

ADMINISTRATIVE PANEL DECISION

Villeroy & Boch AG v. Kndo Pnwq
Case No. D2023-0756

1. The Parties

The Complainant is Villeroy & Boch AG, Germany, represented by Taylor Wessing Partnerschaftsgesellschaft mbB, Germany.

The Respondent is Kndo Pnwq, China.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 17, 2023. On February 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 22, 2023, 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 (Domain Protection Services, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 23, 2023, 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 February 24, 2023.

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 March 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 30, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 3, 2023.

The Center appointed Benjamin Fontaine as the sole panelist in this matter on April 11, 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 Complainant is Villeroy & Boch AG, a German company established since 1748 by its founders François Boch and Nicolas Villeroy. It is active in the high-end segment of ceramic productions, particularly in the areas of bathroom, wellness, tableware and tiles. It has a network of over 4,000 points of sale and distributes its products in 125 countries worldwide. In 2021, the global turnover of the Complainant was near to a billion euros. The Complainant has annexed to its Complaint evidence relating to the numerous awards that it has obtained overtime for the design and quality of its products. It makes no doubt that the Complainant's historic trademark VILLEROY & BOCH is well known in many countries, in its field of activity.

The Complainant relies on a vast number of trademarks as a basis for this case. It suffices to notice here that it owns in particular a European Union trademark no. 1840362 over the words VILLEROY & BOCH, which is registered since January 4, 2002.

The disputed domain name <villeroybochsale.com> was registered on June 20, 2022, through a privacy shield service. The identity of the Respondent, an individual domiciled in China, was disclosed by the Registrar in the course of this proceeding.

The disputed domain name is used to host a website that apparently offers for sale a number of ceramic kitchenware, such as mugs and coffee cups. These products are offered in USD, with significant discounts of 40% and more. The website is entitled "Villeroybochsale" and uses primarily the colours blue and white as a background.

The Complainant has evidenced, with a number of screenshots, that the images displayed on the website of the Respondent are copied from its own website, hosted at "www.villeroy-boch.de".

The Complainant has also evidenced that the Respondent does actually not sell ceramic products, either genuine or counterfeits. It obtains personal data from customers, including sensitive data such as credit card numbers, but does not deliver products. In January 2023, a customer contacted the Complainant and provided the following information: "I wanted to let you know that I ordered the (...) figurine from this site in the U.S. The product never came and it is clear the website is a scam using the name Villeroy & Boch Sale. It is clearly to get credit card information". This customer also indicates that no order confirmation was received, let alone the product ordered.

5. Parties' Contentions

A. Complainant

The arguments of the Complainant on the three elements of the Policy can be summarized as follows:

On the first element of the Policy, the Complainant claims that the disputed domain name is confusingly similar to the trademark VILLEROY & BOCH. Its trademark is fully reproduced, with the exception of the "&" symbol, which cannot be included in a domain name. The Complainant indicates that this omission is irrelevant and that it is customary for entities which brands contain an ampersand to omit it in their portfolio of domain names. The Complainant adds that "the addition of the element `sale` to the famous trademark of the Complainant does not change the distinctive character of the domain as a whole, as the term is utterly generic".

On the second element of the Policy, the Complainant states that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not known under the name "Villeroy Boch", and

he was not permitted in any manner to use the trademarks of the Complainant. Besides, the Respondent is not making a *bona fide* use of the disputed domain name, as it operates a fraudulent scam to obtain sensitive data from customers. In addition to the elements already highlighted in the description of facts above, the Complainant indicates that it is in fact impossible to create an account on the website of the Respondent in the section "My Account", and that the address indicated at the "Contact Us" section corresponds to the location of department stores in Alaska where neither the Complainant, nor the Respondent, are located.

