

ADMINISTRATIVE PANEL DECISION

V.F. Corporation v. Ken Hall

Case No. D2022-4456

1. The Parties

The Complainant is V.F. Corporation, United States of America (“United States”), represented by SILKA AB, Sweden.

The Respondent is Ken Hall, United States.

2. The Domain Name and Registrar

The disputed domain name <vfc.ink> (the “Disputed Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 22, 2022. On November 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On November 22, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 23, 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 amendment to the Complaint on November 24, 2022.

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 November 28, 2022. On December 6, 2022, the Center received communications from a third party, disclosing that they received the Center’s written notice but that they did not have any relationship to the Disputed Domain Name or the Complainant. In accordance with the Rules, paragraph 5, the due date for Response was December 18, 2022. The Respondent did not submit a formal response.

Accordingly, the Center notified the Commencement of Panel Appointment Process on December 19, 2022.

The Center appointed Lynda M. Braun as the sole panelist in this matter on December 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

Founded in 1899, the Complainant is a large apparel, footwear, and accessories company. The Complainant's products are marketed to consumers primarily in specialty stores, national chains, mass merchants, department stores, independently-operated partnership stores, and digital partners. Its products are also marketed to consumers through its own direct-to-consumer operations, which include stores operated by the Complainant, e-commerce sites, and other digital platforms.

At the end of its 2022 fiscal year, the Complainant reported having approximately 1,300 retail stores in 125 countries worldwide, with more than 35,000 employees.

The Complainant is the owner of a number of trademark registrations, which consist of or include the term "VF", including, but not limited to: VF (design mark), United Kingdom Trademark Registration No. UK00000867974, registered on August 12, 1964, in international class 25; VF (word mark), European Union Trade Mark Registration No. 003242534, registered on November 19, 2004, in international classes 9, 18, 20, 22, and 25; and VF (design mark), United States Trademark Registration No. 3,045,108, registered on January 17, 2006, in international class 35. The Complainant also owns numerous VF-formative registered trademarks in other jurisdictions worldwide.

The foregoing trademarks will hereinafter collectively be referred to as the "VF Mark".

The Complainant owns the domain name <vfc.com>, which was registered in 1994, and which hosts a website at "www.vfc.com" that displays information about the company, its brands, and its products.

The Disputed Domain Name was registered on September 26, 2022, and at the time of filing the complaint, the Disputed Domain Name was used to pass off as the Complainant and create emails which were used as part of a phishing scheme to impersonate one of the Complainant's employees, enabling the Respondent to send and receive emails with addresses incorporating the Disputed Domain Name. As of the writing of this decision, however, the Disputed Domain Name resolved to an error landing page that states: "This site can't be reached. vfc.ink's server IP address could not be found."

5. Parties' Contentions

A. Complainant

The following are the Complainant's contentions:

- the Disputed Domain Name is confusingly similar to the Complainant's VF Mark;
- the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- the Disputed Domain Name was registered and is being used in bad faith.

The Complainant seeks the transfer of the Disputed Domain Name from the Respondent to the Complainant in accordance with paragraph 4(i) of the Policy.

B. Respondent

The Respondent did not submit a formal response. As described above, however, the Center received a communication from a third party, disclosing that they received the Center's written notice but that they did not have any relationship to the Disputed Domain Name or the Complainant.

6. Discussion and Findings

In order for the Complainant to prevail and have the Disputed Domain Name transferred to the Complainant, the Complainant must prove the following (Policy, paragraph 4(a)):

- (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 was registered and is being used in bad faith.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a two-fold inquiry, a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to that trademark. The Panel concludes that in the present case, the Disputed Domain Name is confusingly similar to the VF Mark.

It is uncontroverted that the Complainant has established rights in the VF Mark based on its fame as well as its registered trademarks for the VF Mark in jurisdictions worldwide. The registration of a mark satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. As stated in section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), "[w]here the complainant holds a nationally or regionally registered trademark or service mark, this *prima facie* satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case". Thus, the Panel finds that the Complainant satisfied the threshold requirement of having rights in the VF Mark.

The Disputed Domain Name consists of the entirety of the VF Mark, followed by the letter "c" (presumably representing the term "corporation"), and then followed by the generic Top-Level Domain ("gTLD") ".ink." Where the trademark is recognizable in the Disputed Domain Name, the addition of a letter, such as "c" does not prevent a finding of confusing similarity. See [WIPO Overview 3.0](#), section 1.8 ("where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element").

Finally, the addition of a gTLD, such as ".ink" in a domain name is technically required. Thus, it is well established that such element may typically be disregarded when assessing whether a domain name is identical or confusingly similar to a trademark. See *Proactiva Medio Ambiente, S.A. v. Proactiva*, WIPO Case No. [D2012-0182](#), [WIPO Overview 3.0](#), section 1.11.1. Thus, the Panel concludes that the Disputed Domain Name is confusingly similar to the Complainant's VF Mark.

