

## **ADMINISTRATIVE PANEL DECISION**

VKR Holding A/S v. Larry Miller

Case No. D2023-3463

### **1. The Parties**

The Complainant is VKR Holding A/S, Denmark, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Larry Miller, Nigeria.

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

The disputed domain name <veluxfunds.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 August 15, 2023. On August 15, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 18, 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 (Domain Admin, Privacy Protect, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 18, 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 amended Complaint on August 18, 2023.

The Center verified that the Complaint together with the amended 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 August 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 14, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 19, 2023.

The Center appointed Mihaela Maravela as the sole panelist in this matter on September 26, 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 information in the Complaint, the Complainant is part of a group of companies offering roof windows, skylights, vertical windows and systems, thermal solar energy systems, decoration and sun screening products, ventilation, and indoor climate products. The Complainant's group employs a total of 15,400 people in 40 countries. The VELUX product range includes roof windows and modular skylights, as well as decorative elements, blinds, roller shutters, installation solutions and home automation.

The Complainant is the owner of various registered trademarks that include VELUX in various jurisdictions throughout the world, including the following:

- the European Union trademark registration No. 000955609 for VELUX, registered as of March 31, 2000, covering goods in classes 6, 7, 9, 11;
- the International trademark registration No. 928560 for VELUX, registered as of March 28, 2007, covering goods in classes 19, 20, 24, 37.

The Complainant also owns and uses the domain name <velux.com>, at which promotes and provides information about its VELUX brand and products.

The disputed domain name was registered on April 30, 2023, and does not currently resolve to an active website. According to information with the Complaint, the disputed domain name was used to resolve a website promoting cryptocurrency trading services.

The Complainant's legal representatives sent three cease-and-desist letters to the Respondent, to which it received no response.

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

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

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name can be considered as capturing, in its entirety, the Complainant's VELUX trademark and simply adding the term "funds" to the end of the trademark. The mere addition of this term to the Complainant's trademark does not negate the confusing similarity between the disputed domain name and the Complainant's trademark.

As regards the second element, the Complainant argues that the Respondent is not sponsored by or affiliated with the Complainant in any way. The Complainant has not given the Respondent permission to use the Complainant's trademarks in any manner. Furthermore, the Complainant has not licensed, authorized, or permitted the Respondent to register domain names incorporating the Complainant's trademark. Further, the Respondent is not commonly known by the disputed domain name. The Respondent is using the disputed domain name to redirect users to a website where it promotes cryptocurrency trading services.

With respect to the third element, the Complainant argues that it and its VELUX trademark are known internationally, with trademark registrations across numerous countries. The Complainant has marketed and sold its goods and services using this trademark since 1942, which is well before the Respondent's registration of the disputed domain name on April 30, 2023. The Respondent has intentionally misappropriated the Complainant's VELUX trademark as a way of redirecting Internet users searching for the Complainant to its website, where it promotes cryptocurrency investment and trading services, unrelated to the Complainant and its products. This sort of tactic – labeled “bait-and-switch” for its propensity to confuse Internet users into believing that they are visiting a Complainant's site only to discover that the disputed domain name is completely unconnected to that Complainant – has been held to be evidence of bad faith registration and use by past panels under the UDRP proceedings. Moreover, the Complainant has identified four other websites with very similar content, which evinces that the Respondent has merely chosen to register a domain name including the Complainant's highly distinctive VELUX trademark to create a likelihood of confusion and to mislead unsuspecting users into believing that its cryptocurrency investment and trading services are affiliated or connected with the Complainant in some way.

## **B. Respondent**

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

## **6. Discussion and Findings**

No response has been received from the Respondent in this case. Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules. The applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”, and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights, (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**

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. While the addition of other terms here, “funds” may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

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

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

There is no evidence in the record that the Respondent is currently using the disputed domain name in connection with a *bona fide* offering of goods or services, nor does the Respondent appear to engage in any legitimate noncommercial or fair use of the disputed domain name within the meaning of paragraphs 4(c)(i) and (iii) of the Policy. Rather, the disputed domain name does not currently resolve. According to evidence with the Complaint, the Respondent has used the disputed domain name at some point in time in connection with commercial websites to promote cryptocurrency services, featuring the Complainant’s distinctive trademark without the Complainant’s consent. Such use does not in the circumstances of this case give rise to any rights or legitimate interests on the Respondent’s part.

There is no evidence that the Respondent is commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy.

Furthermore, the nature of the disputed domain name carries a risk of implied affiliation and cannot constitute a fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

Based on the available record, the Panel finds the second element of the Policy has been established.

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

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

According to the un rebutted assertions of the Complainant, its VELUX trademark was widely used in commerce well before the registration of the disputed domain name. The disputed domain name is confusingly similar with the Complainant’s trademark. Under these circumstances, it is most likely that the Respondent was aware of the Complainant’s trademark at the registration date of the disputed domain name. The Respondent provided no explanations for why he registered the disputed domain name.

The disputed domain name resolved to a website promoting cryptocurrency trading services.

According to the evidence provided with the Complaint, the website operated under the disputed domain name was used for commercial purposes, for promoting cryptocurrency investments and displaying the Complainant’s trademark VELUX. Paragraph 4(b)(iv) of the Policy provides that the use of a domain name

to intentionally attempt “to attract, for commercial gain, Internet users to [the respondent’s] 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 [the respondent’s] website or location or of a product or service on [the respondent’s] website or location” is evidence of registration and use in bad faith.

Therefore, given the circumstances in the case the Panel considers that the Respondent must have had knowledge of the Complainant’s rights in the VELUX trademarks when it registered the disputed domain name and it has intentionally created likelihood confusion with the Complainant’s trademarks and website in order to attract Internet users for its own commercial gain, as envisaged by paragraph 4(b)(iv) of the Policy and/or to disrupt the business of the Complainant.

The disputed domain name does not currently resolve to an active website. The Panel finds that passive holding of the disputed domain name does not in the circumstances of this case prevent a finding of bad faith. There is no evidence in the record of a legitimate use of the disputed domain name. The trademark of the Complainant is distinctive and widely used in commerce as per the evidence with the Complaint. UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

Moreover, the Respondent has not formally participated in these proceedings and has failed to rebut the Complainants’ contentions or provide any evidence of actual or contemplated good-faith use, and indeed none would seem plausible.

Based on the available record, the Panel finds the third element of the Policy has been 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 <veluxfunds.com> be transferred to the Complainant.

*/Mihaela Maravela/*

**Mihaela Maravela**

Sole Panelist

Date: October 5, 2023