

ADMINISTRATIVE PANEL DECISION

Vente-privee.com and Vente-privee.com IP S.à.r.l. v. Domain Admin, Privacy Protect, LLC (PrivacyProtect.org) / zname
Case No. D2022-2344

1. The Parties

Complainant is Vente-privee.com France, France, and Vente-privee.com IP S.à.r.l., Luxemburg, represented by Cabinet Degret, France.

Respondent is Domain Admin, Privacy Protect, LLC (PrivacyProtect.org), United States of America / zname, China.

2. The Domain Name and Registrar

The disputed domain name <entprivee.com> is registered with Click Registrar, Inc. d/b/a publicdomainregistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 28, 2022. On June 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 30, 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 Complainant on July 1, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on July 5, 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 Respondent of the Complaint, and the proceedings commenced on July 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 28, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on August 9, 2022.

The Center appointed Frederick M. Abbott as the sole panelist in this matter on August 15, 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

Complainant comprises two legal entities under common control: VENTE-PRIVEE.COM, a joint stock company incorporated in Bobigny, France, and VENTE-PRIVEE.COM IP S.à.r.l., a limited liability company registered in Luxembourg (a wholly-owned subsidiary of VENTE-PRIVEE.COM). Each is the owner of registrations in various jurisdictions for the trademarks VENTE-PRIVEE.COM and VENTE-PRIVEE. The two companies, under common control, are referred to herein as “Complainant”.

Complainant is the owner of registration for the figurative trademark VENTE-PRIVEE.COM on the register of the European Union Intellectual Property Office (“EUIPO”), registration number 005413018, registration dated December 20, 2007, in international classes (ICs) 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45, covering a wide range of goods and services. Complainant is the owner of registration as an International Trademark under the Madrid System of the figurative trademark VENTE-PRIVEE, registration number 1116436, registration dated February 23, 2012, in IC 35, covering, *inter alia*, retail services, including through a commercial website. Successful designations under the Madrid Protocol include for Japan, the Republic of Korea and China. Complainant is also the owner of registration for the figurative trademark VENTE-PRIVEE on the register of the EUIPO, registration number 011991965, registration dated January 3, 2014, in ICs 35, 36, 38, 39, 41, 42, 43, 44 and 45, covering a wide range of services.

Complainant operates commercial websites purchasing and selling a wide variety of goods and services, including in the fashion, food and travel sectors. Complainant maintains a substantial position in the global e-commerce market, with an annual turnover in 2018 approaching EUR4 billion. In the first part of 2018, Complainant’s commercial websites were visited by an average of 3.5 million unique visitors per day. As of 2016, Complainant had approximately 30 million registered members on its VENTE-PRIVEE website. At the beginning of 2019 Complainant’s commercial websites were renamed Veepee, but its VENTE-PRIVEE[.COM] trademarks are still in some use on its websites, and Complainant’s websites operating currently at <veepee.com> are reached through re-direction of Complainant’s <vente-privee.com> domain name.

According to the Registrar’s verification, Respondent is registrant of the disputed domain name. According to that verification, the disputed domain name was registered by Respondent on March 16, 2022 and Respondent remains the listed registrant.

Respondent has used the disputed domain name to direct Internet users to a website displaying pornographic images (and anime). The predominant language (characters) on the screenshot samples furnished by Complainant is Chinese. The images are accompanied by links. Complainant has not identified the subject matter to which the links are directed.¹

¹ Complainant has suggested that Respondent’s website, in addition to displaying pornographic content, might be a vehicle for causing Internet users to unintentionally download malware or spyware. This is a good reason to forgo clicking on links for purposes of pursuing additional evidence.

5. Parties' Contentions

A. Complainant

Complainant alleges that it owns rights in the trademarks VENTE-PRIVEE and VENTE-PRIVEE.COM and that the disputed domain name is confusingly similar to those trademarks.

Complainant contends that Respondent lacks rights or legitimate interests in the disputed domain name because: (1) Complainant's trademarks were registered well prior to Respondent's registration of the disputed domain name; (2) Respondent has never objected to Complainant's ownership of trademark rights; (3) Respondent is in no way related to Complainant or its trademarks; (4) Complainant has not authorized Respondent to use its trademarks in the disputed domain name or otherwise; (5) there is no indication that Respondent has been known by the disputed domain name, and (6) there is no indication that Respondent owns trademark registrations corresponding to the disputed domain name.

Complainant argues that Respondent registered and is using the disputed domain name in bad faith because: (1) a Google or Baidu search of the terms forming the disputed domain name would have prominently identified Complainant and its trademarks in advance of Respondent's registration of the disputed domain name; (2) Complainant's trademarks are well known at the international level, including in China, from which many of its products are sourced; (3) Respondent's direction of Internet users to pornographic images diverts traffic for commercial gain, and harms Complainant's brand image; (4) the website identified by the disputed domain name may cause Internet users to inadvertently download malware or spyware, and; (5) the close similarity between the disputed domain name and Complainant's trademarks aggravates Complainant's claim of bad faith.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

The registration agreement between Respondent and the Registrar subjects Respondent to dispute settlement under the Policy. The Policy requires that domain name registrants submit to a mandatory administrative proceeding conducted by an approved Dispute Resolution Service Provider, one of which is the Center, regarding allegations of abusive domain name registration and use (Policy, paragraph 4(a)).

