

ADMINISTRATIVE PANEL DECISION

Piaggio & C. S.p.A. v. esra tuncay
Case No. D2024-3258

1. The Parties

The Complainant is Piaggio & C. S.p.A., Italy, represented by Studio Barbero S.p.A., Italy.

The Respondent is esra tuncay, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <vespabythesea.com> is registered with Dynadot Inc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 8, 2024. On August 8, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 9, 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 (Super Privacy Service LTD c/o Dynadot) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 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 amendment to the Complaint on August 14, 2024.

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 August 20, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 9, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 10, 2024.

The Center appointed Alexander Duisberg as the sole panelist in this matter on September 18, 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 the Italian Company, the largest manufacturer in Europe for two-wheeled motor vehicles and one of the world's leaders in this sector.

The Complainant is owner of the following trademark registrations (non-exhaustive list) ("VESPA Trademarks"):

International Trademark Registration VESPA (verbal) No. 437943, registered on April 20, 1978;
International Trademark Registration VESPA (verbal) No. 656992, registered on June 11, 1996; and
European Union Trademark Registration VESPA (verbal) No. 008938458, registered on August 24, 2010.

Furthermore, the Complainant applied for the following Trademark:

European Trademark Application VESPA BY THE SEA (figurative) No. 019050948, applied for on July 5, 2024.

The application of the VESPA BY THE SEA Trademark was part of a summer campaign by the Complainant, which launched in June 2024.

The disputed domain name was registered on July 5, 2024. The Complainant has registered the VESPA Trademarks before the registration of the disputed domain name and applied for the European Union Trademark VESPA BY THE SEA on the same day as the registration of the disputed domain name. The Complainant has submitted screenshots of the Respondent's website which leads to a domain name selling website, where the disputed domain name is offered for sale (USD 2,850).

The Respondent used a privacy protection service when registering the disputed domain name.

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 entirely incorporates the Complainant's VESPA Trademarks and the mere addition of the generic terms "by", "the", and "sea" are insufficient to distinguish the disputed domain name from the VESPA Trademarks. On the contrary, the addition of the generic terms "by", "the", and "sea" increases the confusing similarity, since these terms are used in the Complainant's summer campaign.

Furthermore, the Complainant states that the Respondent has no rights or legitimate interests in respect of the disputed domain name, since the Respondent is not licensed or in any other way authorized to use the Complainant's VESPA Trademarks. Neither can the Respondent be considered making a bona fide offering of goods or services, or legitimate noncommercial or fair use, since the disputed domain name is offered for sale for USD 2,850, an amount which certainly exceeds the out-of-pocket costs. In addition, the usage of a privacy protection service to conceal the Respondent's identity suggests that the Respondent is not commonly known by the name "Vespa".

Lastly, the Complainant states that the disputed domain name was registered and is used in bad faith. It is inconceivable that the Respondent was unaware of the existence of the Complainant's VESPA Trademarks, given its worldwide reputations. The registration of the disputed domain name in close temporal correlation with the Complainant's eponymous summer campaign implicates the Respondent's knowledge of the Complainant's VESPA Trademarks. The Complainant last states that the registration and usage in bad faith of the disputed domain name is furthermore indicated by the offer for sale for USD 2,850, an amount exceeding the out-of-pocket costs.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove each of the following:

- (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.

The Panel acknowledges the consensus view - as set forth in section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") - that the Respondent's default to respond to the Complaint does not automatically result in a decision in favor of the Complainant.

The Complainant must establish each of the three elements required by paragraph 4(a) of the Policy. Although the Panel may draw appropriate inferences from the Respondent's default (e.g., to regard factual allegations which are not inherently implausible as being true), paragraph 4 of the Policy requires the Complainant to support its assertions with actual evidence in order to succeed in the UDRP proceeding. In view of the Panel, the Complainant has established sufficient evidence in its favor in the case at hand.

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. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. The entirety of the mark is reproduced 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.

Although the addition of other terms here, "by", "the", and "sea" added to the Complainant's VESPA Trademarks may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Furthermore, the addition of the generic Top-Level Domain ("gTLD") ".com" is viewed as a standard registration requirement and as such is disregarded under the first element and has no effect in the confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1.

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

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.

The Complainant’s VESPA Trademarks are well known and have been registered and used preceding the date of the Respondent’s registration of the disputed domain name. The Complainant has neither authorized the Respondent to use the VESPA Trademarks, nor is the Respondent in whatever manner affiliated with the Complainant.

