

ADMINISTRATIVE PANEL DECISION

AS LHV Group v. Domain Admin, Whoisprotection.cc / uangshunfa h,
huangshunfa
Case No. D2022-1853

1. The Parties

Complainant is AS LHV Group, Estonia, represented by Hogan Lovells (Paris) LLP, France.

Respondent is Domain Admin, Whoisprotection.cc, Malaysia / uangshunfa h, huangshunfa,China.

2. The Domain Name and Registrar

The disputed domain name <lhvpank.com> is registered with Mat Bao Corporation (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 23, 2022. On May 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 24, 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 Complainant on May 30, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on May 31, 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 Respondent of the Complaint, and the proceedings commenced on June 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 23, 2022. Respondent did not submit any response. Accordingly, the Center notified the Parties about Commencement of Panel Appointment Process on July 5, 2022.

Respondent sent informal communications in Chinese to the Center on June 3, 2022. In his first informal email, the Respondent mentioned: "Hi! This domain name is owned by me. If you need it, I can resell it to you, provided the price is right". In his second informal email, Respondent said: "Hi! What does the arbitration you sent me mean? Does the party initiating the arbitration want my lhvpank domain name?"

The Center appointed Phillip V. Marano as the sole panelist in this matter on July 13, 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

Complainant is AS LHV Group, a banking and financial services company founded in 1999 and headquartered in Tallinn, Estonia. Complainant owns valid and subsisting registrations for the LHV trademark in numerous countries, including the Trademark LHV (Reg. No. 43892) in Estonia in International Classes 35, and 36, with the earliest priority dating back to May 24, 2006, registered on May 21, 2007.

Respondent registered the disputed domain name on May 7, 2022. At the time this Complaint was filed, the disputed domain name failed to resolve to an active web page. At the time this Complaint was decided, the disputed domain name resolved to pornographic, Chinese language website content.

5. Parties' Contentions

A. Complainant

Complainant asserts ownership of the LHV trademark and has adduced evidence of trademark registrations in numerous countries around the world including Estonia, Austria, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Switzerland, Ukraine, and the United Kingdom with earliest priority in Estonia dating back to May 24, 2006. The disputed domain name is confusingly similar to Complainant's LHV trademark, according to Complainant, because it incorporates Complainant's LHV trademark in its entirety along with the term "pank" (which translates from Estonian to "bank" in English) along with the generic Top-Level Domain ("gTLD") ".com."

Complainant further asserts that Respondent lacks any rights or legitimate interests in the disputed domain name based on: the lack of any license or authorization between Complainant and Respondent; the lack of evidence that Respondent is commonly known by the disputed domain name; Respondent's passive holding of the disputed domain name, which consists of Complainant's LHV trademark with a term that directly relates to Complainant's primary business activities; and the lack of evidence that Respondent has made use of, or demonstrable preparations to use the disputed domain names in connection with a *bona fide* offering of goods or services.

Complainant argues that Respondent has registered and used the disputed domain name in bad faith for numerous reasons, including: Complainant's long pre-existing rights to its LHV trademark; the disputed domain name does not resolve to an active web page; Respondent's pattern of registering domain names comprising variations of well-known trademarks, such as <91crocs.com>, <91legoo.com>, <nike07.com> and <titwter.com>; and Respondent registered the disputed domain name using a privacy service to mask its identity.

B. Respondent

The Respondent did not formally reply to the Complainant's contentions. On June 3rd, 2022, Respondent sent the above-mentioned informal communications in Chinese to the Center.

6. Discussion and Findings

To succeed in its Complaint, Complainant must establish in accordance with paragraph 4(a) of the Policy:

- i. The disputed domain name is identical or confusingly similar to a trademark in which Complainant has rights;
- ii. 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.

Panels typically treat a respondent's submission of a so-called "informal response" (merely making unsupported conclusory statements and/or failing to specifically address the case merits as they relate to the three UDRP elements, e.g., simply asserting that the case "has no merit" and demanding that it be dismissed) in a similar manner as a respondent default. See [WIPO Overview 3.0](#), section 4.3.

Although Respondent did not formally reply to Complainant's contentions, the burden remains with Complainant to establish by a balance of probabilities, or a preponderance of the evidence, all three elements of paragraph 4(a) of the Policy. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3 ("A respondent's default would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true [...] UDRP panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case, e.g. where a particular conclusion is *prima facie* obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent."); see also *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#) ("The Respondent's default does not automatically result in a decision in favor of the complainant. The Complainant must still prove each of the three elements required by Policy paragraph 4(a)").