The Center formally notified the Complaint to Respondent at the email addresses provided in its record of registration. Courier delivery of the Written Notice of the Complaint to Respondent could not be undertaken because of manifestly incomplete and inaccurate contact information in Respondent's record of registration. There is no indication of problems with the transmission by email of the Complaint to Respondent. The Center took those steps prescribed by the Policy and the Rules to provide notice to Respondent, and those steps are presumed to satisfy notice requirements.

Paragraph 4(a) of the Policy sets forth three elements that must be established by a complainant to merit a finding that a respondent has engaged in abusive domain name registration and use and to obtain relief. These elements are that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights;
- (ii) 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.

Each of the aforesaid three elements must be proved by a complainant to warrant relief.

A. Identical or Confusingly Similar

Complainant has provided substantial evidence of rights in the trademark VENTE-PRIVEE, including by registration at the EUIPO, by registration as an International Trademark, and through use in commerce. Complainant has provided substantial evidence of rights in the trademark VENTE-PRIVEE.COM, including by registration at the EUIPO, and through use in commerce. See Factual Background *supra*. Respondent has not challenged Complainant's assertion of trademark rights. The Panel determines that Complainant owns rights in the trademarks VENTE-PRIVEE and VENTE-PRIVEE.COM.

The disputed domain name <enteprivee.com> differs from Complainant's trademarks by exclusion of the letter "v" and exclusion of the hyphen (or dash). The disputed domain name does not directly and fully incorporate Complainant's trademarks, although it does include almost all elements of those trademarks. The disputed domain name is very similar in sight or visual impression to Complainant's trademarks.

The disputed domain name is virtually identical to the subject trademarks, and less likely to be distinguished by the target Internet user group based on a very minor difference in appearance (as compared, for example, to a French-speaking target user group) and, given that Complainant's trademarks are well known, the Panel determines that the disputed domain name is confusingly similar to Complainant's trademarks within the meaning of the Policy.

The Panel determines that Complainant has rights in the trademarks VENTE-PRIVEE and VENTE-PRIVEE.COM and that the disputed domain name is confusingly similar to those trademarks.

B. Rights or Legitimate Interests

Complainant's allegations to support Respondent's lack of rights or legitimate interests in the disputed domain name are outlined above, and the Panel finds that Complainant has made a *prima facie* showing that Respondent lacks rights or legitimate interests in the disputed domain name.

Respondent has not replied to the Complaint and has not attempted to rebut Complainant's *prima facie* showing of lack of rights or legitimate interests.

Respondent's use of the disputed domain name to direct Internet users to pornographic content by virtue of confusing similarity with Complainant's trademarks does not establish rights or legitimate interests in the disputed domain name. Such activity is not making legitimate noncommercial or fair use of Complainant's trademarks. Because Respondent is taking unfair advantage of the goodwill associated with Complainant's trademarks, it does not constitute a *bona fide* offering of goods or services prior to notice of this dispute. There is no indication that Respondent was commonly known by the disputed domain name, or established trademark rights in its terms, when it registered and began using the disputed domain name. Respondent was not authorized by Complainant to make use of its trademarks in the disputed domain name.

Respondent's use of the disputed domain name does not otherwise manifest rights or legitimate interests.

The Panel determines that Complainant has established that Respondent lacks rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

In order to prevail under the Policy, Complainant must demonstrate that the disputed domain name "has been registered and is being used in bad faith" (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy states that "for the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith". These include that, "(iv) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website 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 or location or of a product or service on [the respondent's] website or location".

Complainant's VENTE-PRIVEE and VENTE-PRIVEE.COM trademarks were well-established when the disputed domain name was registered and used by Respondent. As noted by Complainant, a Google or Baidu search of its trademarks by Respondent would have alerted Respondent to the prominence of Complainant's trademarks in the e-commerce arena. It is reasonable to conclude that Respondent registered the disputed domain name in order to take advantage of the goodwill associated with Complainant's trademarks, including in China (where the VENTE-PRIVEE trademark is registered).

Respondent has used the disputed domain name that is confusingly similar to Complainant's well-known trademarks to direct Internet users to pornographic content. Respondent appears to be making that content available for commercial gain. Respondent's bad faith intent is further evidenced by the provision of contact details in its record of registration that are manifestly falsified and incomplete. Respondent has not attempted to justify its conduct. Respondent's registration and use of Complainant's trademark in the disputed domain name constitutes bad faith within the meaning of the Policy.

The Panel determines that Respondent registered and is using the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) 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 <enteprivee.com> be transferred to Complainant.

/Frederick M. Abbott/

Frederick M. Abbott

Sole Panelist

Date: August 29, 2022