

## **ADMINISTRATIVE PANEL DECISION**

Veolia Environnement SA v. Ivan Mccracken

Case No. D2023-3246

### **1. The Parties**

The Complainant is Veolia Environnement SA, France, represented by IP Twins, France.

The Respondent is ivan mccracken, United States of America ("United States" or "U.S.").

### **2. The Domain Name and Registrar**

The disputed domain name <veclia.com> is registered with Hostinger, UAB (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 27, 2023. On July 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 31, 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 Admin, Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 2, 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 amended Complaint on August 3, 2023.

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 of the Complaint, and the proceedings commenced on August 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 31, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 1, 2023.

The Center appointed Reynaldo Uriaga Escobar as the sole panelist in this matter on September 20, 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.

The proceeding is conducted in English, this being the language of the disputed domain name's registration agreement, as confirmed by the Registrar.

#### **4. Factual Background**

The Complainant is the holding company of the Veolia group, a French multinational conglomerate with a 160-year-old history.

The Veolia group has three core businesses: water, waste, and energy, a global workforce of more than 22,000 employees and had revenue of EUR28.5 billion in 2021.

The Complainant holds, *inter alia*, the following VEOLIA trademark registrations:

International trademark No. 814678 registered on September 11, 2003, in relation to classes 1, 6, 9, 11, 17, 19, 32, 35, 36, 37, 39, 40, 41, and 42;

International trademark No. 919580 registered on March 10, 2006, in relation to classes 9, 11, 16, 35, 36, 37, 38, 39, 40, 41, and 42;

International trademark No. 910325 registered on March 10, 2006, in relation to classes 9, 11, 16, 32, 35, 36, 37, 38, 39, 40, 41, 42 and 44;

United States trademark No. 3000764 registered on September 27, 2005, in relation to classes 1, 9, 11, 35, 36, 37, 40, 41, and 42.

United States trademark No. 5603792 registered on November 13, 2018, in relation to classes 1, 7, 37, 39, and 42.

The Complainant's website is located at "www.veolia.com" and the Complainant's domain name was registered on December 30, 2002.

The disputed domain name was registered on July 19, 2023, and has not resolved to an active website since.

On July 20, 2023, the disputed domain name was incorporated into a fake email address purporting to belong to a staff member of the Complainant's Australian subsidiary. The sham email asked the recipient, an actual client of the Veolia group, to make payment of a fake Veolia invoice, and supposedly copied another employee of the Complainant's Australian subsidiary, but using a @veolia.com address instead.

On July 24, 2023, the Complainant sent a cease-and-desist letter to the Respondent, to no avail.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant submits that:

- (i) The disputed domain name is confusingly similar to the Complainant's VEOLIA trademark as it contains the letters "v", "e", "l", "i", "a" in the same order with the only difference that the letter "o" in "VE-O-LIA" is replaced by the letter "c";

- (ii) The choice of the letter c is not a coincidence as the Respondent knew that the one-letter difference between the disputed domain name and the Complainant's VEOLIA mark would be difficult to detect in the various phishing emails that were sent to the Veolia group's client;
- (iii) A number of previous UDRP panels have found that the Complainant's VEOLIA mark has been used around the world for quite a long time;
- (iv) A number of VEOLIA trademarks relied on in the Complaint predate the disputed domain name's registration for years, which makes it unlikely that the Respondent has prior rights or legitimate interests in the disputed domain name;
- (v) As the Complainant's VEOLIA trademark is well known, the Respondent cannot reasonably pretend it was intending to develop a legitimate activity through the disputed domain name;
- (vi) The Respondent is neither affiliated with the Complainant nor is it authorized to use the VEOLIA mark in the disputed domain name;
- (vii) It is unlikely that the Respondent is commonly known by the name "veolia";
- (viii) Prior UDRP panels have found that, in the absence of a license or permission from the complainant to use its widely-known mark, no actual or contemplated *bona fide* or legitimate use of the disputed domain name could reasonably be claimed;
- (ix) The Respondent's phishing attempt is all but proof of legitimate interest in the disputed domain name;
- (x) In light of the VEOLIA trademark's reputation, the Respondent's reproduction of the VEOLIA trademark in the disputed domain name clearly proves that the Respondent was aware of the Complainant's mark;
- (xi) Prior UDRP panels have found that where the disputed domain name is so obviously connected with a well-known trademark its very use by someone with no connection to the trademark suggests opportunistic bad faith;
- (xii) It is more likely than not that the Respondent's primary motive in registering and using the disputed domain name was to capitalize on or otherwise take advantage of the Complainant's trademark rights through the creation of initial interest confusion;
- (xiii) The registration of the disputed domain name in furtherance of cyber-attacks supports a finding of bad faith and it is proof that the Respondent knew of the Complainant's trademark at the time of registering the disputed domain name.

## **B. Respondent**

The Respondent did not submit a Response to the Complaint.

## **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, in order to succeed in this administrative proceeding, the Complainants must prove that:

- (i) the disputed domain name is identical or confusingly similar to trademarks or service marks 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.

These elements are discussed in turn below. In considering these elements, paragraph 15(a) of the Rules provides that the Panel shall decide the Complaint on the bases of statements and documents submitted and in accordance with the Policy, the Rules, and any other rules or principles of law that the Panel deems applicable.

### **A. Identical or Confusingly Similar**

The first element has a low threshold merely serving as a gateway requirement under the Policy. See section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), elucidating that "the standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name".

