of bad faith under the doctrine of passive holding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.”

The Complainant has brought evidence that email addresses associated with the disputed domain name have been used for fraudulent purposes ([...]@vivaltoviesante.fr), impersonating some employees, and even the Deputy General Manager of the Complainant’s parent company, with a view to extorting funds from internet users.

Such domain name, used as e-mail addresses for fraudulent purposes, seems to have been registered simultaneously with the disputed domain name, with the same Registrar and are hosted in the same DNS servers.

In all likelihood, the Registrant that hides behind those domain names, that reproduce the Complainant’s mark, is the same person or group of persons who are clearly engaged in bad faith pattern of conduct.

The Panel finds therefore that the passive holding of the disputed domain name in this case does not prevent a finding of bad faith.

Accordingly, the Complainant has satisfied paragraph 4(a)(iii) 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, <vivaltovie-sante.com> be transferred to the Complainant.

*/William Lobelson/*

**William Lobelson**

Sole Panelist

Date: May 15, 2023