

## **ADMINISTRATIVE PANEL DECISION**

Veja Fair Trade, SARL v. Domain Admin, Whoisprotection.cc, Client Care,  
Web Commerce Communications Limited  
Case No. D2023-3209

### **1. The Parties**

The Complainant is Veja Fair Trade, SARL, France, represented by SafeBrands, France.

The Respondents are Domain Admin, Whoisprotection.cc and Client Care, Web Commerce Communications Limited, Malaysia.

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

The disputed domain names <vejaargentina.com>, <vejabrasilonline.com>, <vejacolombia.com>, <vejahrvatska.com>, <vejamalaysia.com>, <vejaphilippines.com>, <vejaphilippinesstores.com>, <veja-poland.com>, <vejapoland.com>, <vejaportugallojas.com>, <vejasgreece.com>, <vejashoecanada.com>, <vejashoesmexico.com>, <veja-soldes.com>, <veja-store-portugal.com> and <vejazapatillas.com> are registered with Alibaba.com Singapore E-Commerce Private Limited (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 26, 2023. On July 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On July 27, 2023, the Registrar transmitted by email to the Center its verification response, disclosing registrant and contact information for the disputed domain names which differed from the named Respondents (Wilayah Persekutuan, MY and Kuala Lumpur, MY) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 28, 2023, providing the registrant and contact information disclosed by the Registrar and inviting the Complainant to submit an amendment to the Complaint or to file a separate Complainant for each of the disputed domain names. The Complainant filed an amended Complaint on August 1, 2023.

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 Respondents of the Complaint and the proceedings commenced on August 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 27, 2023. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on August 28, 2023.

The Center appointed Antony Gold as the sole panelist in this matter on September 5, 2023. 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 was established in France in 2005, and manufactures and sells environmentally friendly sneakers. Its products are primarily offered through its website at "www.veja-store.com" and additionally through its own boutiques and third party retailers' stores, which are situated in many countries.

The Complainant's brand is VEJA and the Complainant has registered trade marks in multiple jurisdictions to protect its trading style. These include, by way of example only, European Union Trade Mark, registration number 9075003, in classes 18 and 25, for VEJA (figurative), registered on November 30, 2012.

The disputed domain names were registered on various dates between March 29, 2021, and February 22, 2023. Each of the disputed domain names has previously either resolved directly to a website or redirected to a website at one of the other disputed domain names. The form of all the websites has been substantially similar for each of the disputed domain names, save for variances in currency and language which have been adjusted to reflect the country targeted by the website. Each website has prominently featured the stylized VEJA figurative trade mark of the Complainant and has depicted photographs of footwear purporting to be that of the Complainant, many items having been offered for sale at discounted rates.

The clear impression given to Internet visitors by each of the Respondents' websites is that they are operated by, or on behalf of, the Complainant and there is no disclaimer on them which might correct such a misunderstanding. Moreover, the Complainant has provided evidence that its customers have been confused by the Respondents' websites into believing they are those of the Complainant and that at least some customers who did not receive the goods they had ordered nonetheless had their accounts debited with the purchase price.

Six of the disputed domain names no longer resolve to active websites. Seven of the disputed domain names resolve to a webpage stating; "Sorry, you have been blocked - You are unable to access [the disputed domain name]" Two of the disputed domain names now redirect to third party websites which also create the impression that they are websites of, or authorized by, the Complainant and one of the disputed domain names still resolves directly to the form of website described above.

#### **5. Procedural issue – Complaint filed against multiple Respondents**

The Complainant says that the Respondents are the same entity and/or that all disputed domain names are under common control and that it is appropriate for its case in respect of them to be dealt with within the same proceedings under the Policy. In support of its application, the Complainant asserts that;

- both Respondents' Whols details have used the same Registrar privacy service and each of the Respondents' contact telephone numbers, as provided to the Center by the Registrar, are the same;
- all the disputed domain names have resolved to substantially identical websites, as described above, and each website has targeted the Complainant's VEJA trade mark;

- all disputed domain names have followed a similar naming pattern, namely the first element in each disputed domain name comprises the word component of the Complainant's VEJA mark, followed either by the name of the country targeted by the Respondents and/or a term which is apt to be associated with the sale of the Complainant's products;
- all the disputed domain names were registered within the same relatively short period, namely between March 2021 and February 2023.

