

## **ADMINISTRATIVE PANEL DECISION**

VFS Global Services PLC v. David Killam

Case No. D2022-3969

### **1. The Parties**

The Complainant is VFS Global Services PLC, United Kingdom, represented by Aditya & Associates, India.

The Respondent is David Killam, United States of America (United States).

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

The disputed domain name <visasdept.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 October 22, 2022. On October 24, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 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 (Privacy service provided by Withheld for Privacy ehf, Iceland) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 25, 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 October 29, 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 November 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 23, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 24, 2022.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on December 8, 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 part of the VFS Group of companies. The origins of the group can be traced to a company originally incorporated under the name Fastrac Visa Facilitation Services Pvt Ltd in July 2001 but which has been incorporated under a name beginning with "VFS" since November 2003.

The focus of the VFS Group is the provision of services relating to the filing and processing of visa applications. It has invested heavily in developing proprietary software and systems for the provision of these services.

Currently, the VFS Group provides its services to the diplomatic missions of 66 sovereign governments in 144 countries across 5 continents worldwide. The VFS Group operates out of 3539 Visa Application Centers located in Asia, Africa, the Middle East and Europe.

Since 2001, the VFS Group has processed over 248 million visa applications and undertaken almost 110 million biometric enrolments since 2007.

In addition, the VFS Group provides its services to the public from a website to which the domain name <vfsglobal.com> resolves. This domain name was registered by a member of the VFS Group in February 2005. The website provides country specific visa information, application procedures, fee structures, and scheduling of interviews. According to the Complaint, it is accessed by millions of people daily seeking visas for the United States of America, the United Kingdom, Canada or other countries which the VFS Group has contracted with. The Complainant is obviously very proud of the VFS Group's achievements bearing in mind that the processing and issuance of visas involves highly secured and confidential processes and technology and the range of countries for which it is providing services.

The Complaint includes evidence that the VFS Group have registered numerous trademarks for VFS or VFS GLOBAL in numerous jurisdictions including in India, New Zealand, Nigeria, Bangladesh, Uganda, Ukraine, Sri Lanka, Singapore, Albania, Algeria, Armenia, Australia, Azerbaijan, Bahrain, Belarus, Bhutan, China, Colombia, Egypt, Georgia, Ghana, Iran (Islamic Republic of), Japan, Kazakhstan, Kenya, Kyrgyzstan, Lao People's Democratic Republic (the), Macedonia, Mexico, Moldova, Nepal, Myanmar, the United Kingdom, the United States of America, the United Arab Emirates, and Palestine.

For present purposes, it is sufficient to identify by way of example only:

- (a) India Registered Trademark No. 1555892, VFS GLOBAL, which was registered on May 7, 2007, in respect of computer software related to visa applications in International Class 9 (there are numerous registrations in other classes too);
- (b) International Registration No 1250991, VFS (in a circle) VFS.GLOBAL EST. 2001, which was filed and registered on September 5, 2014, in respect of a range of goods and services in International Classes 9, 16, 35, 38, 39, and 42.
- (c) United States of America Registration No. 5,694,062, VFS (in a circle) VFS.GLOBAL EST. 2001, which was registered on March 12, 2019, in the Principal Register in respect of a wide range of goods and services in International Classes 9, 16, 35, 38, 39, and 42.

The text "EST. 2001" in the International Registration is presented in much smaller type underneath the central VFS.GLOBAL element of the sign. The International Registration is the source of many of the registrations in the jurisdictions referred to above. The Complaint also states that there are numerous registrations in other countries.

The disputed domain name was registered on March 30, 2022.

The disputed domain name does not resolve to an active website. However, the Respondent has been using the disputed domain name in connection with an email address, "vfsglobal@visasdept.com".

From the example included in Annexes 15 to 17 to the Complaint, it appears that someone on behalf of the Complainant contacted the Respondent via the email address for information about visas in Canada. Ultimately, the inquirer was directed to a site to make a payment of INR 15,500 for a visa. The landing page presented itself as being a payment to VFS Global Services Private Limited.

VFS Global Services Private Limited is a member of the VFS Global group and does provide visa application services. However, this website is not its website. Nor is the website authorised to take payments on that company's behalf or to process visa applications.

## **5. Discussion and Findings**

No response has been filed. The Complaint and Written Notice have been sent, however, to the Respondent at the electronic and physical coordinates confirmed as correct by the Registrar in accordance with paragraph 2(a) of the Rules. Bearing in mind the duty of the holder of a domain name to provide and keep up to date correct Whois details, therefore, the Panel finds that the Respondent has been given a fair opportunity to present his or its case.