A. Identical or Confusingly Similar

Ownership of a nationally or regionally registered trademark serves as *prima facie* evidence that Complainant has trademark rights for the purposes of standing to file this Complaint. [WIPO Overview 3.0](#), section 1.2.1. Complainant submitted evidence that the LHV trademark has been registered in Estonia, Austria, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Switzerland, Ukraine, and the United Kingdom, with priority dating back to May 24, 2006. Thus, the Panel finds that Complainant's rights in the LHV trademark have been established pursuant to the first element of the Policy.

The only remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant's LHV trademark. In this Complaint, the disputed domain name is confusingly similar to Complainant's LHV trademark because, disregarding the ".com" gTLD, the trademark is contained in its entirety within the disputed domain name. [WIPO Overview 3.0](#), section 1.7. ("This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name ... [I]n cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar..."). In regards to gTLDs, such as ".com" in the disputed domain name, they are generally viewed as a standard registration requirement and are disregarded under the first element. [WIPO Overview 3.0](#), section 1.11.

The combination with the Estonian term "pank", which translates to "bank" in English, does not prevent a finding of confusing similarity between Complainant's LHV trademark and the disputed domain name. WIPO Overview, section 1.8 (Additional terms "whether descriptive, geographic, pejorative, meaningless, or otherwise" do not prevent a finding of confusing similarity under the first element"); see also *AT&T Corp. v. WorldclassMedia.com*, WIPO Case No. [D2000-0553](#) ("Each of the domain names in dispute comprises a

portion identical to [the ATT trademark] in which the Complainant has rights, together with a portion comprising a geographic qualifier, which is insufficient to prevent the composite domain name from being confusingly similar to Complainant's [ATT trademark]”) *OSRAM GmbH v. Cong Ty Co Phan Dau Tu Xay Dung Va Cong Nghe Viet Nam*, WIPO Case No. [D2017-1583](#) (“[T]he addition of the letters ‘hbg’ to the trademark OSRAM does not prevent a finding of confusing similarity between the Disputed Domain Name and the said trademark.”). Indeed, the Panel agrees that Respondent’s combination of Complainant’s LHV trademark with the Estonian term “pank” demonstrates that Respondent has intentionally targeted Complainant for the purposes of the second and third elements of the Policy.

In view of Complainant’s registration for the LHV trademark and Respondent’s incorporation of that trademark in its entirety in the disputed domain name, the Panel concludes that Complainant has established the first element of the Policy.

B. Rights or Legitimate Interests

Complainant must make out a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name, shifting the burden of production on this element to Respondent to come forward with evidence demonstrating such rights or legitimate interests. Where, as in this Complaint, Respondent fails to come forward with any relevant evidence, Complainant is deemed to have satisfied the second element of the Policy. WIPO Overview, section 2.1.

It is evident that Respondent, identified by Whois data for the disputed domain name as “Domain Admin, Whoisprotection.cc / uangshunfa h, huangshunfa,” is not commonly known by the disputed domain name or Complainant’s LHV trademark. Moreover, passively holding a domain name in and of itself does not constitute a *bona fide* offering of goods or services. *Philip Morris USA Inc. v. Gabriel Hall*, WIPO Case No. [D2015-1779](#). Rather, as stated above, Respondent’s intentional use of the Estonian term “pank” within the disputed domain name demonstrates that Respondent has intentionally targeted Complainant for the purposes of the second element of the Policy.

Furthermore, under paragraph 4(c)(iii) of the Policy, neither legitimate noncommercial use or fair use of the disputed domain name can coexist with “intent for commercial gain to misleadingly divert consumers or to tarnish the complainant’s trademark.” WIPO Overview section 2.4. No rights or legitimate interests derive from tarnishment of another’s trademark by using it to divert Internet users to pornographic websites. See *e.g.*, *Andrey Ternovskiy dba Chatroulette v. Protection of Private Person / Aleksandr Katkov*, WIPO Case No. [D2017-0381](#) (April 26, 2017) (finding the respondent’s use of the domain name <chatroulletelolz.com> to redirect Internet users to pornographic websites “should and could not be considered a *bona fide* offering of goods or services”); *L’Oréal v. Robert Caceres, Dollarviews*, WIPO Case No. [D2015-1200](#) (August 31, 2015) (finding that use of a domain name for a website displaying pornographic videos “does not constitute an example of rights and legitimate interests as per paragraph 4(c) of the Policy”); *Neste Oil Oyj v. Nesin Dmitry / Privacy Protection Service INC*, WIPO Case No. [D2014-0883](#) (August 6, 2014) (noting that “pornographic content of the Respondent’s website ought to be regarded as a proof of lacking right or legitimate interest”); *Bayerische Motoren Werke AG v. shilin Li*, WIPO Case No. [D2021-1573](#) (July 22, 2021) (Finding no *bona fide* offering of goods or services or legitimate noncommercial or fair use where “[r]espondent is currently using the disputed domain name on a webpage featuring pornographic and gambling content”).