The principles applied by UDRP panels considering requests for consolidation are set out at section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). This explains that: "Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario". See also *Speedo Holdings B.V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons*, WIPO Case No. [D2010-0281](#).

The factors to which the Complainant has drawn attention, as set out above, indicate that the Respondents – if they are in fact truly different individuals – are acting in concert in order to fulfil a common design and that the disputed domain names are under common control. Moreover, the Panel notes that neither Respondent has challenged the Complainant's assertions as to why consolidation is appropriate.

In these circumstances, it is procedurally efficient, as well as fair and equitable to all Parties, for the Complainant's case in respect of all the disputed domain names to be dealt with in a single Complaint. The Panel therefore grants the Complainant's request for consolidation and the named Respondents are accordingly referred to below collectively as "the Respondent".

## **6. Parties' Contentions**

### **A. Complainant**

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain names. Notably, the Complainant contends that;

- each of the disputed domain names is identical or confusingly similar to a trade mark in which the Complainant has rights. Each incorporates the Complainant's VEJA trade mark in full and adds a term or terms denoting a particular country or a name which in English or another language would be associated with the Complainant's products. Specifically, "zapatillas" is Spanish for "shoes", "lojas", in Portuguese means "shops" and "soldes" means "sale" in French. In any event, none of the additional terms within any of the disputed domain names serve to prevent a finding of confusing similarity;
- the Respondent has no rights or legitimate interests in respect of any of the disputed domain names. The Respondent is not commonly known by the name VEJA nor has it obtained any authorization to use the Complainant's mark. Nor is the Respondent making a *bona fide* use of any of the disputed domain names in that it has used them to resolve to websites which are intended to mislead Internet users that they are somehow connected with the Complainant and are offering for sale footwear which purports to be that of the Complainant, but which is probably counterfeit;
- the disputed domain names have been registered and are being used in bad faith. Having regard to the use which the Respondent has put them, the Respondent was evidently aware of the Complainant's trade mark rights as at the date of registration and this supports a finding of bad faith registration. The use to which the Respondent has put the disputed domain names has been to direct them to unauthorized and misleading websites which offer for sale products supposedly coming from the Complainant at discounted prices. Such use of the disputed domain names is manifestly in bad faith.

## **B. Respondent**

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

## **7. Discussion and Findings**

Dealing, first, with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under, these Rules, the Panel shall be entitled to draw such inferences from this omission as it considers appropriate.

Paragraph 4(a) of the Policy requires that the Complainant proves each of the following three elements in respect of each disputed domain name in order to succeed in its Complaint in relation to that disputed domain name: (i) the disputed domain name is identical or confusingly similar to a trade mark 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**

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and each of the disputed domain names; see the [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of its VEJA trade mark for the purposes of the Policy; see the [WIPO Overview 3.0](#), section 1.2.1. As a technical requirement of registration, the generic Top-Level Domain ("gTLD"), that is ".com" in the case of each disputed domain name, is usually disregarded when assessing confusing similarity. The Complainant's VEJA mark is reproduced in its entirety within each of the disputed domain names and is clearly recognizable within them. In these circumstances, none of the additional terms within any of the disputed domain names prevents a finding of confusing similarity between them and the Complainant's mark for the purposes of the Policy; see the [WIPO Overview 3.0](#), section 1.8.

For the above reasons, based on the available record, the Panel finds that the first element of the Policy has been established.

### **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element; see the [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence

