

ADMINISTRATIVE PANEL DECISION

Vue Entertainment Holdings (UK) Limited v. Hao Li, Lihao
Case No. D2022-4588

1. The Parties

The Complainant is Vue Entertainment Holdings (UK) Limited, United Kingdom, represented by Bird & Bird LLP, United Kingdom (the “Complainant”).

The Respondent is Hao Li, Lihao, China (the “Respondent”).

2. The Domain Name and Registrar

The disputed domain name <vue-me.com> (the “Domain Name”) is registered with GMO Internet, Inc. d/b/a Discount-Domain.com and Onamae.com (the “Registrar”).

3. Procedural History

On December 1, 2022, the Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”). On December 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On December 2, 2022, 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 December 2, 2022, the Center notified the Parties in both English and Japanese that the language of the registration agreement for the Domain Name is Japanese. On December 5, 2022, the Complainant requested for English to be the language of the proceeding. The Respondent did not 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”).

On December 13, 2022, in accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint in English and Japanese, and the proceedings commenced. In accordance with the Rules, paragraph 5, the due date for Response was January 2, 2023. The Respondent did not submit any response. Accordingly, on January 3, 2023, the Center notified the Respondent’s default.

On January 24, 2023, the Center appointed Haig Oghigian as the sole panelist in this matter. 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 one of the world's leading cinema operators, with over 220 sites and 1,997 screens in total. The Complainant enjoys significant renown in a large number of countries, including the United Kingdom, Ireland, Germany, Denmark, the Netherlands, Italy, Poland, Lithuania and Taiwan Province of China.

The Respondent is Hao Li, Lihao.

The Complainant is the owner of an extensive international portfolio of trademark registrations for the VUE trade mark, which are registered for a range of goods and services, including in relation to digital streaming and related services (the "Trademarks"). The Trademarks are registered in at least 33 countries, including the United Kingdom, The European Union, Australia, the Russian Federation and Saudi Arabia.

The Domain Name is <vue-me.com>.

The Complainant is also the registrant of a number of domain names, including <myvue.com> and <vue-international.com> (the "Vue Domain Names"). The Vue Domain Names resolve to the Complainant's website, through which the Complainant operates its cinema business, including functionality for taking bookings for film screenings, among other things (the "Vue Website").

The Registrar confirmed that according to the Whois database, the Domain Name was first registered on October 19, 2022 expires on October 18, 2024. The Registrar confirmed that a lock of the Domain Name was applied and that such lock status will remain in place through the remaining pendency of the proceeding.

The Domain Name leads to the Respondent's Website which is being used to host gambling and pornographic content.

The Complainant does not provide information of when the Trademarks were first registered, but it is clear from the evidence submitted by the Complainant that the Complainant's Trademarks were registered before the Domain Name was registered, including the United Kingdom trademark registration No. UK00912455549 for VUE, registered on September 18, 2015.

5. Parties' Contentions

A. Complainant

The following information has been taken from the Complaint and the attached Annexes.

The Complainant submits that the dispute is properly within the scope of the Policy and that this Panel has the jurisdiction to decide the dispute because the registration agreement, pursuant to which the Domain Name that is the subject of the Complaint is registered, incorporates the Policy.

The Complainant submits that the goodwill associated with the Marks is proprietary to the Complainant and cannot pass to any third party without a formal assignment. No such assignment by the Complainant in favor of the Respondent has taken place.

The Complainant submits that the Domain Name is clearly intended to imitate and take advantage of the VUE brand and the Trademarks. The VUE mark is wholly contained within the Domain Name. VUE is distinctive and would immediately catch the public's attention by reason of its placement in the first position of the Domain Name. The two letters "me" would be perceived as the standard English word "me", or as designating the country code for Montenegro, so they do not have a significant impact on the overall impression of the of the Domain Name – the Complainant's Trademark is still the distinctive and most striking part of it. The high degree of similarity between the Domain Name and the VUE Trademark makes it clear that the Respondent's intention is to associate itself with the VUE brand and the Complainant's goodwill and reputation in the Trademarks.

The Complainant provided evidence of the content hosted under the Domain Name that shows gambling and pornographic content. The Complainant submits that the VUE trademark does not appear anywhere on the webpage itself, suggesting the Domain Name was chosen solely for the purpose of diverting Internet traffic intended for the Complainant's VUE Website to the Respondent's Website. Instead, it is noted that the domain name <872av.com> appears several times on the webpage. As a result, there exists an intention on behalf of the Respondent to associate itself with the Complainant and to trade off the Complainant's goodwill and reputation in the Trademarks.

The Complainant submits that given the strong reputation of the VUE Trademark, and the renown of the Complainant's business, the Respondent must have been aware that in registering the Domain Name it was misappropriating the valuable intellectual property of the Complainant and attempting to attract for monetary gain, Internet users to the Respondent's website by creating a likelihood of confusion with the VUE Trademarks.

