

ADMINISTRATIVE PANEL DECISION

Valero Energy Corporation and Valero Marketing and Supply Company v.
Samuel Aigbogun
Case No. D2023-4789

1. The Parties

The Complainants are Valero Energy Corporation, United States of America ("United States") and Valero Marketing and Supply Company, United States, represented by Fasthoff Law Firm PLLC, United States, hereinafter together referred to as "the Complainant".

The Respondent is Samuel Aigbogun, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <valeropetroleumenergy.com> is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 17, 2023. On November 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 21, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 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 amended Complaint on November 27, 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 December 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 26, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 28, 2023.

The Center appointed Charles Gielen as the sole panelist in this matter on January 16, 2024. 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 operates in the field of oil and gas exploration, production, processing, and distribution services. Among others, the Complainant owns United States Trade Mark Reg. Nos. 1,314,004 (registered January 8, 1985), 2,656,971 (registered December 3, 2002), and 3,108,715 (registered June 27, 2006, combined) for the VALERO Mark (or the “Mark”). The Complainant has continuously used the VALERO Mark in commerce for at least 39 years. During this time, the Complainant has spent tens of millions of dollars in advertising, marketing, and promoting the Mark worldwide in a wide variety of media formats, including print, television, radio, Internet, billboards, and signage, among others. The Complainant further claims that it has continuously owned and operated an Internet website under the domain name <valero.com> for many years and utilizes that domain name for company email addresses through which it communicates internally, with customers, vendors, and the public in general.

The disputed domain name <valeropetroleumenergy.com> was registered on September 22, 2023, and redirects to the homepage of the website of the Complainant at “www.valero.com”. The Complainant has provided evidence demonstrating that the Respondent has used the disputed domain name for sending email communications impersonating the Complainant’s President and CEO purportedly offering a donation and requesting the recipient to certify a check for pick up.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to the Mark VALERO in that it only differs by the addition of the generic, dictionary terms “petroleum” and “energy”. The Complainant also contends that the generic Top-Level Domain (“gTLD”) (“*.com*”) should not be considered when analyzing identity or confusing similarity between the trade mark and the disputed domain name.

Furthermore, the Complainant contends that the Respondent does not have any rights or legitimate interests in the disputed domain name. The Complainant has found no evidence that the Respondent has been commonly known by the name Valero Petroleum Energy prior to, or after the registration of the disputed domain name. The Complainant has not licensed to the Respondent the right to use the Mark VALERO, and the Respondent is not otherwise authorized to act on the Complainant’s behalf.

Also, the Respondent has not used or made demonstrable preparations to use the disputed domain name in relation to a *bona fide* offering of goods or services and is not making a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain. On the contrary, according to the Complainant, the Respondent uses the disputed domain name for criminal activities by attempting to collect personal identifying information and financial information, and to defraud victims. The Complainant draws the attention to an email using the disputed domain name purporting to have been sent by the President and CEO of the Complainant, in which he allegedly offers to make a USD 15,500 donation to Dolores Mission Church and School and attempts to persuade the victim to contact his bank. The intended victim contacted the Complainant who verified that the Respondent’s activities were part of a scam and not authorized by it. Also, the Complainant contends that, in addition to the Respondent’s conduct, the Respondent is using the disputed domain name so that it resolves to the home page of the Complainant, in an effort to make it appear as though the Respondent’s activities actually emanate from the Complainant’s site.

Finally, the Complainant argues that the Respondent registered and is using the disputed domain name in bad faith. Several reasons are given for that. First of all, the Respondent was aware of the existence of the Mark VALERO that has been used extensively for a long period of time. Notwithstanding the Respondent's knowledge of the fame associated with the Mark VALERO, the Respondent intentionally registered, for commercial gain, a domain name that is comprised of the Complainant's Mark. Second, the conduct by the Respondent using the disputed domain name to attempt to defraud receivers of scam emails, is a clear indication of the bad faith behavior of the Respondent. Third, the Respondent has provided false contact information to the Registrar in an attempt to conceal his or her true identity, both of which constitute bad faith under the UDRP.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's VALERO Mark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7. Based on the available record, the Panel finds the Complainant has shown rights in respect of a trade mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the Mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. The only difference between the Mark and the disputed domain name (leaving aside the gTLD ".com") is the addition of the terms "petroleum" and "energy".

The Panel is of the opinion that applying these principles to this case, the disputed domain name is confusingly similar to the Mark.

Therefore, the requirement under paragraph 4(a)(i) of the Policy is met.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the Complainant, panels have recognized that proving a Respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the Respondent. As such, where a Complainant makes out a *prima facie* case that the Respondent lacks rights or legitimate interests, the burden of production on this element shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name (although the burden of proof always remains on the Complainant). If the Respondent fails to come forward with such relevant evidence, the Complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

The Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The record shows no evidence that the Respondent has been commonly known by the name Valero Petroleum Energy prior to, or after the registration of the disputed domain name, nor that the Complainant has licensed to the Respondent the right to use the Mark VALERO. The Panel also finds that the illegitimate intentions by the Respondent follow from the use in an email of the disputed domain name for fraudulent activities. The Respondent sent an email attempting to collect personal identifying information and financial information, and to defraud victims and such use can never confer rights or legitimate interests on the Respondent. [WIPO Overview 3.0](#), section 2.13. Furthermore, the Respondent uses the disputed domain name with the intent to confuse Internet users as to the origin of the Respondent's website, since the disputed domain name redirects to the website of the Complainant.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel is of the opinion that the disputed domain name was registered and is being used in bad faith. With respect to the registration, the Panel finds that it is obvious that the Respondent must have been aware of the Complainant's earlier Mark when it registered the disputed domain name. As the Complainant convincingly argues, the Mark VALERO is a well-known trade mark, and it has been in use for quite some time, long before the Respondent registered the disputed domain name and, moreover, the Respondent has used the disputed domain name for sending an email impersonating the Complainant's President and CEO, which shows the knowledge of the Complainant.

In the present case, the Panel notes that the disputed domain name contains the well-known distinctive Mark of the Complainant causing confusion in itself with the activities of the Complainant. The use of the disputed domain name clearly is bad faith use. First of all, this follows from the fact that the website to which the disputed domain name redirects is the home page of the Complainant. Second, panels have held that the use of a domain name for illegal activities constitutes bad faith. In this case it has been proven that the Respondent sent an email using the disputed domain name purporting to have been sent by the President and CEO of the Complainant, in which he allegedly offers to make a USD 15,500 donation to Dolores Mission Church and School and attempts to persuade the victim to contact his bank. The intended victim contacted the Complainant who verified that the Respondent's activities were part of a scam. The Panel concludes that this is a clear proof of the bad faith use of the disputed domain name by the Respondent. [WIPO Overview 3.0](#), section 3.4.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under 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 <valeropetroleumenergy.com> be transferred to the Complainant.

/Charles Gielen/

Charles Gielen

Sole Panelist

Date: January 30, 2024