

## ADMINISTRATIVE PANEL DECISION

VKR Holding A/S v. Wu Yu

Case No. D2022-0744

### 1. The Parties

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

The Respondent is Wu Yu, China.

### 2. The Domain Name and Registrar

The disputed domain name <veluxom.net> is registered with Sav.com, LLC (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 3, 2022. On March 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 3, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on March 4, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint.<sup>1</sup> The Complainant filed an amended Complaint on March 9, 2022.

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 March 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 31, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 1, 2022.

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1. At the time of the filing of the Complaint, the Respondent’s identity was masked by a privacy service.

The Center appointed Nayiri Boghossian as the sole panelist in this matter on April 12, 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 offers through its subsidiaries roof windows, skylights, vertical windows and systems, thermal solar energy systems, decoration and sun screening products, ventilation, and indoor climate products. The Complainant owns trademark registrations for VELUX such as International registration No. 928560, registered on March 28, 2007; and United States of America registration No. 1091446, registered on May 16, 1978. The group to which the Complainant belongs was established in 1941 and a patent for roof window in 1942 was obtained and the product was called "VELUX".

The disputed domain name was registered on April 21, 2021. The disputed domain name resolves to a parked webpage hosting pay-per-click ("PPC") sponsored links. Some of these links are links to websites competing with the Complainant's business.

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

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

The Complainant contends that the disputed domain name is confusingly similar to a trademark or service mark in which the Complainant has rights. The generic Top-Level Domain ("gTLD") ".net" should typically be ignored. The disputed domain name incorporates the Complainant's trademark in full and adds to it the letters "om". The addition of generic or descriptive terms does not eliminate similarity.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. The trademark VELUX is owned by the Complainant. The Complainant did not authorize the Respondent to use its trademark in the disputed domain name nor is the Respondent affiliated with the Complainant. The Respondent is not commonly known by the disputed domain name. The Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services nor is he making a legitimate noncommercial or fair use of the disputed domain name. The disputed domain name is being offered for sale at an amount far exceeding the Respondent's out-of-pocket expenses. The Respondent registered the disputed domain name many years after the Complainant's registration of its trademark and after the trademark had become known worldwide.

The Complainant contends that the disputed domain name is registered and is being used in bad faith. The Respondent knew of the Complainant's trademark as the Complainant and its trademark are known internationally and the Complainant's trademark has been in use since 1942. The disputed domain name is registered with the intent to confuse Internet users and divert traffic for commercial gain evidenced by the presence of PPC links. The Respondent is offering to sell the disputed domain name for an amount far exceeding the Respondent's out-of-pocket expenses. The Respondent has used a privacy service. The Respondent did not respond to the Complainant's cease-and-desist letter.

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

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

## 6. Discussion and Findings

### A. Identical or Confusingly Similar

The Complainant owns trademark registrations for VELUX. The Panel is satisfied that the Complainant has established its ownership of the trademark VELUX.

The disputed domain name incorporates the Complainant's trademark VELUX in its entirety. It is established by prior UDRP panels that when a domain name incorporates a complainant's registered trademark, such incorporation is sufficient to establish identity or confusing similarity for the purposes of the Policy even if other terms are added as part of the disputed domain name. *E.g., Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) ("Oki Data"). Consequently, the addition of the letters "om" does not alter the fact that the disputed domain name is confusingly similar to the Complainant's trademark. The Complainant's trademark remains very clearly recognizable.

The gTLD ".net" should typically be ignored when assessing confusing similarity as established by prior UDRP decisions.

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

### B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make at least a *prima facie* showing that a respondent does not have any rights or legitimate interests in the disputed domain name. Once such showing is made, the burden of production shifts to the respondent. In the instant case, the Complainant asserts that the Respondent is not authorized by the Complainant to use its trademark. The Complainant further asserts that the Respondent is not using the disputed domain name for a *bona fide* offering of goods or services, and the Respondent is not commonly known by the disputed domain name. Therefore, the Complainant has established a *prima facie* case and the burden of production shifts to the Respondent to show that it has rights or legitimate interests.

UDRP panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links capitalize on the reputation and good will of the complainant's mark. When the Panel visited the disputed domain name, she noted that some of the PPC links appearing on the website to which the disputed domain name resolves are links to websites which offer window installation, gutter, and filter installation. Bearing in mind that the Complainant's group of companies provide products such as windows and ventilation products, it is the Panel's view that the Respondent is trying to capitalize on the reputation and good will of the Complainant's mark. In *Legacy Health System v. Nijat Hassanov*, WIPO Case No. [D2008-1708](#), it was found that the respondent had no rights or legitimate interests as "the sole purpose of the disputed domain name is to resolve to pay-per-click advertising websites and collect click-through revenue from advertising links. Such use demonstrates that the Respondent has used the disputed domain name to derive a commercial benefit. There is no indication on the website that the Respondent has made a *bona fide* use of the disputed domain name".

The Respondent has not provided any evidence to show that it has 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

The Respondent must have been aware of the Complainant's trademark as VELUX has been in use for 80 years and the first registration of the trademark dates back to 1978. The disputed domain name resolves to a parked page with sponsored links. Such use here constitutes bad faith. In *Mpire Corporation v. Michael Frey*, WIPO Case No. [D2009-0258](#), the panel found that "While the intention to earn click-through-revenue is not in itself illegitimate, the use of a domain name that is deceptively similar to a trademark to obtain click-

through-revenue is found to be bad faith use.” Such conduct of using a domain name, to attract Internet users for commercial gain, would fall squarely within the meaning of paragraph 4(b)(iv) of the Policy. Given the above, the Panel believes that the Respondent has registered the disputed domain name in order to trade off the reputation of the Complainant’s trademark.

Furthermore, when the Panel visited the disputed domain name, it was offered for sale for a minimum of USD 5,000. The offer for sale at such a high figure is a clear sign of bad faith.

Accordingly, the Panel finds that 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 <veluxom.net> be transferred to the Complainant.

*/Nayiri Boghossian/*

**Nayiri Boghossian**

Sole Panelist

Date: April 26, 2022