

ADMINISTRATIVE PANEL DECISION

Varian Medical Systems, Inc. v. Privacy service provided by Withheld for Privacy ehf / Roger Richter, Huskie Tools LLC
Case No. D2022-2305

1. The Parties

The Complainant is Varian Medical Systems, Inc., United States of America ("United States"), represented by Sideman & Bancroft LLP, United States.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Roger Richter, Huskie Tools LLC, United States.

2. The Domain Name and Registrar

The disputed domain name <varian-us.com> is registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 24, 2022. On June 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 27, 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 June 28, 2022, 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 July 1, 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 July 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 21, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 22, 2022.

The Center appointed Evan D. Brown as the sole panelist in this matter on July 27, 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 is in the business of manufacturing medical devices for treating cancer. It owns the trademark VARIAN, which it has registered in many countries, including the United States (Reg. No. 828,848, registered on May 16, 1967). According to the Whois records, the disputed domain name was registered on January 21, 2022. The Complainant asserts that the Respondent has used the disputed domain name to send emails while impersonating employees of the Complainant, including an executive, with the intent to gather personal or business information, or obtain products or services that will be charged to the Complainant. The disputed domain name redirects to Complainant's official website at the domain name <varian.com>.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is nearly identical and confusingly similar to the Complainant's trademark; that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

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. The Panel finds that all three of these elements have been met in this case.

A. Identical or Confusingly Similar

This first element under the Policy functions primarily as a standing requirement. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7. This element requires the Panel to consider two issues: first, whether the Complainant has rights in a relevant mark; and second, whether the disputed domain name is identical or confusingly similar to that mark.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#). The Complainant has demonstrated its rights in the VARIAN mark by providing evidence of its trademark registrations.

The disputed domain name incorporates the VARIAN mark in its entirety with the term “us”, which does not prevent a finding of confusing similarity between the disputed domain name and the Complainant’s VARIAN mark. See [WIPO Overview 3.0](#), section 1.8. The VARIAN mark remains sufficiently recognizable for a showing of confusing similarity under the Policy.

The Panel finds that the Complainant has established this first element under the Policy.

B. Rights or Legitimate Interests

The Panel evaluates this element of the Policy by first looking to see whether the Complainant has made a *prima facie* showing that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. If the Complainant makes that showing, the burden of production of demonstrating rights or legitimate interests shifts to the Respondent (with the burden of proof always remaining with the Complainant). See [WIPO Overview 3.0](#), section 2.1; *AXA SA v. Huade Wang*, WIPO Case No. [D2022-1289](#).

The Complainant has asserted that (1) the Respondent is not commonly known by the disputed domain name and therefore the Respondent does not have rights or legitimate interests in the disputed domain name on that basis, (2) there is no relationship between the Complainant and the Respondent, and the Complainant has not licensed the VARIAN mark to the Respondent or authorized the Respondent to register the disputed domain name, and (3) the Respondent’s use of the disputed domain name further supports a finding that the Respondent lacks rights and legitimate interest in the disputed domain name. As for the third point, the Complainant asserts that the Respondent is neither using the disputed domain name for the *bona fide* offering of goods and services, nor making a legitimate noncommercial or fair use of the disputed domain name. Indeed, it appears that the Respondent is fraudulently attempting to establish commercial relationships by sending emails from an email address connected to the disputed domain name (*i.e.* [...]@varian-us.com) in order to gather personal or business information or obtain products or services.

The Panel finds that the Complainant has made the required *prima facie* showing. The Respondent has not presented evidence to overcome this *prima facie* showing. And nothing in the record otherwise tilts the balance in the Respondent’s favor.

Accordingly, the Panel finds that the Complainant has established this second element under the Policy.

C. Registered and Used in Bad Faith

The Policy requires a complainant to establish that the disputed domain name was registered and is being used in bad faith. The Policy describes several non-exhaustive circumstances demonstrating a respondent’s bad faith registration and use. Under paragraph 4(b)(iv) of the Policy, a panel may find bad faith when a respondent “[uses] the domain name to intentionally attempt 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 a product or service on [the respondent’s] website or location”.

Because the Respondent used the disputed domain name to imitate the Complainant, one cannot reasonably believe that the Respondent was not aware of the Complainant and its marks when it registered the disputed domain name. The fact that the disputed domain name redirects to the Complainant’s official website further supports this finding. In the circumstances of this case, such a showing is sufficient to establish bad faith registration of the disputed domain name. Bad faith use is clear from the Respondent’s activities of using the disputed domain name to send fraudulent emails. For these reasons, the Panel finds

that the Complainant has successfully met this third UDRP element.

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 <varian-us.com> be transferred to the Complainant.

/Evan D. Brown/

Evan D. Brown

Sole Panelist

Date: August 10, 2022