In view of the absence of any evidence supporting any rights or legitimate interests in the disputed domain name, Respondent’s passive holding of the disputed domain name, Respondent’s prior configuration of the disputed domain name to resolve to pornographic website content, and Respondent’s intentional targeting of Complainant, the Panel concludes that Complainant has established the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy proscribes the following non-exhaustive circumstances as evidence of bad faith registration and use of the disputed domain name:

- i. Circumstances indicating that Respondent has registered or Respondent has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to Complainant who is the owner of the trademark to a competitor of that Complainant, for valuable consideration in excess of Respondent's documented out of pocket costs directly related to the disputed domain name; or
- ii. Respondent has registered the disputed domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- iii. Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- iv. By using the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

Passively holding a domain name does not prevent a finding of bad faith. WIPO Overview, section 3.3. This includes domain names that do not resolve to any website content. Where a domain name is being passively held, as alleged in this Complaint, bad faith registration and use exists based upon: (i) the degree of distinctiveness or reputation of the complainant's mark; (ii) the failure of the respondent to submit any response or offer any credible evidence of rights or legitimate interests; (iii) the respondent's concealing its identity or use of false contact details; and (iv) the implausibility of any good faith use which the domain name may be put. See *Id.* See also *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) ("A remedy can be obtained under the Policy only if those circumstances show that the Respondent's passive holding amounts to acting in bad faith.") In this Complaint, Respondent has failed to submit any response or assert any legitimate interests, and Respondent has benefitted from a proxy registration service to mask its identity from public Whois data. More importantly, Respondent's intentional use of the Estonian term "pank" within the disputed domain name demonstrates that Respondent has targeted Complainant and its rights in LHV trademark (which predate the disputed domain name by nearly sixteen years) in bad faith for the purposes of the third element of the Policy. Such intentional targeting in bad faith is only further underscored by Whois evidence proffered by Complainant to show that Respondent has also targeted third party trademarks including CROCS, LEGO, NIKE, and TWITTER. Under the circumstances, any good faith or otherwise legitimate uses are rather implausible.

Moreover, the use of a domain name to tarnish a complainant's trademark, including for commercial purposes in connection with pornographic content, constitutes evidence of a respondent's bad faith. [WIPO Overview 3.0](#), section 3.12. See *Red Bull GmbH v. Whois Agent, Domain Protection Services, Inc. / esco escortlar, escort sitesi*, WIPO Case No. [D2017-1639](#) (finding the respondent's use of the domain for a pornographic website constituted "a strong indication of bad faith registration and use," because it showed respondent's main purpose was "to create a likelihood of confusion among customers and/or to tarnish the Complainant's RED BULL trademark for commercial gain or any other illegitimate benefit"); *Bank of Jerusalem Ltd. v. Shek Cheung Chung*, WIPO Case No. [D2017-1153](#) (July 31, 2017) (finding bad faith where the domain resolved to a website "at which adult content and links to websites at which pornographic contact [was] being offered, tarnishing Complainant and its trademark, and for which Respondent [was] likely receiving commercial gain").

Finally, where it appears that a respondent employs a privacy or proxy service merely to avoid being notified of a UDRP proceeding filed against it, UDRP panels tend to find that this supports an inference of bad faith. WIPO Overview section 3.6. Use of a privacy or proxy registration service to shield a respondent's identity and elude or frustrate enforcement efforts by a legitimate complainant demonstrates bad-faith use and registration of a disputed domain name. See *Fifth Third Bancorp v. Secure Whois Information Service*, WIPO Case No. [D2006-0696](#) (the use of a proxy registration service to avoid disclosing the identity of the

real party in interest is also consistent with an inference of bad faith when combined with other evidence of evasive, illegal, or irresponsible conduct).

In view of Respondent's passive holding of the disputed domain name, Respondent's intentional targeting of Complainant, Respondent's prior use of the disputed domain name in connection with pornographic website content, Respondent's use of a proxy registration service to mask its identity, and the informal Respondent's communications offering to sell the disputed domain name, the Panel concludes that 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, <lhvpank.com> be transferred to Complainant.

/Phillip V. Marano/

Phillip V. Marano

Sole Panelist

Date: August 3, 2022