

ADMINISTRATIVE PANEL DECISION

VMware LLC v. Watt Polly

Case No. D2024-4667

1. The Parties

Complainant is VMware LLC, United States of America ("United States" or "U.S."), represented by Quarles & Brady LLP, United States..

Respondent is Watt Polly, United States..

2. The Domain Name and Registrar

The Disputed Domain Name <vmwarecable.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 12, 2024. On November 13, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On November 13, 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 (Respondent) and contact information in the Complaint. The Center sent an email communication to Complainant on November 14, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on November 18, 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 November 20, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 10, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on December 13, 2024.

The Center appointed Colin T. O'Brien as the sole panelist in this matter on December 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

Complainant is a provider of cloud infrastructure and virtualization solutions. Complainant's technologies include app platforms, security and load balancing solutions, software-defined edge technologies, and integrated cloud infrastructure solutions.

Complainant, through itself and its affiliates, licensees, predecessors, and/or successors, began using its VMWARE trademark at least as early as May 15, 1999. Complainant owns several incontestable U.S. trademark registrations and applications for the VMWARE mark including the U.S. Trademark Registration Nos. 2491236 registered on September 18, 2001, 2491237 registered on September 18, 2001, 2764540 registered on September 16, 2003, and 3345331 registered on November 27, 2007.

The Disputed Domain Name <vmwarecable.com> was registered on April 7, 2024, and resolves to a website that purports to offer Complainant's products.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name.

The Disputed Domain Name is identical and/or confusingly similar to the VMWARE Marks in which Complainant has rights. First, Complainant has priority rights in the VMWARE Mark starting no later than April 7, 1999, through the registration of the VMWARE Mark with the United States Patent and Trademark Office ("USPTO"). Second, the Disputed Domain Name is confusingly similar to the VMWARE Marks because the Disputed Domain Name, consists of Complainant's VMWARE Mark plus the word "cable". The addition of the term "cable" does not add distinction to the Disputed Domain.

Respondent registered the Disputed Domain Name on April 7, 2024, 25 years after Complainant began use of the VMWARE Marks and 23 years after Complainant first registered the VMWARE Marks with the USPTO. Respondent is not a licensee of Complainant nor is Respondent otherwise authorized to use Complainant's VMWARE Marks for any purpose. Upon information and belief, Respondent is not commonly known as "VMWARECABLE".

Respondent has no legitimate interests in the Disputed Domain Name because it appears Respondent does not offer any bona fide goods or services via the Disputed Domain Name, including Respondent's purported development of software and computer programs. For example, the website that resolves from the Disputed Domain Name claims that Respondent has a physical location and phone number, but the address provided does not exist and the phone number appears to be inactive.

Alternatively, if Respondent is offering bona fide goods or services under the Disputed Domain Name, Respondent has no legitimate interest in the Disputed Domain Name because Respondent intentionally trades on the goodwill of Complainant's trademark to attract Internet users looking for Complainant's goods and/or services to Respondent's website for Respondent's own commercial gain. Indeed, by registering the Disputed Domain Name that incorporates Complainant's trademark in its entirety, and then purportedly offering related services, Respondent has demonstrated a knowledge of and familiarity with Complainant's well-known brand and business.

Respondent purports to offer VMware-branded “Software License/Upgrade” products on the website to which the Disputed Domain Name resolves. Respondent is not authorized by Complainant to sell, resell or distribute VMware software. Respondent’s purported offers of Complainant’s software are thus either in direct competition with Complainant and Complainant’s authorized resellers and distributors, or efforts to defraud potential customers of Complainant’s software using Complainant’s trademarks.

Respondent knowingly registered the Disputed Domain Name containing Complainant’s VMWARE Marks to capitalize on consumer recognition of the VMWARE Marks. Respondent registered the Disputed Domain name almost three (3) decades after Complainant’s first use of the VMWARE Marks in commerce, and the website to which the Disputed Domain Name resolves purports to offer services related to Complainant’s services. It is not credible, therefore, that the registration of the Disputed Domain Name was made in good faith because the Respondent was fully aware of Complainant and its reputation for category-leading cloud infrastructure solutions and used Complainant’s trademark to attract users to its own website. By registering the Disputed Domain Name, Respondent sought to take unfair advantage of the goodwill associated with Complainant’s trademark and secure for itself a website that third parties would assume belonged to, or was affiliated with, Complainant.

