

## **ADMINISTRATIVE PANEL DECISION**

Visual Supply Company (“VSCO”) v. Nice IT Services Group Inc., Customer Domain Admin

Case No. D2024-0621

### **1. The Parties**

The Complainant is Visual Supply Company (“VSCO”), United States of America (“United States”), represented by Sideman & Bancroft LLP, United States.

The Respondent is Nice IT Services Group Inc., Customer Domain Admin, Dominica.

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

The disputed domain name <vsco.top> is registered with NameSilo, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 10, 2024. On February 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 12, 2024, 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 (Registrant Unknown, PrivacyGuardian.org llc) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 14, 2024, 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 February 17, 2024.

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 February 21, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 12, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 14, 2024.

The Center appointed Steven A. Maier as the sole panelist in this matter on March 20, 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 is a United States corporation. It is the provider of a photo and video editing app and related website and operates an online community for its users.

The Complainant is the owner of various registrations for the trademark VSCO, including (for example) United States trademark registration number 4672062 for the word mark VSCO, registered on January 13, 2015, in International Class 42.

The Complainant operates a website at "www.vSCO.co". The website includes content created by the Complainant's community members.

The disputed domain name was registered on June 11, 2023.

The Complainant provides evidence that the disputed domain name has resolved to a website at "www.vSCO.top". The website appears to reference the Complainant's app and services and includes a box marked "VSCO username" and a button marked "Download". It also includes the statement "vSCO.top provides an alternative way to view media hosted by vSCO.co." The website includes sections headed "Quick Facts" and "Disclaimer" which state respectively that "vSCO.top is in no way affiliated with vSCO.co," and that "[o]ur role is to offer an alternative way to access and view content from vSCO.co."

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

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

The Complainant submits that it launched its first mobile app in 2012 and offers its products for download through its own website, the Google Play Store and the Apple App Store. It states that it has amassed over 150 million Android and iPhone downloads to date, and that its VSCO trademark has therefore acquired significant customer recognition and goodwill.

The Complainant submits that the disputed domain name is identical to its VSCO trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It states that it has no relationship with the Respondent and has never authorized it to use its VSCO trademark, that the Respondent has not commonly been known by the disputed domain name and that the Respondent is making neither bona fide commercial use nor legitimate noncommercial or fair use of the disputed domain name.

The Complainant contends that instead, the Respondent has used the disputed domain name to host a website which closely imitates the Complainant's own website and duplicates images and user profiles taken from that website. The Complainant submits that the Respondent's website also offers links to user profiles and images on the Complainant's website, and has bypassed technological protection that the Complainant has put in place to prevent such images from being downloaded.

The Complainant contends that the Respondent's use of the disputed domain name to impersonate the Complainant cannot give rise to rights or legitimate interests in respect of the disputed domain name.

The Complainant submits that the disputed domain name was registered and has been used in bad faith. It contends that the Respondent is taking unfair advantage of its VSCO trademark and, in particular, has used the disputed domain name to lure potential and current users of the Complainant's services to the Respondent's website, to confuse such users, and to unduly profit from the Complainant's reputation. The Complainant adds that the Respondent's providing access to profiles and images taken from the Complainant's legitimate website also tarnishes the Complainant's reputation.

## **B. Respondent**

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

## **6. Discussion and Findings**

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

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

The Complainant has established that it has registered trademark rights in respect of the mark VSCO. The disputed domain name is identical to that trademark and the Panel therefore finds that the disputed domain name is identical to a trademark in which the Complainant has rights.

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

The Respondent purports to offer an alternative method of accessing and viewing the Complainant's content. However, the Panel finds that the Respondent has done so dishonestly. First, the disputed domain name constitutes a direct appropriation of the Complainant's VSCO trademark, without any addition which might indicate the Respondent's lack of affiliation with the Complainant. The use of a domain name which is identical to a complainant's trademark carries "a high risk of implied affiliation" with that trademark (see section 2.5.1 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") and the Panel finds that Internet users are likely to be confused, by the disputed domain name itself, into believing that the Respondent's website is affiliated with or duly authorized by the Complainant. The Respondent is in a position to gain a commercial advantage as soon as Internet users visit its website on the basis of such confusion, and the Panel finds the Respondent's disclaimer to be ineffective to prevent that consequence. Moreover, the Panel finds that the Respondent has copied and provided access to materials taken from the Complainant's website, which may implicate both intellectual property and security concerns.

In the circumstances described above, the Respondent's use of the disputed domain name to provide access to the Complainant's content is neither bona fide nor legitimate and the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

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

The Panel's conclusions in respect of the third element under the Policy are informed by similar considerations as set out above. The Panel finds the disputed domain name to be inherently misleading, and that both the use of the disputed domain name and the Respondent's website content take unfair

advantage of the Complainant's trademark rights. The Panel accepts the Complainant's submissions that the Respondent's conduct with regard to the Complainant's user content is liable to tarnish the Complainant's reputation, in addition to providing an unfair commercial advantage to the Respondent.

The Panel finds in particular that, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of its website or of a product or service on its website (paragraph 4(b)(iv) of the Policy).

The Panel finds in the circumstances that the disputed domain name has been registered and is being used 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 disputed domain name <vsco.top> be transferred to the Complainant.

*/Steven A. Maier/*

**Steven A. Maier**

Sole Panelist

Date: April 3, 2024