

ADMINISTRATIVE PANEL DECISION

Marq Vision Inc. v. jastin koleman, jole
Case No. D2022-4634

1. The Parties

The Complainant is Marq Vision Inc., Republic of Korea, internally represented.

The Respondent is jastin koleman, jole, United States of America.

2. The Domain Name and Registrar

The disputed domain name <getmarqvision.com> (“Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 30, 2022. On December 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On December 5, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on December 6, 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 amendment to the Complaint on December 7, 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 the Respondent of the Complaint, and the proceedings commenced on December 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 9, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 13, 2023.

The Center appointed Willem J. H. Leppink as the sole panelist in this matter on January 27, 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 following facts are undisputed.

The Complainant provides B2B Software as a Service to businesses worldwide under the MARQVISION brand.

The Complainant owns the Korean trademark registration for the combined word device mark M MARQVISION, registered on May 24, 2021, with registration number 4017306270000 for classes 09 35 38 42 ("Trademark").

The Complainant owns the domain name <marqvision.com> and uses this for its official website.

The Domain Name was registered on October 2, 2022. At the time of this decision the Domain Name does not resolve to an active webpage.

5. Parties' Contentions

A. Complainant

The Complainant, to the extent relevant, contends the following:

The Domain Name is identical or confusingly similar to the Trademark. The Respondent uses the Domain Name, without the Complainant's written or verbal authorization, providing the same services as the Complainant offers under its Trademark.

The Respondent has no rights or legitimate interests in the Domain Name for the following reasons:

- (i) the Respondent is not commonly known by the Domain Name;
- (ii) the Respondent has not acquired trademark or service mark rights;
- (iii) the Respondent has not been authorized by the Complainant to use its well-known Trademark;
- (iv) no actual or contemplated *bona fide* or legitimate use of the Domain Name can be claimed since the Respondent is not licensed or permitted by the Complainant to use its Trademark; and
- (v) the Domain Name is being used to host a website copying the Trademark and copyright protected contents that can be found on the Complainant's websites and running an online web page in order to confuse potential customers to make an assumption that the Domain Name and the website is endorsed or sponsored by the Complainant.

The Domain Name was registered and is being used in bad faith.

At the time of registration of the Domain Name, the Respondent must have known of the Complainant and its Trademark. The Respondent has impersonated the official website owned by the Complainant by using its Trademark and copyright protected images. Since the structure of the Domain Name is identical to the official website owned by the Complainant, this is causing strong confusion to potential customers and Internet users to assume that the Domain Name is endorsed, or sponsored by the Complainant. A simple trademark search would have revealed the Complainant's trademark registrations, as would have a simple search on the Internet. Further, the Respondent is using the Domain Name and set its own pricing plan to

intentionally attract, for commercial gain, Internet users and businesses to its website, by creating a likelihood of confusion with the Trademark as to the source, sponsorship or endorsement of the website. The Respondent's registration of the Domain Name also prevents the Complainant from reflecting its Trademark in the corresponding domain name, and this affects the Complainant's business.

B. Respondent

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

6. Discussion and Findings

Pursuant to paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements:

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

Noting the burden of proof on the Complainant, the Respondent's default (*i.e.*, failure to submit a formal response) would not by itself mean that the Complainant is deemed to have prevailed. The Respondent's default is not necessarily an admission that the Complainant's claims are true. See in this regard WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3, "In cases involving wholly unsupported and conclusory allegations advanced by the complainant, or where a good faith defense is apparent (e.g., from the content of the website to which a disputed domain name resolves), panels may find that – despite a respondent's default – a complainant has failed to prove its case. Further to paragraph 14(b) of the UDRP Rules however, panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case e.g., where a particular conclusion is *prima facie* obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent."

A. Identical or Confusingly Similar

The Complainant must demonstrate that it has rights in a trademark or service mark and, if so, the Domain Name must be shown to be identical or confusingly similar to that mark.

The Panel is satisfied that the Complainant has shown that it has rights in the Trademark. The Trademark is a combined word / device mark, consisting of the word MARQVISION accompanied by a stylized M.

As set out in the [WIPO Overview 3.0](#), section 1.7, the first element functions primarily as a standing requirement. The threshold test for confusing similarity between the Domain Name and the Trademark involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the Domain Name.

In light of the foregoing, the Panel finds that the Domain Name is confusingly similar to the Trademark. The Domain Name consists of the elements "marqvision", preceded by the term "get", and the gTLD ".com".

The element "marqvision" is identical to the dominant text element of the Trademark. The Panel finds the additional term "get" does not prevent a finding of confusing similarity.

In light of the foregoing, the Panel finds that the Domain Name is confusingly similar to the Trademark.

Therefore, the Panel is satisfied that the first element of the Policy is met.

B. Rights or Legitimate Interests

The Panel has carefully considered the factual allegations that have been made by the Complainant and are supported by the submitted evidence.

In particular, the Respondent has failed to offer the Panel any of the types of evidence set forth in paragraph 4(c) of the Policy from which the Panel might conclude that the Respondent has rights or legitimate interests in the Domain Name, such as:

- (i) use or preparation to use the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services prior to notice of the dispute; or
- (ii) being commonly known by the Domain Name (as an individual, business or other organization) even if the Respondent has not acquired any trademark or service mark rights; or
- (iii) making 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.

The Respondent does not seem to be affiliated with the Complainant in any way. There is no evidence that “Marqvision” is the Respondent’s name or that the Respondent is commonly known under this name.

There is also no evidence that the Respondent is, or has ever been, a licensee of the Complainant or that the Respondent has ever asked, or has ever been permitted in any way by the Complainant to register or use the Trademark, or to apply for or use any domain name incorporating the Trademark.

The Complainant has alleged that the Domain Name is being used to host a website copying the Trademark and copyright protected contents that can also be found on the Complainant’s websites and that this creates confusion with potential customers.

Certainly noting that the Respondent has failed to respond to the Complaint and thus has not taken any steps to rebut the Complainant’s arguments, the Panel finds that the Respondent lacks rights to or legitimate interest in the Domain Name.

Therefore, the Panel is satisfied that the second element of the Policy is met.

C. Registered and Used in Bad Faith

The Panel finds that the Domain Name was registered and is being used in bad faith.

The Panel refers to its considerations under section 6.B and adds the following:

In the Panel’s view, also taking into account that the Respondent has mimicked the Complainant’s official websites, the Respondent must have been aware of the existence of the Complainant’s activities and rights at the time the Respondent registered the Domain Name. As such the registration and the use have clearly been in bad faith.

Last, the Respondent uses a privacy shield to hide his contact details and did not avail itself of the opportunity to respond to the claims made by the Complainant, which are also additional factors for considering a registration in bad faith (see [WIPO Overview 3.0](#), section 3.6).

Therefore, the Panel is satisfied that the third element of the Policy is met.

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, <getmarqvision.com> be transferred to the Complainant.

/Willem J.H. Leppink/

Willem J. H. Leppink

Sole Panelist

Date: February 8, 2023