

## **ADMINISTRATIVE PANEL DECISION**

VAPOSTORE v. ThYKnw NotHiNg

Case No. D2025-0190

### **1. The Parties**

The Complainant is VAPOSTORE, France, represented by MIIP - MADE IN IP, France.

The Respondent is ThYKnw NotHiNg, United States of America ("United States").

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

The disputed domain name <vapostorre.com> is registered with NameCheap, Inc. (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 17, 2025. On January 17, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 17, 2025, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 20, 2025, 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 January 20, 2025.

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 January 21, 2025. In accordance with the Rules, paragraph 5, the due date for Response was February 10, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 11, 2025.

The Center appointed Federica Togo as the sole panelist in this matter on February 17, 2025. 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 describes itself as the leading French network for the retailing of electronic cigarettes, e-liquids, and smoker accessories retailing.

It results from the undisputed evidence provided by the Complainant that it is the registered owner of several figurative trademark registrations containing or consisting of the stylized verbal element VAPOSTORE, e.g., European Union Trademark No. 011389781, registered on May 22, 2013, for goods and services in classes 5, 34, 35, and 43. The Complainant owns the domain name <vapostore.com> registered in 2012.

The Respondent registered the disputed domain name on March 19, 2024. It resolves to a Registrar parking page with sponsored Pay-Per-Click ("PPC") links unrelated to the Complainant's business. Furthermore, Mail Exchange ("MX") servers are configured.

#### **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:

- (1) the disputed domain name is phonetically identical to the Complainant's trademarks VAPOSTORE. The additional letter "r", contained in the disputed domain name, can be seen as a typo;
- (2) the absence of rights or legitimate interests of the Respondent infers the following arguments: the Respondent does not own any trademark rights on the word "vapostorre". There is no business or legal relationship between the Complainant and the Respondent. The Respondent is neither commonly known by the disputed domain name nor by the sign VAPOSTORRE. The disputed domain name does not resolve to an active website but to a parking site with sponsored links; and
- (3) the disputed domain name is registered with the aim of taking advantage of the reputation and goodwill of trademark VAPOSTORE. It seems unlikely and implausible that the Respondent was unaware of the activities of the Complainant and existence of its prior rights at the time of the registration of disputed domain name. The fact that the MX servers are configured suggests, given the composition of the disputed domain name with a misspelling, that the disputed domain name may be actively used for fraudulent email purposes. When registering the disputed domain name, the Respondent employed a privacy service in order to hide its identity. Moreover, the Respondent has provided false/inaccurate contact information when registering the disputed domain name.

##### **B. Respondent**

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

## 6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to “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 requires the Complainant to prove each of the following three elements in order to obtain an order that the disputed domain names should be transferred or cancelled:

- (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 Panel is satisfied that the registrant of record for the disputed domain name is the Respondent and will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

### 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. It is true that said trademark is a figurative trademark, containing a design element. However, it is acknowledged that also such figurative marks prima facie satisfy the requirement that the complainant show “rights in a mark” for further assessment as to confusing similarity, [WIPO Overview 3.0](#), section 1.10.

The above test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. In the case at hand, the entirety of the mark’s textual component “vapostore” is reproduced within the disputed domain name. It is true that the disputed domain name shows an additional “r”, doubling the “r” contained in the Complainant’s mark. However, the Panel understands this as a common, obvious, or intentional misspelling of a trademark, which remains recognizable within the disputed domain name. [WIPO Overview 3.0](#), section 1.9. Consequently, the Panel considers the disputed domain name to be confusingly similar to the relevant mark for purposes of the first element.

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 Panel notes that the Respondent has neither rebutted the Complainant's prima facie showing nor has it 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.

Panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users. [WIPO Overview 3.0](#), section 2.9.

Consequently, 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.

One of those circumstances are those specified in paragraph 4(b)(iv), i.e., where the domain name is used to intentionally attempt to attract, for commercial gain, Internet users to 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 respondent's website or location or of a product or service on respondent's website or location.

In the Panel's view, the Respondent has registered the disputed domain name with the Complainant's trademark in mind which is confusingly similar to the Complainant's trademark - simply doubled the "r" contained therein. By the time the disputed domain name was registered, the Panel considers it to be unlikely that the Respondent did not have knowledge of the Complainant and its mark VAPESTORE, which is recognizable in the disputed domain name, and which has been existing more than a decade when the disputed domain name has been registered. The Complainant also proved that the Respondent is using the disputed domain name to resolve to a hosting parking page, with commercial PPC links. These facts confirm that the disputed domain name is used to intentionally attempt to attract, for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

Finally, the further circumstances surrounding the disputed domain name's registration and use support the findings that the Respondent has registered and is using the disputed domain name in bad faith:

- (i) the fact that the disputed domain name has been connected to active MX records so that the Respondent could be engaged in a phishing scheme;
- (ii) the fact that the details disclosed for the Respondent by the Registrar were incomplete, noting the mail courier's inability to deliver the Center's Written Notice;
- (iii) the Respondent's failure to respond to this Complaint; and
- (iv) the Respondent concealing its identity behind a privacy shield.

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 <vapostorre.com> be transferred to the Complainant.

*/Federica Togo/*

**Federica Togo**

Sole Panelist

Date: March 2, 2025