The disputed domain name is an obvious misspelling (also known as typosquatting) of the Complainant's VEOLIA mark.

As such, the disputed domain name is deemed to be confusingly similar to the Complainant's VEOLIA mark. See section 1.9 of the [WIPO Overview 3.0](#) (a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element.)

The Panel accordingly finds that the disputed domain name is confusingly similar to the VEOLIA trademarks in which the Complainant has rights.

The Complaint passed muster under paragraph 4(a)(i) of the Policy.

### **B. Rights or Legitimate Interests**

The second element under the Policy is that the Respondent has no rights or legitimate interests in respect of the disputed domain name (Policy, paragraph 4(a)(ii)). Paragraph 4(c) of the Policy provides that "any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate [the respondent's] rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

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

As noted in section 2.1 of the [WIPO Overview 3.0](#), the onus is on the Complainants to establish the absence of the Respondent's rights or legitimate interests in the disputed domain names. However, because of the inherent difficulties in proving a negative, the consensus view is that the Complainant needs only put forward a *prima facie* case that the Respondent lacks rights or legitimate interests. The burden of production then shifts to the Respondent to rebut that *prima facie* case (see also, e.g., *World Wrestling Federation Entertainment, Inc. v. Ringside Collectibles*, WIPO Case No. [D2000-1306](#)).

Per the Complaint, the Respondent is not authorized to use the Complainant's VEOLIA mark in the disputed domain name or otherwise.

The Complainant also alleges that the Respondent is not known by the disputed domain name.

The Panel lends credibility to these factual assertions, which at any rate remain uncontested by the Respondent.

Regardless, the record shows that, on July 20, 2023, the disputed domain name was used to simulate the email addresses of two actual employees of the Veolia group.<sup>1</sup> with the intention to defraud an actual client of the Complainant's Australian subsidiary by seeking to collect payment from that client on a fake Veolia invoice.

It is well settled that use of the disputed domain for scam purposes is inimical to the Respondent having legitimate interests within the meaning of the Policy. See section 2.13.1 of the [WIPO Overview 3.0](#) (the use of a domain name for illegal activity, including impersonation/passing off, or other types of fraud, can never confer rights or legitimate interests on a respondent).

The Panel therefore finds that the Respondent lacks rights or legitimate interests in the disputed domain name within the realm of the Policy.

The Complainant has fulfilled the second limb of Policy, paragraph 4(a).

### **C. Registered and Used in Bad Faith**

Pursuant to Policy, paragraph 4(a)(iii), in order to be granted relief, the Complainant must show that the disputed domain name was registered and is being used in bad faith.

Paragraph 4(b) of the Policy sets forth the following non-exhaustive grounds of bad faith registration and use:

“(i) circumstances indicating that you [the respondent] have registered or 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 [the respondent's] documented out-of-pocket costs directly related to the domain name; or

(ii) you [the respondent] 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 [the respondent] have engaged in a pattern of such conduct; or

(iii) you [the respondent] have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you [the respondent] have intentionally attempted to attract, for commercial gain, Internet users to your [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 your [the respondent's] website or location or of a product or service on your [the respondent's] website or location.”

In the Policy context, bad faith is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. See section 3.1 of the [WIPO Overview 3.0](#).

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<sup>1</sup> The Complainant produced entries of the Veolia directory showing the names, job titles, and email addresses of the two employees impersonated in the sham July 20, 2023 email.

As explained in section 4 *supra*, the Complainant owns international and U.S. trademark registrations for VEOLIA, all of which predate the Respondent's registration of the disputed domain name.

The VEOLIA mark has been used across America, Africa, Europe, Asia, Australia, and New Zealand, in which continents and countries the Complainant operates.<sup>2</sup>

Accordingly, the Panel acknowledges that VEOLIA is a well-known international trademark, as found in *Veolia Environnement S.A. v. Raj Singh*, WIPO Case No. [D2010-2048](#); *Veolia Environnement SA v. WhoisGuard Protected / Greg Tapper*, WIPO Case No. [D2020-0531](#); and *Veolia Environnement S.A. v. Hartford Vehicle*, WIPO Case No. [D2021-3821](#).

The Panel finds that, by deliberately switching the letter "o" for the letter "c" the Respondent registered the disputed domain name in bad faith.

The Panel also finds that, the Respondent's use of the disputed domain name in connection with fake email accounts impersonating the Complainant's employees with the intention to commit fraud is evidence of bad faith. See section 3.4 of the [WIPO Overview 3.0](#) and *Veolia Environnement SA v. Whois Privacy Protection Foundation / Name Redacted*, WIPO Case No. [D2022-0785](#) (use of domain names for the purpose of impersonating a complainant's employees as part of a fraudulent phishing scheme amounts to bad faith use).

Lastly, the Panel notes that the Respondent provided a false or incomplete mailing address while registering the disputed domain name since the written notice could not be delivered as evidenced in the case file.

All these circumstances, taken together, persuade the Panel that the disputed domain name was registered in bad faith and is being used in bad faith.

The Complainant has discharged its burden in relation to paragraph 4(a)(iii) 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 <veclia.com> be transferred to the Complainant.

/Reynaldo Urtiaga Escobar/

**Reynaldo Urtiaga Escobar**

Sole Panelist

Date: October 16, 2023

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<sup>2</sup> [www.veolia.com](http://www.veolia.com)