

ADMINISTRATIVE PANEL DECISION

The Constant Company LLC v. Lori M. Smith
Case No. D2025-0316

1. The Parties

Complainant is The Constant Company LLC, c/o Walters Law Group, United States.

Respondent is Lori M. Smith, United States.

2. The Domain Name and Registrar

The disputed domain name <vultr.store> is registered with NameCheap, Inc. ("Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center ("Center") on January 27, 2025. On January 28, 2025, the Center transmitted by email to Registrar a request for registrar verification in connection with the disputed domain name.

On that same date, Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name that differed from that in the Complaint (e.g., the Complaint named "Privacy Service Provided by Withheld for Privacy ehf" as Respondent). The Center sent an email communication to Complainant on January 29, 2025, providing the registrant and contact information disclosed by Registrar and inviting Complainant to submit an amendment to the Complaint. Complainant sent an amendment to the Complaint on January 29, 2025, adding the new information regarding the registrant.

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 ("Policy"), the Rules for Uniform Domain Name Dispute Resolution Policy ("Rules"), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy ("Supplemental Rules").

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on January 30, 2025. In accordance with the Rules, paragraph 5, the due date for Response was February 19, 2025. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on February 21, 2025.

The Center appointed Debra J. Stanek as the sole panelist in this matter on March 1, 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

Complainant provides website hosting and cloud computing services under the mark VULTR. It uses the mark in its website at <vultr.com> and owns at least two registrations for the mark:

- United States: Reg. No. 4,636,137, registered November 11, 2021 for, among other things, software for sharing a variety of types of content and cloud computing services.
- European Union: Protection under International Reg. No. 1635056, notified on December 23, 2021.

The disputed domain name was created on December 19, 2024. At the time the Complaint was filed, it resolved to an active website that offers cloud computing services.

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.

In particular:

- The disputed domain name includes the VULTR mark in its entirety.
- Complainant's rights in and registrations for the VULTR mark long predate Respondent's registration of the disputed domain name.
- Respondent is not affiliated or connected with Complainant, has not been authorized by Complainant to use the VULTR mark, and is not known by the VULTR mark.
- Respondent's website at the disputed domain name advertises cloud computing services that compete with those offered by Complainant.
- Respondent did not respond to Complainant's January 6, 2025, email demand to cease use of the disputed domain name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

To prevail under the Policy a complainant must prove, as to the domain name at issue, that: (a) it is identical or confusingly similar to a mark in which the complainant has rights, (b) respondent has no rights or legitimate interests in respect to it, and (c) it has been registered and is being used in bad faith. Policy, paragraph 4(a). A respondent's failure to respond does not automatically result in a finding for the complainant; the complainant continues to have the burden of establishing each element. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3. The Panel may, however, draw appropriate inferences from the default. See Rules, paragraph 14(b).

The Panel determines that "Lori M. Smith" is the appropriate Respondent. See [WIPO Overview 3.0](#), section 4.4.5 (in cases involving a privacy service, Panel has discretion to determine appropriate respondent).

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

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 identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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 Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in proceedings under the Policy 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 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.

The Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. There is no reason to conclude that Respondent is commonly known by the disputed domain name and use of the disputed domain name for a website that offers services that directly compete with those of Complainant is not a noncommercial or a fair use. Respondent has not rebutted 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 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.

In this case, Complainant has shown that its rights in the VULTR mark predate Respondent's use in the disputed domain name by a decade or more and that Respondent is using the page to offer services that compete with those offered by Complainant under the VULTR mark. Under these circumstances, including Respondent's failure to respond to Complainant's correspondence and concealing her identity in the publicly available WhoIs, the Panel concludes that Respondent's use is an intentional attempt to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with Complainant's mark, constituting bad faith under the Policy.

The Panel finds the third element of the Policy has been established.

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 <vultr.store> be transferred to Complainant.

/Debra J. Stanek/

Debra J. Stanek

Sole Panelist

Date: March 7, 2025