

ADMINISTRATIVE PANEL DECISION

Nicoventures Holdings Limited v. Name Redacted
Case No. D2024-4801

1. The Parties

The Complainant is Nicoventures Holdings Limited, United Kingdom, represented by Demys Limited, United Kingdom.

The Respondent is Name Redacted.¹

2. The Domain Name and Registrar

The disputed domain name <vuses.shop> is registered with Web Commerce Communications Limited dba WebNic.cc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 20, 2024. On November 21, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 22, 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 (Domain Admin, Whoisprotection.cc) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 22, 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 November 27, 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

¹The Respondent appears to have used the name of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted the Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

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 28, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 18, 2024. A third party sent an informal email communication to the Center on December 3, 2024. The Center notified the Parties about Commencement of Panel Appointment Process on December 19, 2024.

The Center appointed Stefan Bojovic as the sole panelist in this matter on December 27, 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 an entity within the British American Tobacco group of companies (“BAT group”), which acts as an investment holding company in associated undertakings of the BAT group in relation to new category products. The Complainant’s portfolio of products also includes non-combustible vaping products sold under the brand VUSE.

The Complainant is BAT group’s holder of intellectual property rights for VUSE brand and its trademark registrations for VUSE include the following:

- United Kingdom trademark registration No. 910885994 for VUSE, registered on November 27, 2012;
- European Union trademark registration No. 10885994 for VUSE, registered on November 27, 2012;
- Swiss trademark registration No. 637846 for VUSE, registered on December 13, 2012.

The Complainant operates several official country-specific VUSE websites to which Internet users are redirected when visiting the Complainant’s <vuse.com> domain name.

The disputed domain name was registered on September 20, 2024, and at the time of filing of the Complaint, it resolved to a website in English that offers the Complainant’s Vuse products for sale, with product names and descriptions in French. The products offered on the website are of the unknown origin and were offered at heavily discounted prices. This website also featured the product images taken from the Complainant’s French regional website. At the time of the Decision, the disputed domain name resolves to an inactive webpage.

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 its VUSE trademark, as the disputed domain name incorporates this trademark in its entirety, combined with a suffix “s” which can be interpreted either as plural or possessive form of VUSE. Additionally, the Complainant avers that the top-level domain name “.shop” is required only for technical reasons and can be ignored for the purposes of comparison of the disputed domain name to the Complainant’s trademark.

With reference to rights or legitimate interests in respect of the disputed domain name, the Complainant contends that the Respondent has not been commonly known by the disputed domain name nor has any

rights in the term “vuse”. The Respondent is not a licensee of the Complainant and has not received any permission or consent from the Complainant to use its trademarks. The Complainant avers that the Respondent cannot claim a legitimate “fair use” interest in the disputed domain name as it carries a high risk of implied affiliation. Although the Respondent appears to offer the Complainant’s Vuse products for sale, it has not received permission or consent from the Complainant to act as an authorized distributor of its goods and cannot claim to be a genuine reseller of the Complainant’s products. Even if the Respondent were a genuine reseller of the Complainant’s products, the Respondent could not claim nominative fair use as reseller or distributor and would fail the “Oki Data test” (*Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)) as it is not a part of the Complainant’s distribution network (and consequently the goods on offer are either counterfeit, “parallel import”, or “grey market” goods) and it does not accurately and prominently disclose its relationship (or, more accurately, non-relationship) with the Complainant. Finally, the Complainant underlines that the Respondent did not reply to the communication sent by the Complainant’s agent and that a genuine offering of bona fide products and services would reasonably generate a reply to any such letter or contact request.

With reference to the circumstances evidencing bad faith, the Complainant avers that 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 VUSE trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website. The Complainant observes that the Respondent’s website lacks any disclaimers that would dispel the confusion regarding the disputed domain name and the associated website. Furthermore, the Complainant observes that its Vuse marketing materials and products images are prominently displayed on the Respondent’s website. The Complainant has a reasonable apprehension that the website associated with the disputed domain name is used in relation to the sale of either counterfeit or “parallel import”, or “grey market” goods and underlines that such use cannot equate to a good faith use of the disputed domain name.