Finally, on the third element of the Policy, the Complainant claims that the disputed domain name was registered, and is being used, in bad faith. It is being used in bad faith because "the high degree of market recognition of the trademark VILLEROY & BOCH at the time of the Respondent's registration of the highly similar (disputed) domain name (...) makes obvious that the registration was not a coincidence but was filed in awareness of the Complainant's well-known trademarks in order to attract, for commercial gain, Internet users to its website". It is used in bad faith, also argues the Complainant, because it hosts a website which is solely used for scamming purposes.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy requires that the Complainant prove all of the following three elements in order to be successful in these proceedings:

- (i) the disputed 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 disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant, under the first requirement of paragraph 4(a) of the Policy, needs to establish that the disputed domain name is identical or confusingly similar to a trademark or a service mark in which it has rights. The first criterion is perceived primarily as a standing requirement for the Complainant.

The Complainant has shown that it holds numerous rights over the trademark VILLEROY & BOCH.

The disputed domain name <villeroybochsale.com> reproduces the words VILLEROY and BOCH,. The omission of the ampersand, which is attributable to technical limits, bears no impact. As correctly argued by the Complainant, it is customary to omit ampersands in domain name registrations, or to replace them by hyphens. Besides, the addition of the word "sale" does not prevent the trademark of the Complainant from being immediately recognized in the disputed domain name.

Hence, the first criteria element set out in paragraph 4(a) of the Policy is satisfied.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a non-exclusive list of circumstances that may indicate the Respondent's rights or legitimate interests in the disputed domain name. These circumstances are:

- i. before any notice of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- ii. the Respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, in spite of not having acquired trademark or service mark rights; or
- iii. the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent, in not responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed domain name. This entitles the Panel to draw any inferences from such default as it considers appropriate, pursuant to paragraph 14(b) of the Rules. Nevertheless, the burden of proof is still on the Complainant to make at least a *prima facie* case against the Respondent under the second UDRP element.

In that sense, and according to the evidence submitted, the Complainant has made a *prima facie* case against the Respondent which has not been commonly known by the disputed domain name and is not affiliated with the Complainant nor has it been licensed or otherwise permitted to use any of the Complainant's trademarks or to register a domain name incorporating any of those trademarks. Also, the nature of the disputed domain name (including the dominant and distinctive parts of the Complainant's trademark with the term "sales") suggest a risk of implied affiliation as users will believe that the disputed domain name hosts a website where discounted products of the Complainant can be purchased. See section 2.5.1 of the [WIPO Overview 3.0](#). The Panel is also of the view that the Respondent is not making a *bona fide* use of the disputed domain name, which is solely used for scamming activities.

Under these circumstances, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name.

C. Registered and Used in Bad Faith

In order to prevail under the third element of paragraph 4(a)(iii) of the Policy, the Complainant must demonstrate that the disputed domain name has been registered and is being used in bad faith.

Paragraph 4(b) of the Policy lists a number of circumstances which, without limitation, are deemed to be evidence of the registration and use of a domain name in bad faith. These are:

- (i) circumstances indicating that [a respondent has] registered or acquired a domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name to the complainant or to a competitor of the complainant, for valuable consideration in excess of [the respondent's] documented out-of-pocket costs directly related to the domain name; or
- (ii) [the respondent has] registered the domain name in order to prevent the complainant from reflecting the complainant's trademark or service mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; or
- (iii) [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (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.

In this case the Complainant has duly argued and evidenced that the disputed domain name was registered, and is being used, in bad faith.

The Respondent has configured the disputed domain name in such a manner to induce Internet users into the belief that they would access to genuine products of the Complainant sold at discounted price. This creates initial confusion to the detriment of users and of the Complainant.

The Respondent has then hosted under the disputed domain name a website which impersonates that of the Complainant (same images, nearly identical name, same background colours), and which is used solely for scamming purposes: potential clients provide their personal data, including that of their credit cards, and they – obviously - do not receive the goods that they have purchased.

Accordingly, the third criteria element set out in paragraph 4(a) of the Policy is also satisfied and the Complaint succeeds.

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

/Benjamin Fontaine/

Benjamin Fontaine

Sole Panelist

Date: April 13, 2023