

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. Michael Moscovici
Case No. D2024-0171

1. The Parties

The Complainant is Philip Morris Products S.A., Switzerland, represented by D.M. Kisch Inc., South Africa.

The Respondent is Michael Moscovici, Romania.

2. The Domain Name and Registrar

The disputed domain name <veevo-vapes.com> (the “Disputed Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 16, 2024. On January 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On January 17, 2024, 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 (Registration Private Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 17, 2024, 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 January 21, 2024.

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 January 24, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 13, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 15, 2024.

The Center appointed Nick J. Gardner as the sole panelist in this matter on March 7, 2024. 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 a group of companies affiliated to Philip Morris International Inc. (the group is referred to as “PMI” in this decision). PMI is a leading international tobacco company, with products sold in approximately 180 countries. Its products include well-known brands such as MARLBORO.

In the course of transforming its business from combustible cigarettes to (so-called within the tobacco industry) Reduced Risk Products (or “RRPs”), PMI has developed a new product, namely a precisely controlled heating device into which a specially designed tobacco product is inserted and heated to generate a nicotine-containing aerosol. The device itself is marketed under the brand name IQOS, while the tobacco inserts are branded HEETS. The IQOS product was first introduced in Japan in 2014, and is now available in some 71 markets across the world. It is used by some 19 million consumers.

The Complainant is the proprietor of various trademark registrations for the term VEEV (which it uses in marketing its IQOS and HEETS products) in many jurisdictions around the world including for example European Union Intellectual Property Office (EUIPO) Registration VEEV (word) No. 1305642 registered on June 1, 2022. These trademarks are referred to collectively in this decision as the “VEEV trademark”.

The Disputed Domain Name was registered on July 19, 2022. At the time of this decision, it resolves to a web page with a “coming soon” message but filed evidence shows it was previously linked to a website (referred to in this decision as the “Respondent’s Website”) which offered or purported to offer third party RRP products bearing the brand name “VEEVO”.

5. Parties’ Contentions

A. Complainant

The Complainant submits that the Disputed Domain Name is confusingly similar to the VEEV trademark, in which it has rights. It differs from the Complainant’s trademark only by the addition of the letter “o and the non-distinctive word “vapes”. It also says it has successfully opposed in Romania an application for the trademark “Veevo” which confirms the confusing similarity.

The Complainant further submits that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The Respondent is not a licensee of the Complainant, nor has it been otherwise allowed by the Complainant to make use of the Complainant’s trademark.

Finally, the Complainant submits that the Disputed Domain Name was registered and has been used in bad faith. The Complainant submits that the Respondent chose the Disputed Domain Name in order to deliberately cause confusion among Internet users as to the source of the goods sold through its website in order to take unfair advantage of the Complainant’s reputation.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Matter: No Response

The Panel notes that no written communication has been received from the Respondent. However, given the Complaint and Written Notice were sent to the relevant addresses disclosed by the Registrar, the Panel considers that this satisfies the requirement in paragraph 2(a) of the UDRP Rules to “employ reasonably available means calculated to achieve actual notice”. Accordingly, the Panel considers it is able to proceed to determine this Complaint and to draw inferences from the Respondent’s failure to file any Response. While the Respondent’s failure to file a Response does not automatically result in a decision in favor of the Complainant, the Panel may draw appropriate inferences from the Respondent’s default (see, e.g., *Verner Panton Design v. Fontana di Luce Corp*, WIPO Case No. [D2012-1909](#)).

6.2. Substantive Matters

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

- (i) the Disputed Domain Name is identical with 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;
- (iii) the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has rights in the VEEV trademark. The Panel finds the Disputed Domain Name is confusingly similar to this trademark.

The Disputed Domain Name simply adds the letter “o” and the word “vapes” to the Complainant’s VEEV trademark. Previous UDRP panels have consistently held that domain names are identical or confusingly similar to a trademark for purposes of the Policy “when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name” (*Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. [D2000-0662](#)). It is established that, where a mark is the distinctive part of a disputed domain name, the disputed domain name is considered to be confusingly similar to the registered mark (*DHL Operations B.V. v. DHL Packers*, WIPO Case No. [D2008-1694](#)).

It is also established that the addition of a descriptive or geographic term (such as here “vapes”) to a domain name does not prevent a finding of confusing similarity between the domain name and the mark (*Quixtar Investments, Inc. v. Dennis Hoffman*, WIPO Case No. [D2000-0253](#); *PRL USA Holdings, Inc. v. Spiral Matrix*, WIPO Case No. [D2006-0189](#); and section 1.8 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

It is also well established that the generic Top-Level Domain (“gTLD”), in this case “.com”, does not affect the Disputed Domain Name for the purpose of determining whether it is identical or confusingly similar. See, for example, *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. [D2000-0429](#).

Accordingly, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant’s trademark and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

B. Rights or Legitimate Interests

The Panel finds the VEEV trademark is, on the evidence before the Panel, a distinctive term relating to the Complainant which appears to be a coined word with no ordinary meaning and where there is no evidence of anyone else using that or any similar term.

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a domain name:

“(i) before any notice to the respondent of the dispute, use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) the respondent has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

None of these apply in the present circumstances. The Respondent’s Website cannot amount to a bona fide offering of goods for reasons discussed below in relation to bad faith. The Complainant has not authorised, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use the VEEV trademark. The Complainant has prior rights in the VEEV trademark, which precede the Respondent’s acquisition of the Disputed Domain Name. The Complainant has therefore established a prima facie case that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name, and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Name (see, for example, *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

The Panel finds that the Respondent has failed to produce any evidence to establish his rights or legitimate interests in the Disputed Domain Name.

Accordingly, the Panel finds the Respondent has no rights or any legitimate interests in the Disputed Domain Name and the second condition of paragraph 4(a) of the Policy has been fulfilled.

C. Registered and Used in Bad Faith

Under paragraph 4(b) of the Policy a non-exhaustive list of factors evidencing registration and use in bad faith comprises:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.”

The Panel concludes that the filed evidence establishes clearly that paragraph 4(b)(iv) of the Policy applies as the Disputed Domain Name is likely to attract traffic because of confusion with the Complainant's trademark, and the Respondent hopes to derive commercial gain as a result by selling products which compete with the Complainant's products. There appears to be no plausible reason for the Respondent's selection of the Disputed Domain Name other than as a deliberate attempt to profit from the confusion generated with the Complainant's VEEV trademark. The Panel finds that the Respondent has failed to produce any evidence to rebut that inference or to show that the registration and use of the Disputed Domain Name was not in bad faith.

Accordingly, the Panel finds that the Disputed Domain Name has been registered and is being used in bad faith and hence the third condition of paragraph 4(a) of the Policy has been fulfilled.

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 <veevo-vapes.com> be transferred to the Complainant.

/Nick J. Gardner/

Nick J. Gardner

Sole Panelist

Date: March 21, 2024