B. Respondent

Respondent did not reply to the Complainant’s contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

Complainant has demonstrated it owns registered and common law trademark rights in the famous VMWARE mark. The addition “cable” does not prevent the Complainant’s trademark from being recognizable in the Disputed Domain Name. The Top-Level Domain (“TLD”) “.com” is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. Accordingly, the Disputed Domain Name is confusingly similar to a mark in which the Complainant has rights.

See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.8, and *Hoffmann-La Roche AG v. Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org / Conan Corrigan*, WIPO Case No. [D2015-2316](#).

B. Rights or Legitimate Interests

Complainant has presented a prima facie case that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and has not been commonly known by the Disputed Domain Name.

The fact that Respondent obtained the Disputed Domain Name almost 25 years after Complainant had begun using its VMWARE mark indicates that Respondent likely knew the Complainant and the VMWARE mark.

After a complainant has made a prima facie case, the burden of production shifts to a respondent to present evidence demonstrating rights or legitimate interests in the domain name. See, e.g., *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

Here, Respondent has provided no evidence of any rights or legitimate interests in the Disputed Domain Name. Moreover, the evidence provided by Complainant shows that the Disputed Domain Name resolves to an active website seemingly implying an endorsement of the Complainant by featuring the Complainant’s trademark and claiming to offer Complainant’s products along with competing third-party products. While resellers and distributors may have limited rights to use a complainant’s trademark for nominative purposes,

the lack of any authorization by the Complainant, the lack of any information on the website connected to the Disputed Domain Name as to the website's lack of authorization or relation to the Complainant, and the fact that competing third-party products are also offered for sale on the website, renders any fair use safe haven inapplicable in this instance. See section 2.8 of the [WIPO Overview 3.0](#).

While circumstantial, the lack of authorization and the severely discounted prices found at the Disputed Domain Name suggest that, should any products or services sold at the Disputed Domain Name are likely to be counterfeit. Noting the above considerations, it is not necessary for the Panel to make any ultimate determination as to the nature of the goods, as the evidence clearly shows the Respondent has attempted to pass itself off as the Complainant. The Panel finds that such use cannot be qualified as a bona fide offering of goods or services or legitimate noncommercial or fair use. See section 2.13 of the [WIPO Overview 3.0](#). Rather, such illegal use can never confer rights or legitimate interests upon a respondent.

In the absence of any evidence rebutting Complainant's prima facie case indicating Respondent's lack of rights or legitimate interests in respect of the Disputed Domain Name, the Panel finds that Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Complainant has satisfied its burden of proof in establishing Respondent's bad faith in registration and use of the Disputed Domain Name. Paragraph 4(b)(iv) of the Policy states that evidence of bad faith may include a respondent's use of a domain name to intentionally attempt to attract Internet users, for commercial gain to its own website.

Due to the renown of the VMWARE mark, it is inconceivable that Respondent registered the Disputed Domain Name incorporating Complainant's mark with the term "cable" without knowledge of Complainant. The Disputed Domain Name is used for a website that is allegedly selling Complainant's products along with third-party products, but Complainant has established that Respondent's use is not authorized, nor is affiliated with Complainant in any way. The facts establish a deliberate effort by the Respondent to cause confusion with the Complainant for commercial gain. Such impersonation of the Complainant is sufficient to establish the Respondent's bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#). Under these circumstances, the Panel finds no plausible good faith reason for the Respondent's conduct and concludes that the Disputed Domain Name was registered and 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 <vmwarecable.com> be transferred to the Complainant.

/Colin T. O'Brien/

Colin T. O'Brien

Sole Panelist

Date: December 30, 2024