

## ADMINISTRATIVE PANEL DECISION

### GROUPE VYV v. 吴清儒 (wu qing ru)

### Case No. D2023-4208

#### 1. The Parties

The Complainant is Groupe VYV, France, represented by IP Twins, France.

The Respondent is 吴清儒 (wu qing ru), China.

#### 2. The Domain Name and Registrar

The disputed domain name <vyv.info> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

#### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on October 10, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 11, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

On October 16, 2023, the Center informed the parties in Chinese and English, that the language of the registration agreement for the disputed domain name is Chinese. On October 16, 2023, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the language of the proceeding.

The Center verified that 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 in English and Chinese of the Complaint, and the proceedings commenced on October 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 14, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 17, 2023. However, on November 18, 2023, the Respondent sent an informal email to the Center requesting withdrawal of the Complaint. On November 20, 2023, the Center sent an email to the Parties regarding a possible settlement. However, the Complainant did not request suspension of the proceeding.

The Center appointed Matthew Kennedy as the sole panelist in this matter on December 18, 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 is a French mutualist health and social protection company. It provides protection to over 10 million people and operates through various brands, with 500 contact points in France. The Complainant owns certain French trademark registrations, including the following:

- number 4509583 for a semi-figurative VYV mark, registered on November 5, 2021, designating goods and services in classes 9, 10, 16, 35, 36, 38, 39, 42, and 45;
- number 4562992 for a semi-figurative VYV mark, registered on March 26, 2021, designating services in classes 35, 36, 37, 39, 42, and 43; and
- number 4562993 for VYV, registered on March 26, 2021, designating services in classes 35, 36, 37, 39, 42, and 43.

The above trademark registrations (collectively, the “VYV mark”) are current. The Complainant has also registered the domain name <groupe-vyv.fr> that it uses in connection with a website in French that prominently displays its name “Groupe vyv” and provides information about itself and its services. The Complainant also registered the domain name <vyv.fr> on December 4, 2017 that redirects to <groupe-vyv.fr>.

The Respondent is an individual located in China.

The disputed domain name was registered on June 26, 2023. It resolves to a webpage hosted by a domain name broker that offers it for the price of USD 950 to “buy now”, or USD 106 per month to “lease to own”.

#### **5. 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 name.

Notably, the Complainant contends that the disputed domain name is identical to its VYV mark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent reproduces the Complainant’s trademark without any license or authorization from the Complainant.

The disputed domain name has been registered and is being used in bad faith. The Complainant states that it is inconceivable that the Respondent ignored the Complainant’s earlier rights on the term VYV. The Respondent obviously had the Complainant’s name and trademark in mind when registering the contested domain name. The Respondent’s choice of domain name cannot have been accidental. Indeed, a simple search on an online search engine yields results only related to the Complainant. The Respondent acquired the disputed domain name to prevent the Complainant from reflecting its earlier trademarks in the corresponding domain name and in full knowledge of the Complainant and its earlier rights. The disputed domain name is offered for sale.

## **B. Respondent**

In his informal email, the Respondent requested withdrawal of the Complaint. He agreed to transfer the disputed domain name to the Complainant but only in return for some financial compensation.

## **6. Discussion and Findings**

### **6.1 Language of the Proceeding**

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English, arguing that it is not able to communicate in Chinese, that the proceeding should take place with due expedition and that the choice of language should not create an undue burden on the Parties.

The Respondent sent an informal email to the Center in Chinese but did not make any submission with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs. See [WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition \("WIPO Overview 3.0"\)](#), section 4.5.1.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English. The Panel would have accepted a Response in Chinese, but none was filed.

### **6.2 Substantive Issues**

Paragraph 4(a) of the Policy provides that the complainant must prove each of the following elements:

- (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.

The burden of proof of each element is borne by the Complainant. The Respondent's default does not mean that the Complainant automatically prevails. See [WIPO Overview 3.0](#), section 4.3.

## **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 the disputed domain name. See [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a VYV trademark or service mark for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. The Panel finds the entirety of the VYV mark is reproduced within the disputed domain name. As a standard

requirement of domain name registration, the generic Top-Level Domain (“gTLD”) extension (“.info”) may be disregarded in the comparison between the disputed domain name and the VYV mark. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. See [WIPO Overview 3.0](#), sections 1.7 and 1.11.