The Respondent cannot be considered to be making a bona fide offering of goods and services in the meaning of paragraph 4(c)(i) of the Policy, since no goods and services other than the disputed domain name itself are offered, nor can the Respondent be considered making noncommercial or fair use of the disputed domain name without intent for commercial gain. (*Pluxee International v. Yikai Ren*, WIPO Case No. [D2024-2710](#))

It is highly unlikely that the Respondent is commonly known by the name “Vespa”, since the Respondent’s name “esra tuncay” bears no resemblance with the VESPA Trademarks. The Respondent has not filed any Response to the Complaint and, therefore, has not alleged any facts or elements to justify rights or legitimate interests in the disputed domain name.

The Panel also notes that the disputed domain name reproduces the Complainant’s recent campaign, hence it carries a risk of implied affiliation with Complainant. [WIPO Overview 3.0](#), section 2.5.1.

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 circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Paragraph 4(b)(i) constitutes that circumstances indicating the registration of the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to the Complainant or to a competitor of that Complainant for valuable consideration in excess of the out-of-pocket

costs directly related to the disputed domain name shall be constituted as bad faith. However, panels have found that the mere registration of a domain name for subsequent resale would not itself support a registration in bad faith and additional circumstances need to be considered to constitute the registration as in bad faith. These circumstances can be the timing and circumstances of the registration (in particular following a product launch, or the complainant's failure to renew its domain name registration). [WIPO Overview 3.0](#), section 3.2.1.

The disputed domain name resolves to a website offering the sale of the disputed domain name. The prices for buying or leasing the disputed domain name likely exceed the out-of-pocket costs directly related to the disputed domain name (absent any evidence from the Respondent to the contrary). Previous UDRP panels have held that an offer to sell for excess of out-of-pocket costs supports a finding of bad faith under paragraph 4(b)(i) of the Policy (*Audi AG v. Claus Linder*, WIPO Case No. [D2016-1579](#); *Royal Leerdammer Leerdammer B.V. v. 吴清儒 (wu qing ru)*, WIPO Case No. [D2023-2979](#); *Bev Marks (Australia) Pty Ltd v. Domain Manager*, WIPO Case No. [D2018-2789](#); and *Permian Triassic Ltd. v. Michael Nava, Domain Nerdz LLC*, WIPO Case No. [D2024-0044](#)).

The disputed domain name wholly reproduces the Complainant's recent campaign and unregistered VESPA BY THE SEA Trademark, indicating bad faith. The Respondent has registered the disputed domain name identical to the VESPA BY THE SEA Trademark application on the same day as the application and only few days after the Complainant's relevant campaign and has not used the disputed domain name other than to offer it for sale. The Respondent has not provided any explanation for the registration. In the absence of any explanation or any obvious reason why an entity would register a domain name identical to the VESPA BY THE SEA Trademark, the Panel concludes that the registration was motivated by an awareness of the VESPA BY THE SEA Trademark Application and the Complainant's eponymous summer campaign with the purpose of selling it for a sum likely to be greater than any out-of-pocket costs related to the disputed domain name. This is also indicated by the close temporal correlation between the registration of the disputed domain name and the VESPA BY THE SEA Trademark Application. Pursuant to paragraph 4(b)(i) of the Policy, the Respondent has registered and used the disputed domain name in bad faith (*Permian Triassic Ltd. v. Michael Nava, Domain Nerdz LLC*, WIPO Case No. [D2024-0044](#); *Compagnie Générale des Etablissements Michelin v. Cameron Jackson*, WIPO Case No. [D2016-2392](#); and *Bayer AG v. Whois Agent, Whois Privacy Protection Service, Inc. / Syed Hussain, IBN7 Media Group*, WIPO Case No. [D2016-2354](#)).

Additionally, the Panel finds that it is highly likely that the Respondent had knowledge of the Complainant's VESPA Trademarks in mind when registering the disputed domain name. This is indicated by the close temporal correlation of registration of the disputed domain name and the Complainant's eponymous summer campaign.

Lastly, the Panel finds that the Respondent's use of privacy protection in order to hide its true identity further constitutes the registration and use in bad faith (see *H & M Hennes & Mauritz AB v. Domain Admin, Private Registrations Aktien Gesellschaft / Domain Admin, C/O ID#10760, Privacy Protection Service INC d/b/a PrivacyProtect.org*, WIPO Case No. [D2017-0491](#); and *Compagnie Générale des Etablissements Michelin v. Balticsea LLC*, WIPO Case No. [D2017-0308](#)).

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 <vespabythesea.com> be transferred to the Complainant.

/Alexander Duisberg/

Alexander Duisberg

Sole Panelist

Date: October 2, 2024