

ADMINISTRATIVE PANEL DECISION

VKR Holding A/S v. YangZhiChao, YangZhiChao
Case No. D2022-2198

1. The Parties

The Complainant is VKR Holding A/S, Denmark, represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is YangZhiChao, YangZhiChao, China.

2. The Domain Name and Registrar

The disputed domain name <veluxuss.com> is registered with 22net, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on June 16, 2022. On June 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 20, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on June 20, 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 in English on June 20, 2022.

On June 20, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On June 20, 2022, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceedings commenced on June 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 18, 2022. The Respondent did not submit any

response. Accordingly, the Center notified the Respondent's default on July 19, 2022.

The Center appointed Rachel Tan as the sole panelist in this matter on August 1, 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 the parent company of the Velux Group. Through its subsidiaries, the Complainant offers roof windows, skylights, vertical windows and systems, thermal solar energy systems, decoration and sun screening products, ventilation, and indoor climate products. The Velux Group is part of the VKR Group which was established by Villum Kann Rasmussen in 1941. He called his first roof window "Velux" – "Ve", from the word "ventilation" and "Lux", from the Latin word for "light".

The Complainant is the owner of the VELUX mark across different jurisdictions, including China Trade Mark Registration No. 211705, registered on August 15, 1984 in class 6; China Trade Mark Registration No. 211706, registered on August 15, 1984 in class 19; United States of America ("US") Trade Mark Registration No. 1091446, registered on May 16, 1978 in class 19 and US Trade Mark Registration No. 1492904, registered on June 21, 1988 in classes 6, 19 and 20.

The Complainant promotes and provides information about its VELUX brand and products at "www.velux.com".

The Respondent is YangZhiChao, YangZhiChao, China.

The disputed domain name was registered on March 11, 2022. It resolves to an active pay-per-click ("PPC") webpage that lists out multiple third-party links related to different advertisements covering contents such as "Velux Skylight", "Skylight Window" and "Roof Windows".

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the Complainant's VELUX mark. "uss" in the disputed domain name is a misspelling of "USA" which is a geographical term that is closely linked and associated with the Complainant's brand. The addition of this geographically descriptive element "uss" to the Complainant's VELUX mark is making the disputed domain name confusingly similar to the Complainant's mark. Further, the disputed domain name is identical to the Complainant's own domain name <veluxusa.com> but for the final "a", replaced by the adjacent letter "s". Further, it is standard practice not to take the ".com" extension into account when comparing a disputed domain name to complainant's trade mark.

The Complainant further alleges that the Respondent is not sponsored by or affiliated with the Complainant in any way. The Complainant has not given the Respondent permission to use the Complainant's mark in any manner, including in domain names. The Respondent is not commonly known by the disputed domain name. The Respondent is using the disputed domain name to redirect Internet users to a website featuring links to third-party websites, some of which directly compete with the Complainant's business. The Respondent's website also features a link that directly references the Complainant and its business, namely "Velux Skylight". The Respondent presumably receives PPC fees from the linked websites that are listed at the resolved website. As such, the Respondent is not using the disputed domain name to provide a *bona fide* offering of goods or services.

The Complainant finally asserts that its VELUX mark is known internationally. By registering a domain name that comprises the Complainant's VELUX mark and a misspelling of the Complainant's own domain name <veluxusa.com>, the Respondent has demonstrated a knowledge of and familiarity with the Complainant's brand and business. The Respondent is using the disputed domain name to confuse unsuspecting Internet users looking for the Complainant's services, and to mislead Internet users as to the source of the domain name and website. As evidenced by the presence of multiple PPC links posted to the Respondent's website, some of which directly reference the Complainant and/or its products, the Respondent has demonstrated a nefarious intent to capitalize on the fame and goodwill of the Complainant's mark in order to increase traffic to the resolved website for the Respondent's own pecuniary gain. Further, the Respondent has previously been involved in other cases, which provides evidence of the pattern of cybersquatting.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

Initially, the Panel must address the language of the proceeding. Paragraph 11(a) of the Rules provides that the language of the administrative proceeding shall be the language of the Registration Agreement unless otherwise agreed by the parties, subject to the authority of the panel to determine otherwise, having regard to the circumstances of the administrative proceeding. The panel may choose to write a decision in either language, or request translation of either party's submissions.

In this case, the Registrar has confirmed to the Center that the language of the Registration Agreement as used by the registrant for the disputed domain name is Chinese. However, the Complainant has requested that English be adopted as the language of the proceeding for the reasons summarized below:

- (a) the Complainant is unable to communicate in Chinese and translation of the Complaint would unfairly disadvantage and burden the Complainant and delay the proceedings and adjudication of this matter;
- (b) such additional delay poses continuing risk to the Complainant and unsuspecting consumers seeking the Complainant or its products;
- (c) the disputed domain name is comprised of Latin characters including the misspelling "uss" of the term "usa";
- (d) the website found at the disputed domain name features various phrases, in English including "Velux Skylight", "Skylight Window" and "Roof Windows"; and
- (e) the term "velux", which is the dominant portion of the disputed domain name, does not carry any specific meaning in the Chinese language.

It is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding, in order to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to undue burdens being placed on the parties and undue delay to the proceeding.

