

ADMINISTRATIVE PANEL DECISION

British American Tobacco (Brands) Limited v. HONGDE GUAN, JI
Technology Limited
Case No. D2024-2547

1. The Parties

The Complainant is British American Tobacco (Brands) Limited, United Kingdom, represented by Demys Limited, United Kingdom.

The Respondent is HONGDE GUAN, JI Technology Limited, Hong Kong, China.

2. The Domain Name and Registrar

The disputed domain name <veloryde.com> is registered with Gname.com Pte. Ltd. (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on June 21, 2024. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 24, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name that differed from the named Respondent (Redacted for privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 25, 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 in English on June 28, 2024.

On June 25, 2024, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the disputed domain name is Chinese. On June 28, 2024, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceedings commenced on July 9, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 29, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 30, 2024.

The Center appointed Matthew Kennedy as the sole panelist in this matter on August 8, 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 member of the British American Tobacco group of companies ("BAT") and is the entity within BAT that owns the corporate trademarks and domain names. BAT markets an oral nicotine product under the brand "Velo" (launched in 2019) and a dietary supplement shot under the brand "Ryde" (launched in 2023). The Complainant owns multiple trademarks in multiple jurisdictions, including the following:

- United Kingdom trademark registration number UK00003385832 for VELO, registered on August 16, 2019, specifying services in class 34;
- International trademark registration number 1519358 for VELO, registered on October 16, 2019, specifying goods in classes 5 and 30; and
- International trademark registration number 1537428A for RYDE, registered on March 4, 2020, specifying goods in classes 5, 30, 32, and 34.

The above trademark registrations are current. The Complainant has registered the domain names <velo.com> and <ryde.com> that it uses in connection with websites where it provides information about its VELO and RYDE products, respectively.

The Respondent is an individual and a company based in Hong Kong, China.

The disputed domain name was registered on February 23, 2024. It resolves to an online store in English that prominently displays the title "Veloryde" alongside a logo. The online store offers for sale a variety of products including a foldable bag, a dog hammock car seat cover, clothes, shoes, and household items. The header displays the company name "Exposed to the Sun Group, LLC" and the contact details are in the United States of America. Prices are displayed in USD.

On March 22, 2024, the Complainant sent a cease-and-desist letter to the Respondent via the contact email address shown on the website associated with the disputed domain name. On April 2, 2024, it sent a follow-up email but received no response.

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 Complainant's VELO and RYDE trademarks. The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not a licensee of the Complainant and has not received any permission, consent, or acquiescence from the Complainant to use its marks in association with any

domain name, service, or product. The disputed domain name was registered and is being used in bad faith. Given that the disputed domain name is entirely made up of two of the Complainant's marks, it is inconceivable that the Respondent did not have the Complainant firmly in mind when it registered the disputed domain name.

B. Respondent

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

6. Discussion and Findings

6.1. Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

The Complaint and amended Complaint were filed in English. The Complainant requests that the language of the proceeding be English. Its main reasons are that the website associated with the disputed domain name is in English and is aimed at consumers in the United States of America, which is indicative of the fact that the Respondent is familiar with English; and that the Complainant would be put to great expense and inconvenience if it were required to translate its Complaint into Chinese.

The Respondent did not comment on the Complainant's request for the language of the proceeding to be English.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English. The Panel would have accepted a Response in Chinese, but none was filed.

6.2. Substantive Issues

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following elements with respect to each disputed domain name:

- (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 has been registered and is being used in bad faith.

The burden of proof of each element is borne by the Complainant.

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 trademark and the disputed domain name. See [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of the VELO trademark and in respect of the RYDE trademark for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.2.1.

Both the VELO and RYDE marks are wholly incorporated within the disputed domain name. Despite the combination of marks, each one is recognizable within the disputed domain name. The only additional element in the disputed domain name is the generic Top-Level Domain extension ".com" which, as a standard requirement of domain name registration, may be disregarded in the comparison with the mark for the purposes of the first element of the Policy. Accordingly, the disputed domain name is confusingly similar to both marks for the purposes of the Policy. See [WIPO Overview 3.0](#), sections 1.7, 1.8, and 1.11.

Therefore, the Panel finds the first element of the Policy has been established.

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 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. See [WIPO Overview 3.0](#), section 2.1.

In the present case, the disputed domain name combines two marks both owned by the Complainant and the Respondent uses it to resolve to an online store. Although an Internet user who reaches the online store would realize that it had no connection to the Complainant or its products, by that time the disputed domain name would already have succeeded in diverting the Internet user to the Respondent's site. The Panel does not consider that to constitute a use of the disputed domain name in connection with a bona fide offering of goods or services that would create rights or legitimate interests for the purposes of the Policy. Given that the online store offers goods for sale, this is not a legitimate noncommercial or fair use of the disputed domain name either.

The Registrar has verified that the Respondent's name is "HONGDE GUAN, JI Technology Limited" while the company name displayed on the Respondent's website is "Exposed to the Sun, LLC", none of which resembles the disputed domain name. Nothing on the record indicates that the Respondent (whether as an individual, business, or other organization) has been commonly known by the disputed domain name.

The Panel has taken note that "vélo" is French for "bicycle". However, the Respondent's online store does not sell bicycles or have any other apparent connection with that meaning.

Having reviewed the available record, the Panel finds 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.

Based on the record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes certain circumstances that, without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The fourth such circumstance is as follows:

“(iv) by using the [disputed] 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 the present case, the disputed domain name was registered in 2024, years after the registration of the Complainant’s VELO and RYDE marks. The disputed domain name wholly incorporates not one but both these marks. Given that the combination of these marks is not a dictionary word or common phrase, the Panel considers it unlikely that the Respondent registered these two marks belonging to the same party by coincidence. Even though the Respondent’s online store does not compete with the Complainant or its products, the Panel considers that the most likely explanation for the composition of the disputed domain name is that the Respondent had the Complainant’s marks in mind at the time of registration.

As regards use, the Respondent uses the disputed domain name, which combines two marks both belonging to the Complainant, to resolve to an online store that offers goods for sale that are dissimilar from those of the Complainant. In the Panel’s view, the disputed domain name is intended to attract Internet users searching for the Complainant’s VELO or RYDE products, or both, and divert them to the Respondent’s online store, thus capitalizing on the reputation of the Complainant’s marks, as envisaged in paragraph 4(b)(iv) of the Policy.

Therefore, the Panel finds that the Complainant has established the third element 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 <veloryde.com> be transferred to the Complainant.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: August 13, 2024