

ADMINISTRATIVE PANEL DECISION

Vuori, Inc. v. Tulip Trading Company Limited
Case No. D2023-5395

1. The Parties

The Complainant is Vuori, Inc., United States of America (U.S.), represented by IPLA, U.S.

The Respondent is Tulip Trading Company Limited, Saint Kitts and Nevis.

2. The Domain Name and Registrar

The disputed domain name <vouriclothing.com> (the “Disputed Domain Name”) is registered with Above.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 29, 2023. On January 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On January 8, 2024, 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 (Above.com PTY Ltd) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 10, 2024, 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 January 15, 2024.

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 January 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 4, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 6, 2024.

The Center appointed Flip Jan Claude Petillion as the sole panelist in this matter on February 9, 2024. 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, Vuori, Inc., is an American company operating in the design, manufacture, and sale of apparel and clothing products.

The Complainant is the owner of numerous trademarks including the following:

- U.S. figurative mark depicted below, registered under No. 3591068 on March 17, 2009, in class 25:



- VUORI, U.S. word mark registered under No. 5053716 on October 4, 2016, in class 25;
- VUORI, International word mark registered under No. 1297242 on March 31, 2016, in class 25.

The Complainant appears to operate through its official website accessible via the domain names <vuoriclothing.com> and <vuori.com>.

The Disputed Domain Name was registered on July 12, 2018. According to the Complainant's evidence, in 2019, the Disputed Domain Name appeared to redirect to a parking page <https://ww1.vouriclothing.com/>, which was blocked due to a security threat at some point. The Disputed Domain Name now redirects to a parking page <http://ww38.vouriclothing.com/> with pay-per-click links.

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 is identical or confusingly similar to a trademark in which it claims to have rights. According to the Complainant, there is a high likelihood that consumers will be confused, deceived, or otherwise mistaken that the Disputed Domain Name is owned, sponsored, or endorsed by, or otherwise affiliated with the Complainant and the VUORI trademarks.

The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Complainant contends that:

- the Disputed Domain Name was registered after the first use dates and/or the trademark registration dates of the Complainant's VUORI trademarks and after the Complainant's websites were registered and operational;
- the Respondent's use of the Disputed Domain Name does not represent a legitimate or bona fide offering of goods and services;
- it is not aware of any trademark rights, domain name rights, or other rights that the Respondent has relating to the VUORI trademarks;

- it has never authorized the Respondent to use its VUORI trademark in connection with any goods or services;
- nothing in any publicly available source suggests the Respondent is commonly known by the Disputed Domain Name.

Finally, the Complainant claims that the Disputed Domain Name was registered and is being used in bad faith. According to the Complainant:

- the Complainant has senior trademark rights in the VUORI trademarks;
- the use of the Disputed Domain Name redirecting either to a blocked web page or to a parking page with links to third-party competitor websites is considered “textbook” bad faith use;
- the Respondent knew of the Complainant’s prior trademark rights and purposely adopted a common misspelling of Complainant’s mark to redirect traffic away from the Complainant;
- the Respondent intended to profit from and/or harm the Complainant’s well-known mark and brand reputation when registering the Disputed Domain with the sole purpose of capitalizing on the user traffic intended for the Complainant’s website.

B. Respondent

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

6. Discussion and Findings

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“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 Disputed Domain Name is confusingly similar to the VUORI mark for the purposes of the Policy. The Disputed Domain Name appears to be an obvious misspelling of the Complainant’s VUORI trademark: the letters “O” and “U” of the trademark have been reversed. This practice is commonly referred to as “typosquatting”. The Panel finds that this small change does not prevent the Disputed Domain Name from being confusingly similar. [WIPO Overview 3.0](#), section 1.9.

Additionally, the Panel finds that the addition of another term, here “clothing”, 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.

It is well established that generic Top-Level-Domains (“gTLDs”), here “.com”, may be disregarded when considering whether the Disputed Domain Name is confusingly similar to a trademark in which the Complainant has rights.

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available 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.

The Panel notes that the Respondent has not apparently been commonly known by the Disputed Domain Name, and that the Respondent does not seem to have acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is “Tulip Trading Company Limited”. The Respondent’s use and registration of the Disputed Domain Name was not authorized by the Complainant.