The Panel finds the first element of the Policy has been established.

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

Given the Panel’s findings regarding the third element of paragraph 4(a) of the Policy, it is unnecessary to consider the second element.

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

The Panel notes that paragraph 4(b) of the Policy establishes circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. While those circumstances are not an exhaustive list, it is necessary in any case for the Complainant to show both that the disputed domain name was registered in bad faith and also that the disputed domain name is being used in bad faith. Bad faith registration in general requires a showing that the Respondent’s aim in registering the disputed domain name was to profit from or exploit the Complainant’s trademark.

In the present case, the disputed domain name was registered in 2023, two years after the registration of the Complainant’s VYV mark. The disputed domain name is identical to that mark, adding only a gTLD extension (“.info”). However, “vyv” is a three-letter combination with multiple potential co-existing uses. Nothing indicates that the VYV mark has become famous like, say, IBM or BMW. In view of these circumstances, the Panel does not consider that the identity between the disputed domain name and the mark by itself indicates that the Respondent was aware of the Complainant.

The Complainant refers to its trademark registrations. However, the Panel does not consider that the Respondent should necessarily be deemed to have notice of the contents of the French trademark register or the WIPO Global Brands Database, and even if it did (contrary to the Complainant’s arguments) there are possible non-infringing alternate uses of the disputed domain name. The Complainant alleges that it has 500 contact points in France and a global turnover of more than EUR 10 billion. It does not allege that it has any contact points outside France (where the Respondent is located) and it also states that VYV is one of 7 brands through which it operates. The Complainant shows that the top results of an Internet search for “vyv” all relate to itself including some results relating to a regional music festival that it organizes in France. However, the Panel has conducted Internet searches for the same term in order to weigh this evidence, and obtained very different results.<sup>1</sup> All but one of the top results of the Google search conducted by the Panel are unrelated to the Complainant, while all the top results of a Baidu search are unrelated to the Complainant (Baidu being the most popular Internet search engine in China, where the Respondent is located). Accordingly, the Panel accords little weight to the Complainant’s evidence of its Internet search results. The Complainant provides no other evidence of its reputation aside from its listed marks. The Complainant claims to own “several dozen names in the VYV term” but identifies only one (<vyv.fr>) which, in any case, is not in the Complainant’s “groupe-vyv” website address. Nor is the operational element of the disputed domain name identical to the Complainant’s website address. There is no reason to infer that the Respondent was aware, or should have been aware, of the Complainant’s mark or website.

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<sup>11</sup>The Panel notes its general powers articulated *inter alia* in paragraphs 10 and 12 of the Rules and has conducted Internet searches for “vyv” in the Google and Baidu search engines to evaluate the weight to attribute to the evidence regarding the Complainant’s Internet search for that same term. The Panel considers this process of weighing the evidence useful in assessing the case merits and reaching a decision. See [WIPO Overview 3.0](#), section 4.8. The Panel considered putting the results of this limited factual research to the Parties in a procedural order but determined that this was not necessary because the mark is a three-letter combination with multiple potential co-existing uses and there is no evidence of targeting the Complainant’s mark.

There is no evidence that the Respondent targeted the Complainant or its VYV mark. While the Respondent offers the disputed domain name for sale, it is not suggested that the price (USD 950 to buy now or USD 106 per month) reflects the Complainant's or its competitors' capacity to pay (based on their turnover) as opposed to that of unrelated third parties who may have a general interest in this short domain name. Nor is there evidence that the Respondent has registered other domain names incorporating trademarks from which certain inferences could be drawn. Accordingly, based on the record of this proceeding, the Panel cannot find that the Respondent necessarily knew or should have known of the Complainant's mark at any time prior to receiving notice of this dispute, or above all that it targeted the Complainant.

In summary, the evidence as presented in the Complaint does not indicate that the Respondent's aim in registering the disputed domain name was to profit from or exploit the Complainant's VYV trademark. Therefore, the Panel is unable to find that the Respondent registered the disputed domain name in bad faith. Given that finding, it is unnecessary to evaluate whether the disputed domain name is being used in bad faith.

Based on the available record, the Panel finds the third element of the Policy has not been established.

## **7. Decision**

For the foregoing reasons, the Complaint is denied.

*/Matthew Kennedy/*

**Matthew Kennedy**

Sole Panelist

Date: January 1, 2024