Accordingly, the Panel finds that the first element of paragraph 4(a) of the Policy has been met by the Complainant.

B. Rights or Legitimate Interests

Under the Policy, a complainant has to make out a *prima facie* case that the respondent lacks rights or

legitimate interests in the disputed domain name. Once such a *prima facie* case is made, the respondent carries the burden of production of evidence that demonstrates rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant may be deemed to have satisfied paragraph 4(a)(ii) of the Policy. See [WIPO Overview 3.0](#), section 2.1.

In this case, given the facts as set out above, the Panel finds that the Complainant has made out a *prima facie* case. The Respondent has not submitted any arguments or evidence to rebut the Complainant's *prima facie* case. Furthermore, the Complainant has not authorized, licensed or otherwise permitted the Respondent to use its VF Mark. Nor does the Complainant have any type of business relationship with the Respondent. There is also no evidence that the Respondent is commonly known by the Disputed Domain Name or by any similar names, nor any evidence that the Respondent was using or making demonstrable preparations to use the Disputed Domain Name in connection with a *bona fide* offering of goods or services. See Policy, paragraph 4(c).

Based on the Respondent's initial use of the Disputed Domain Name to pass off as the Complainant and perpetuate a phishing scheme targeting the Complainant's customers using emails incorporating the Disputed Domain Name does not confer rights or legitimate interests on the Respondent. See [WIPO Overview 3.0](#), section 2.13.1 ("Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent."). Specifically, the Disputed Domain Name had been used to impersonate one of the Complainant's employees to send phishing emails, stating that one of the Complainant's bank accounts had changed and requesting that the payments be made to the "new" bank account. In this regard, the use of a disputed domain name for illegal or fraudulent activity such as phishing or passing off/impersonation, can never confer rights or legitimate interests on a respondent.

Thus, the Panel concludes that nothing on the record before it would support a finding that the Respondent is making a legitimate noncommercial or fair use of the Disputed Domain Name. Rather, the Panel finds that the Respondent is using the Disputed Domain Name for commercial gain with the intent to mislead by defrauding the Complainant's customers. Such use cannot conceivably constitute a *bona fide* offering of a product/service within the meaning of paragraph 4(c)(i) of the Policy.

Accordingly, the Panel finds that the second element of paragraph 4(a) of the Policy has been met by the Complainant.

C. Registered and Used in Bad Faith

The Panel finds that based on the record, the Complainant has demonstrated the existence of the Respondent's bad faith pursuant to paragraph 4(b) of the Policy.

First, the Panel finds that the Respondent's registration and use of the Disputed Domain Name indicate that such registration and use has been done for the specific purpose of trading on the name and reputation of the Complainant and its VF Mark. See *Madonna Ciccone, p/k/a Madonna v. Dan Parisi and "Madonna.com"*, WIPO Case No. [D2000-0847](#) ("[t]he only plausible explanation for Respondent's actions appears to be an intentional effort to trade upon the fame of Complainant's name and mark").

Second, the Panel finds that the Respondent had actual knowledge of the Complainant's VF Mark and targeted the Complainant when it registered the Disputed Domain Name, demonstrating the Respondent's bad faith. Based on the widespread use of the VF Mark worldwide, it strains credulity to believe that the Respondent had not known of the Complainant or its VF Mark when registering the Disputed Domain Name. The Respondent's awareness of the Complainant and its VF Mark additionally suggests that the Respondent's decision to register the Disputed Domain Name was intended to cause confusion with the Complainant's VF Mark and to disrupt the Complainant's business. Such conduct indicates that the Respondent registered and used the Disputed Domain Names in bad faith.

Third, the Disputed Domain Name initially redirected to the Complainant's website, passing off as the Complainant, and was used to impersonate one of the Complainant's employees by using the Disputed Domain Name in an email address as part of a phishing scheme. It is not possible to conceive of a plausible situation in which the Respondent would have been unaware of the Complainant and its VF Mark when the Disputed Domain Name was registered.

Lastly, the communication the Center received from a third party on December 6, 2022, seems to indicate that the Respondent used their address to register the Disputed Domain Name, which further suggests bad faith.

In sum, since the Disputed Domain Name was initially used to redirect to the Complainant's website and to impersonate one of the Complainant's employees, the Panel concludes that the Respondent knew of the Complainant and registered the Disputed Domain Name in bad faith to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's VF Mark. The Respondent's use of the Disputed Domain Name constitutes an attempt to trade on the goodwill and reputation of the Complainant's VF Mark to commit a fraudulent activity, namely, to induce customers to redirect payments addressed to the Complainant, to another bank account purportedly belonging to the Respondent. In the Panel's view, the Respondent's conduct amounts to bad faith.

Accordingly, the third element of paragraph 4(a) of the Policy has been met by the Complainant.

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 <vfc.ink> be transferred to the Complainant.

/Lynda M. Braun/

Lynda M. Braun

Sole Panelist

Date: January 10, 2023