

## **ADMINISTRATIVE PANEL DECISION**

Mylan, Inc. v. syed Amer Arif  
Case No. D2023-1701

### **1. The Parties**

The Complainant is Mylan, Inc., United States of America (“United States”), represented by The Webb Law Firm, United States.

The Respondent is syed Amer Arif, United Arab Emirates.

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

The disputed domain name <viatrismedicalequipment.com> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 18, 2023. On April 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 19, 2023, 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 (DOMAINS BY PROXY) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 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 May 1, 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 May 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 28, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 9, 2023.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on June 22, 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**

According to the Complainant's undisputed allegations, the Complainant is a member company of Viatris, a global healthcare company.

The VIATRIS mark has been used since at least as early as 2020, and has been registered as a trademark in the United States as well as many other jurisdictions, totaling to approximately 608 registrations worldwide. The Complaint is based on a large number of registered trademarks consisting of or containing the mark VIATRIS, e.g., United States Trademark Registration for VIATRIS (verbal) No. 6,149,437, registered on September 8, 2020, for services in class 44.

The disputed domain name was registered on February 15, 2023.

It further results from the undisputed evidence provided by the Complainant that the disputed domain name resolves to a website that purports to offer medical equipment repairs under a brand VAITRIS. In addition, the Respondent's website under the disputed domain name shows numerous pictures of doctors and nurses that are actively engaged in their profession, such as operating surgeries, providing diagnosis, and operating medical equipment.

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

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

Firstly, the Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant's mark. In fact, the disputed domain name clearly incorporates the Complainant's registered VIATRIS mark as the dominant portion of the disputed domain name in its entirety, with the addition of the generic terms "medical equipment". The qualifier is merely descriptive and is irrelevant to the confusing similarity inquiry.

The Complainant, secondly, submits that the Respondent has no rights or legitimate interests in the disputed domain name. In particular, the Respondent presented itself as "VAITRIS MEDICAL EQUIPMENT REPAIR", but the disputed domain name uses the Complainant's mark VIATRIS, rather than its own company name "VAITRIS", to confuse consumers into visiting its website and/or purchasing its products/services. It is, thus, creating a false and misleading association with the Complainant. The Respondent never obtained license or permission from the Complainant to use the trademark in the disputed domain name. By intentionally misspelling its entity name in the disputed domain name, the Respondent demonstrated that it is not commonly known by the disputed domain name, has no acquired trademark or service mark rights as a result of acquiring the disputed domain name, and is not using the disputed domain name with a *bona fide* offering of goods or services.

Thirdly, the Complainant contends that the Respondent registered and uses the disputed domain name in bad faith. In its view, the circumstances of the case indicate that the disputed domain name was registered or acquired primarily for the purpose of intentionally attempting to mislead consumers into believing the disputed domain name and the website to which it resolves are associated with the Complainant to trade on the Complainant's extensive goodwill for commercial gain. The Respondent's use of the disputed domain name creates a clear likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and unlawful activities connected with the same.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules instructs this Panel to “decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

Furthermore, paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements in order to obtain an order that the disputed domain name should be transferred or cancelled:

- (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.

The Panel is satisfied that the registrant of record for the disputed domain name is the Respondent and will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

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

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must establish rights in a trademark or service mark and secondly establish that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

It results from the evidence provided, that the Complainant is the registered owner of many trademarks consisting of or including the term VIATRIS, e.g. United States trademark registration VIATRIS (verbal) no. 6,149,437, registered on September 8, 2020.

Many UDRP panels have found that a disputed domain name is confusingly similar to a complainant's trademark for purposes of the first element, where the relevant trademark is recognizable within the disputed domain name. Under such circumstances, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) 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](#)”). This Panel shares the same view and notes that the Complainant's registered trademark VIATRIS is included in full in the disputed domain name and is recognizable therein. The combination of the trademark VIATRIS with the terms “medical equipment” does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark.

Finally, the generic Top-Level Domain (“gTLD”) “.com” is viewed as a standard registration requirement and is as such to be disregarded under the first element confusing similarity test ([WIPO Overview 3.0](#) at section 1.11.1).

In the light of the above, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

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

Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests to the disputed domain name. In the Panel's view, based on the undisputed allegations stated above, the Complainant has made a *prima facie* case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name:

According to the Complaint, which has remained unchallenged, the Complainant has never authorized the Respondent's use of the trademark VIATRIS, e.g., by registering the disputed domain name comprising said mark entirely.

Furthermore, the Panel notes that there is no evidence showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

Finally, it results from the Complainant's undisputed allegations that the disputed domain name resolves to a website that purports to offer services regarding medical equipment repairs under a brand "VAITRIS". In addition, the Respondent's website shows numerous pictures of doctors and nurses that are actively engaged in their profession, such as operating surgeries, providing diagnosis, and operating medical equipment. The Panel assesses this use as being commercial, so that it cannot be considered 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 pursuant to paragraph 4(c)(iii) of the Policy. Furthermore, such use as described above cannot be qualified as a *bona fide* offering of goods or services in accordance with paragraph 4(c)(i) of the Policy. In fact, this Panel considers that in particular the promotional pictures and graphics used on the website to which the disputed domain name resolves, suggest that the Respondent also offers medical goods and services in close relation to the Complainant's VIATRIS goods. Where a domain name consists of a trademark plus additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner ([WIPO Overview 3.0](#) at section 2.5).

Previous UDRP panels have found that once a *prima facie* case is made by a complainant, the burden of production under the second element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. Since the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds, in the circumstances of this case, that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant has therefore satisfied paragraph 4(a)(ii) of the Policy.

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

According to paragraph 4(a)(iii) of the Policy, the Complainant must thirdly establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith.

One of these circumstances is that the respondent, by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to its 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 its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy).

It is the view of this Panel that these circumstances are met in the case at hand.

It results from the Complainant's documented allegations that the disputed domain name is currently connected to a website that purports to offer services regarding medical equipment repairs under a brand "VAITRIS". In addition, the Respondent's website shows numerous pictures of doctors and nurses that are actively engaged in their profession, such as operating surgeries, providing diagnosis, and operating medical equipment. For the Panel, it is therefore evident that the Respondent positively knew the Complainant's

VIATRIS mark. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent also knew that the disputed domain name included the Complainant's trademark when it registered the disputed domain name, having registered it due to its similarity with the Complainant's VIATRIS mark. Registration of the disputed domain name which contains a third party's mark, in awareness of said mark, to take advantage of its similarities with the mentioned mark, and in the absence of rights or legitimate interests amounts to registration in bad faith.

The finding of bad faith registration and use is supported by the further circumstances resulting from the case at hand, which are:

- (i) the Respondent's failure to submit a response;
- (ii) the Respondent's failure to provide any evidence of actual or contemplated good-faith use;
- (iii) the implausibility of any good faith use to which the disputed domain name may be put; and
- (iv) the Respondent hiding its identity behind a privacy shield.

In the light of the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith pursuant to 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 <viatrismedicalequipment.com> be cancelled.

*/Tobias Malte Müller/*

**Tobias Malte Müller**

Sole Panelist

Date: July 6, 2023