Fundamentally, a respondent’s use of a domain name will not be considered “fair” if it falsely suggests affiliation with the trademark owner. The correlation between a domain name and the complainant’s mark is often central to this inquiry. In this case, the Panel finds that the Disputed Domain Name can be considered as virtually identical to the Complainant’s VUORI trademark as it simply reverses 2 letters of the mark. The Panel finds that subtle misspellings of a complainant’s mark in a domain name can impersonate the complainant, as there is a risk that Internet users will not notice the difference between such misspelling and the complainant’s mark. See *Banque et Caisse d’Epargne de l’Etat, Luxembourg, v. Domain Admin, Whoisprotection.cc / hans larsson*, WIPO Case No. [D2022-1505](#).

Moreover, the Disputed Domain Name combines a misspelling of the Complainant’s VUORI trademark with the descriptive term “clothing”, which can be directly linked to the Complainant’s clothing business. The Panel also observes that, except for the misspelling of the Complainant’s VUORI trademark, the Disputed Domain Name is identical to the domain name <vuoriclothing.com> resolving to the Complainant’s official website. Therefore, the Panel finds that the Disputed Domain Name carries a risk of implied affiliation with the Complainant and cannot constitute fair use.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, such as the content of the website linked to the disputed domain name and the absence of a response, support a fair use or not. [WIPO Overview 3.0](#), sections 2.5.2 and 2.5.3.

In this case, the Panel is of the opinion that the Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name. According to evidence provided by the Complainant, the Disputed Domain name appeared (and still appears) to redirect to a parking page containing pay-per-click (“PPC”) links such as “Clothes Store” and third-party clothing websites.

Given the distinctive character of the Complainant's mark, the Panel finds that such sponsored links may capitalize on the reputation and goodwill of the Complainant's mark or mislead Internet users, which cannot be considered as a use of the Disputed Domain Name in connection with a bona fide offering of goods or services. [WIPO Overview 3.0](#), section 2.9.

The Respondent had the opportunity to demonstrate its rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the prima facie case established by the Complainant has not been rebutted.

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.

As established above, the Disputed Domain Name appears to redirect to a parking page containing PPC links. In the circumstances of the present case, the Panel considers this to indicate that the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trademark. [WIPO Overview 3.0](#), section 3.2.4. While the intention to earn click-through-revenue is not in itself illegitimate, the Panel finds that the use of the Disputed Domain Name that is confusingly similar to the Complainant's trademark to obtain click-through-revenue constitutes bad faith use. See *Mpire Corporation v. Michael Frey*, WIPO Case No. [D2009-0258](#); *L'Oréal, Biotherm, Lancôme Parfums et Beauté & Cie v. Unasi, Inc.*, WIPO Case No. [D2005-0623](#).

Other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

The Panel holds that the misspelling of the Complainant's mark in the Disputed Domain Name is a form of typosquatting which is further evidence of bad faith. See *ESPN, Inc. v. XC2*, WIPO Case No. [D2005-0444](#); *WestJet Airlines Ltd. v. Taranga Services Pty Ltd*, WIPO Case No. [D2010-1814](#); and *Compagnie Générale des Etablissements Michelin v. Terramonte Corp, Domain Manager*, WIPO Case No. [D2011-1951](#).

Moreover, in the present case, the Panel finds that the Respondent must have been aware of the Complainant and its trademark rights when it registered the Disputed Domain Name as:

- some of the Complainant's trademarks predate the registration of the Disputed Domain Name by more than 9 years;
- the Disputed Domain Name incorporates an obvious misspelling of the Complainant's distinctive trademark in its entirety, and combines it with a term directly referring to the Complainant's clothing business;

Finally, the Respondent did not formally take part in the administrative proceedings. According to the Panel, this serves as additional indication of the Respondent's bad faith.

Based on the available record, the Panel finds that the Complainant has established the third element 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 <vouriclothing.com> be transferred to the Complainant.

/Flip Jan Claude Petillion/

Flip Jan Claude Petillion

Sole Panelist

Date: February 23, 2023