The Complainant states that the various banners and thumbnails on the Respondent's website are undoubtedly pay-per-click, meaning the Respondent will be benefitting financially when the links are clicked by visitor. Further, the nature of the content on the Respondent's website is harmful to the Complainant's reputation because it contains gambling and pornographic material.

The Respondent's registration of the Domain Name has also prevented the Complainant from registering a domain name which corresponds with the VUE Trademarks.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

The Registrar confirmed that the language of the Registration Agreement of the Domain Name is Japanese. The Complainant sets forth a number of arguments as to why the proceeding should be held in English, including that the Domain Name is in Latin script and not in Japanese script and that the Respondent is located in Hong Kong, China where English is one of the two official languages. The Respondent did not comment or object on the Complainant's request.

In accordance with paragraph 11(a) of the Rules, the Panel determines that the language of the proceeding should be English.

6.2 Substantive Issues

A. Identical or Confusingly Similar

Where a complainant holds a nationally or regionally registered trademark or service mark, this *prima facie*

satisfies the threshold of having trademark rights for the purposes of standing.

The Complainant holds a number of registered Trademarks for the VUE term. The Complainant relies on the goodwill and recognition that it has attained under the VUE brand, which has become a distinctive identifier of its offerings.

The Panel is of the view that the Complainant has demonstrated to the Panel's satisfaction that it has the rights to the Trademarks as per the registration of the Trademarks and also of its commercial use.

The Domain Name incorporates the Complainant's Trademarks. UDRP panels have established that where the relevant trademark is recognizable, the addition of other terms within a domain name would not prevent a finding of confusing similarity. The mere addition of a non-significant element does not sufficiently differ the domain name from the registered trademark. The Panel concludes that the Domain Name is confusingly similar with the Complainant's Trademarks.

B. Rights or Legitimate Interests

The Complainant has presented a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name for the purposes of paragraph 4(a)(ii) of the Policy. The burden of production therefore shifts to the Respondent to show that it has rights or legitimate interests in the Domain Name.

In accordance with paragraph 4(c) of the Policy, the Respondent, in order to demonstrate its rights or legitimate interests can, without limitation, refer to the following circumstances:

- (i) before any notice to you of the dispute, your 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are 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.

No evidence was adduced by the Respondent to demonstrate any rights or legitimate interests in the Domain Name. The Respondent, having been duly notified of the Complaint and the present proceeding, has chosen not to reply to the contentions of the Complainant nor otherwise participated in this proceeding.

It does not appear that the Respondent has registered any Trademarks for VUE or anything similar. It does not appear that the Respondent holds any unregistered rights to any such term either. The Respondent has not been licensed by the Complainant to use domain names that feature its Trademark.

No evidence was adduced that would demonstrate that the Respondent has used any trademarks similar to the one used in the Domain Name nor that the Respondent has been authorized to register any domain names including the Trademark. It does not appear from the evidence that the Respondent is not connected or affiliated with the Complainant. Mere ownership of a domain name does not confer rights or legitimate interests on a respondent.

There is no evidence that would show that the Respondent was acting in accordance of any rights or legitimate interests upon registration of the Domain Name.

There is also no evidence that would show that the Respondent had "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", as per paragraph 4(c) of the Policy referred above.

The Respondent has clearly used the Domain Name to attract and misleadingly divert Internet users website that capitalizes on the Complainant's reputable Trademark. The Domain Name is not being used in connection with any *bona fide* offering of goods or services, nor any legitimate commercial use. Rather, the Domain Name is not being used for legitimate purposes.

Therefore, the Panel concludes that the Respondent has neither rights nor legitimate interests in the Domain Name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that if the following circumstances in particular but without limitation, are present, they shall be evidence of the registration and use of a domain name in bad faith:

- (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.

Under the Policy, bad faith is understood to occur where a respondent has taken unfair advantage of or has otherwise abused a complainant's mark.

The Complainant has also accrued substantial goodwill and international recognition in its Trademarks. An Internet searches would have unequivocally brought the Complainant's established rights in the Trademarks. The Respondent should have been aware of the Complainant's Trademarks at the time of registration. The Panel sees no reason for the Respondent to have registered the Domain Name. This supports a finding of bad faith.

The Respondent's use of the Domain Name, by fully adopting the Complainant's Trademarks, diverts customers from the Complainant and thus disrupts the Complainant's business, tarnishes its well-known and incontestable VUE marks, and damages its business reputation.

The Respondent is using the Domain Name for commercial gain. Internet users will be deceived by the Domain Name and believe they are arriving at a website that offers information regarding the Complainant's services, but instead will arrive at a website showing illicit content. The use of a domain name to tarnish a complainant's trademark, including for commercial purposes in connection with pornographic and gambling content, constitutes evidence of a respondent's bad faith.

For the reasons above, the Panel finds that both the registration and use of the Domain Name have been done in bad faith.

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 Domain Name <vue-me.com> be transferred to the Complainant.

/Haig Oghigian/

Haig Oghigian

Sole Panelist

Date: February 17, 2023