B. Respondent

The Respondent did not reply to the Complainant’s contentions. However, the Center has received an informal email communication from a third party whose name has been listed as the registrant of the disputed domain name and consequently as the Respondent in present proceedings. In that communication, the third party claimed unauthorized use of its identity and contact details in relation to the disputed domain name in the present proceedings. After reviewing the case file, the Panel finds the allegation of identity theft credible and has therefore redacted the name of the Respondent in accordance with paragraph 4(j) of the Policy.

6. Discussion and Findings

According to paragraph 15(a) of the Rules: “A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.”

Paragraph 4(a) of the Policy stipulates that the complainant must prove each of the following:

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

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["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 Panel finds the Complainant's trademark is recognizable within the disputed domain name. The addition of the final letter "s", denoting plural, does not prevent a finding of confusing similarity, as the Complainant's VUSE trademark remains clearly recognizable and entirety of the trademark 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.

In addition, it is well established that the generic Top-Level Domain ".shop", can be disregarded in the assessment of the confusing similarity between the disputed domain name and the Complainant's trademark. [WIPO Overview 3.0](#), section 1.11.1.

The Panel, therefore, finds that 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 Panel notes that there seems to be no relationship between the Respondent and the Complainant and that the Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant's VUSE trademark. There appears to be no element from which the Panel could infer the Respondent's rights or legitimate interests in the disputed domain name, or that the Respondent might be commonly known by the disputed domain name.

Based on the undisputed evidence provided by the Complainant, the Respondent has used the disputed domain name for a website that appears to offer the Complainant's Vuse products (of unknown origin) for sale at heavily discounted prices. This website also featured the product images and marketing materials taken from the Complainant's French regional website. The nature of the products offered on the Respondent's website is unclear and the Complainant claims that these products are either counterfeit or "parallel import", or "grey market" goods. Even if those products were genuine, the Respondent's use of the

disputed domain name would not meet the Oki Data Test requirements (as established in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)), because the website did not disclose the lack of relationship between the Respondent and the Complainant. [WIPO Overview 3.0](#), section 2.8.

Furthermore, the Panel underlines that Oki Data Test was primarily established to evaluate the activities of authorized resellers against the Policy, while the activities of unauthorized resellers in some cases may fall under the scope of the test depending on particular circumstances of the case (see, for example, *Victron Energy B.V. v. Lukas Matuska, SWPOWER Innovation A.S.*, WIPO Case No. [D2024-3948](#)). The Panel, holds that circumstances of this case would not even justify the application of Oki Data test, having in mind the clear intention of the Respondent to create confusion with the Complainant's official websites by using copyrighted marketing materials of the Complainant and by deliberately failing to make any disclosure of the nature of its relationship with the Complainant (or lack thereof).

Having in mind the above, 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.

In the present case, the Panel notes that the Respondent must have been well-aware of the Complainant and its VUSE trademark at the time of the registration of the disputed domain name. The content of the website to which the disputed domain name used to resolve leaves no room for a doubt on the Respondent's knowledge of the Complainant and its VUSE trademark and evidences that the Respondent actually had the Complainant in mind when registering the disputed domain name. It should be also borne in mind that that the registration and use of VUSE trademark predates the registration of the disputed domain name for more than a decade, making it unlikely that the Respondent was not aware of the Complainant's trademark at the time of registration of the disputed domain name.

Due to the above, the Panel finds that the disputed domain name has been registered in bad faith.

As previously indicated, based on the undisputed evidence provided by the Complainant, the disputed domain name was used for a website that offered for sale Vuse products of unknown origin at heavily discounted prices. This website used copyrighted marketing materials of the Complainant taken from the Complainant's French regional website and made no disclosure on lack of affiliation with the Complaint. The Panel considers such use as prima facie evidence of bad faith as it makes it clear that the Respondent has used confusingly similar disputed domain name primarily with the intention of attempting to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of such website, or of a product or service on such website.

While the disputed domain name no longer resolves to an active website, such inactivity does not prevent a finding of bad faith given the totality of the circumstances of the case at hand. [WIPO Overview 3.0](#), section 3.3.

Therefore, the Panel finds that the disputed domain name has been both registered and is being used in bad faith, and consequently 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 <vuses.shop> be transferred to the Complainant.

/Stefan Bojovic/

Stefan Bojovic

Sole Panelist

Date: January 10, 2025