demonstrating rights or legitimate interests in the disputed domain names. In particular, the Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made demonstrable preparations to use, the disputed domain names or a name corresponding to the disputed domain names in connection with a *bona fide* offering of goods or services; see paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2. UDRP panels have held that the use of a domain name for illegal activity, including impersonation/passing off, can never confer rights or legitimate interests on a respondent; see the [WIPO Overview 3.0](#), section 2.13.1. Accordingly, the use of the disputed domain names to resolve to websites which masquerade as those of the Complainant does not comprise a *bona fide* use of them; see, for example, *Bytedance Ltd. v. Registration Private, Domains By Proxy, LLC / Kemal Aydin, Kemal*, WIPO Case No. [D2020-3433](#) and *On AG, On Clouds GmbH v. Web Commerce Communications Limited, Domain Admin, Whoisprotection.cc / Christin Schmidt, Sandra Naumann, Jana Papst*, WIPO Case No. [D2021-2263](#). The position is the same whether the disputed domain names resolve directly to the form of website described above or redirect to a third party website with the same or very similar content and whether or not the footwear offered for sale by the Respondent is that of the Complainant or counterfeit;
- there is no evidence in the record that the Respondent has been commonly known by any of the disputed domain names; see paragraph 4(c)(ii) of the Policy and the [WIPO Overview 3.0](#), section 2.3;
- the Respondent is not making a legitimate noncommercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue; see paragraph 4(c)(iii) of the Policy and the [WIPO Overview 3.0](#), section 2.4;
- the disputed domain names which are now either entirely inactive or which contain a notice indicating that access to the corresponding website has been blocked are not being used in connection with a *bona fide* offering of goods and services;
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain names.

For the above reasons, based on the available record, the Panel finds the second element of the Policy has been established.

### **C. Registered and Used in Bad Faith**

The use of the disputed domain names by the Respondent has been to resolve to websites which purport to be operated by, or with the authority of, the Complainant and to offer for sale footwear which purports to be that of the Complainant. Having regard to the confusing similarity between the word element of the Complainant's VEJA mark and each of the disputed domain names, coupled with the use to which they have been put following registration, the Panel finds that the Respondent was aware of the Complainant as at the date of registration of the disputed domain names and registered them in order to take unfair advantage of the Complainant's mark. It is well-established under the Policy that registration of a domain name by an unconnected party with knowledge of a complainant's trade mark registration and where the domain name is put to a misleading use establishes bad faith. The Panel therefore finds the Respondent's registration of the disputed domain names to have been in bad faith.

In addition to the inherently misleading nature of the Respondent's websites, Internet users aware of the Complainant's VEJA mark who visited them will have been apt to assume from the confusing similarity between the disputed domain names and the Complainant's mark that they were owned by the Complainant or that they were operated with its authority.

For the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The Respondent's use is in bad faith in that it has intentionally attempted to attract, for commercial gain, Internet users to its websites or other online location by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website; see paragraph 4(b)(iv) of the Policy, the [WIPO Overview 3.0](#), section 3.1.4. and also, by way of example, *New Balance Athletics, Inc., v. Super Privacy Service LTD c/o Dynadot Contact Privacy Inc. / Lillie Sutton*, WIPO Case No. [D2022-1247](#). The application of the Policy in these circumstances is the same irrespective of whether a disputed domain name resolves directly to a website in the form described above or redirects to a third party website which is in substantially the same form.

So far as the current inactive use of almost all of the disputed domain names is concerned, prior UDRP panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Inactivity in this respect includes domain names which resolve to blank or "coming soon" pages and would also extend to those disputed domain names which resolve to web pages indicating that Internet visitors have been blocked from entering the website of the disputed domain name.

While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details and (iv) the implausibility of any good faith use to which the domain name may be put by the respondent; See [WIPO Overview 3.0](#), section 3.3 and, by way of example, *Compagnie Générale des Etablissements Michelin v. zhouhaotian*, WIPO Case No. [D2015-1728](#). Each of these factors, in the circumstances of these proceedings, is supportive of a finding of bad faith passive holding on the part of the Respondent and the Panel accordingly finds that the passive holding of these inactive disputed domain names by the Respondent comprises bad faith use under the Policy.

For the above reasons, the Panel finds the Respondent's registration and use of the disputed domain names is in bad faith and that the third element of the Policy has been established.

## 8. 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 names, <vejaargentina.com>, <vejabrasilonline.com>, <vejacolombia.com>, <vejahrvatska.com>, <vejamalaysia.com>, <vejaphilippines.com>, <vejaphilippinesstores.com>, <veja-poland.com>, <vejapoland.com>, <vejaportugallojas.com>, <vejasgreece.com>, <vejashoecanada.com>, <vejashoesmexico.com>, <veja-soldes.com>, <veja-store-portugal.com>, and <vejazapatillas.com> be transferred to the Complainant.

/Antony Gold/

**Antony Gold**

Sole Panelist

Date: September 15, 2023