When a respondent has defaulted, paragraph 14(a) of the Rules requires the Panel to proceed to a decision on the Complaint in the absence of exceptional circumstances. Accordingly, paragraph 15(a) of the Rules requires the Panel to decide the dispute on the basis of the statements and documents that have been submitted and any rules and principles of law deemed applicable.

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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**

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

The Complainant has proven ownership of numerous registered trademarks for each of VFS GLOBAL and VFS (in a circle) VFS.GLOBAL EST. 2001. Given the scale of use of the VFS Group's website, the Panel also finds that the Complainant has established it has rights in that domain name as an unregistered trademark. See e.g. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.3.

The second stage of this inquiry simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of "likelihood of confusion" under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties and other considerations that may be relevant to an

assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. See e.g. [WIPO Overview 3.0](#), section 1.7.

In undertaking that comparison, it is permissible in the present circumstances to disregard the generic Top Level Domain (“gTLD”) component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

The Complainant contends that the Respondent’s email address, “vfsglobal@visasdept.com”, creates confusion that the disputed domain name may be related to the Complainant. The Complainant further contends that the Respondent is using the disputed domain name with the email account “vfsglobal” to create a fraudulent email address which is therefore identical or confusingly similar to the Complainant’s domain name.

The Panel readily accepts that the email address is likely to be mistaken for an email address associated with the Complainant or at least the VFS Group. Given the way it is being used, ultimately to connect visa applicants to a fraudulent website to extract money from the applicants in the false belief they are paying for a visa, the Panel accepts that the Respondent appears to be using the email address in connection with a fraudulent enterprise.

Unfortunately, the Policy is concerned with the abusive registration of domain names, not email addresses. The domain name at issue here is <visasdept.com>. It is this which must be at least confusingly similar to the Complainant’s trademarks.

Disregarding the “.com” gTLD, the disputed domain name consists of “visasdept”. It is not possible to recognise the Complainant’s trademarks in that expression. It neither looks nor sounds like “VFS Global”.

The Panel accepts that the addition of a descriptive term to a complainant’s trademark qualifies as a confusingly similar registration. See e.g. [WIPO Overview 3.0](#), section 1.8. However, the present case is different to the cases relied on by the Complainant:

- (1) *Bank for International Settlements v. James Elliott*, WIPO Case No. [D2003-0987](#), involving the disputed domain name <bisonlinedept.com>;
- (2) *Solvay SA v. Des Jo*, WIPO Case No. [D2021-2105](#), involving the disputed domain name <solvayal-be.com>;
- (3) *Philip Morris Products S.A. v. Tarik Sucu, GPM*, WIPO Case No. [DPW2019-0004](#), involving Registered Trademarks IQOS and HEETS and the disputed domain name <iqosheetskentglo.pw>.

In each of these cases, it was the domain name itself that was found to be confusingly similar to the complainant’s trademark rights. Similarly, in the seven previous proceedings in which the Complainant has successfully challenged the registration of domain names based on its rights in VFS GLOBAL, it was the domain names themselves which resembled the Complainant’s trademarks.

The Panel is aware that it can be legitimate in cases of doubt to refer to the respondent’s website to ascertain if the respondent is targeting the complainant’s trademark. See e.g. [WIPO Overview 3.0](#), section 1.15. The cases there referred to, however, involved domain names which had some resemblance to the asserted trademark rights.

That is not the case here although the Panel accepts the letter “v” in the Complainant’s trademarks is the initial of and derived from “visa”. The Complainant does also assert that it has rights in the term “visa department” or “visas department”. But, even allowing for the apparently fraudulent nature of the Respondent’s email address, “visa department” or “visas department” is a descriptive term over which the Complainant’s evidence does not demonstrate it has acquired secondary meaning.

With very considerable reluctance, therefore, the Panel finds that the Complainant has failed to establish that the disputed domain name is confusingly similar to the Complainant's trademark rights. The Policy is limited to resolving disputes about the registration of abusive domain names. See e.g. Final Report of the First WIPO Internet Domain Name Process, April 30, 1999, paragraphs 169-177; *Weber-Stephen Products Co. v. Armitage Hardware*, WIPO Case No. [D2000-0187](#) and *Milwaukee Electric Tool Corporation v. Bay Verte Machinery, Inc. d/b/a The Power Tool Store*, WIPO Case No. [D2002-0774](#). Accordingly, the jurisdiction of this Panel is limited to providing a remedy in cases of "the abusive registration of domain names", also known as "cybersquatting".

As the Complainant has failed to establish the first requirement under the Policy, the Complaint must fail.

## 6. Decision

For the foregoing reasons, the Complaint is denied.

*/Warwick A. Rothnie/*

**Warwick A. Rothnie**

Sole Panelist

Date: December 22, 2022