The Panel has considered the above circumstances, and finds that English shall be the language of this proceeding. The reasons are set out below:

- (a) the Complainant is a company based in Denmark. Requiring the Complainant to submit documents in Chinese would lead to delay and cause the Complainant to incur translation expenses;

(b) the Respondent's choice of Roman letters and "uss" for the disputed domain name and the website with links in English which the disputed domain name resolves to indicate that the Respondent is familiar with the English language;

(c) even if the Respondent does not possess a sufficient command of English to understand the Complaint, there were ample opportunities for the Respondent to raise an objection. The Center notified the Parties in English and Chinese of the Complainant's request for English to be the language of the proceeding, but the Respondent did not protest against this request;

(d) the Respondent has failed to participate in the proceeding even though the Center sent the notification in English and Chinese of the Complaint, and has been notified of his/her default; and

(e) the Complaint has been submitted in English. No foreseeable procedural benefit may be served by requiring Chinese to be used. On the other hand, the proceeding may proceed expeditiously in English.

Accordingly, the Panel will proceed with issuing this Decision in English.

6.2 Substantive Issues

A. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has adduced evidence to demonstrate its established rights in the VELUX mark.

The Panel notes the disputed domain name is comprised of the VELUX mark in its entirety. The positioning of the VELUX mark in the disputed domain name is instantly recognizable. In cases where a domain name incorporates the entirety of a trade mark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing. See section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Further, it is accepted by previous UDRP panels that the addition to the complainant's trade mark of other words or terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element of the Policy. Accordingly, the additional element "uss", which is a misspelling of the word "usa" relating to the Complainant's business, does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's VELUX mark. See section 1.8 of the [WIPO Overview 3.0](#).

Lastly, it is permissible for the Panel to ignore the general Top-Level Domain, in this case ".com". See section 1.11.1 of the [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the Complainant has satisfied the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

In circumstances where the Complainant possesses exclusive rights to the VELUX mark whereas the Respondent seems to have no trade mark rights, and considering the facts and arguments set out above, the Panel is satisfied that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, and the burden of production shifts to the Respondent. See section 2.1 of the [WIPO Overview 3.0](#).

The Respondent has not provided evidence of a legitimate use of the disputed domain name or reasons to justify the choice of a domain name that is confusing similar to the Complainant's VELUX mark. Further, there is no indication to show that the Respondent is commonly known by the disputed domain name or

otherwise has rights or legitimate interests in it. In addition, the Complainant has not granted the Respondent a license or authorization to use the Complainant's VELUX mark or register the disputed domain name. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name in the terms of paragraph 4(c)(iii) of the Policy since at the time of filing the Complaint and, at the date of this Decision, the disputed domain name resolves to a PPC website with links to third-party websites, some of which are related to or competed with the Complainant's business. Such usage may reasonably be assumed to be commercial in its intent and effect. Prior UDRP panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering of goods or services where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users. See section 2.9 of the [WIPO Overview 3.0](#).

Therefore, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name. Accordingly, the Panel finds that the Complainant has satisfied the second element under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Complainant's VELUX mark has been registered across different jurisdictions. The disputed domain name was registered long after the registration of the Complainant's VELUX mark. Through extensive use and advertising, the Complainant's VELUX mark is known throughout the world. Search results using the key word "Velux" on Internet search engines direct Internet users to the Complainant and its business, which indicates that an exclusive connection between the VELUX mark and the Complainant has been established. As such, the Respondent either knew or should have known of the Complainant's VELUX mark when registering the disputed domain name, and has exercised "the kind of willful blindness that numerous panels have held support a finding of bad faith". See *Barclays Bank PLC v. Andrew Barnes*, WIPO Case No. [D2011-0874](#).

Section 3.1.4 of the [WIPO Overview 3.0](#) states that "[...] mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith". In this case, the disputed domain name is confusingly similar to the widely known VELUX mark and was registered by the Respondent who has no relationship with the Complainant, which means that a presumption of bad faith can be created.

Section 3.5 of the [WIPO Overview 3.0](#) states that "[p]articularly with respect to 'automatically' generated pay-per-click links, panels have held that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name (nor would such links *ipso facto* vest the respondent with rights or legitimate interests)". The Panel notes that the disputed domain name resolves to a parked page comprising PPC advertising links that divert Internet users to various contents, some of which are related to and competing with the Complainant's business. The Panel finds the use of the confusingly similar disputed domain name to lure Internet users to third-party websites is evidence of bad faith. See *Sodexo v. 杨智超 (Zhi Chao Yang)*, WIPO Case No. [D2020-1171](#).

The Panel also notes that the Respondent appears to be engaged in a pattern of abusive registration having registered multiple domain names comprising third-party trade marks. The Panel finds this case is a continuation of that bad faith pattern. See *Asurion, LLC v. 杨智超 (Zhichao Yang)*, WIPO Case No. [D2021-4231](#). Such constitutes evidence of bad faith registration and use as contemplated under paragraph 4(b)(ii) of the Policy.

The Respondent has kept silent in the face of the Complainant's allegations of bad faith. Taking into account these circumstances, the Panel finds that the Respondent must have known of the Complainant before registering the disputed domain name and, considering the Respondent's lack of rights or legitimate interests, and by registering and using the disputed domain name as discussed above, the Panel is led to conclude that the disputed domain name was registered and is being used in bad faith.

Accordingly, the Panel finds that the Complainant has satisfied the third element under paragraph 4(a) of the Policy.

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 <veluxuss.com> be transferred to the Complainant.

/Rachel Tan/

Rachel Tan

Sole Panelist

Date: August 15, 2022