

ADMINISTRATIVE PANEL DECISION

Thesy LLC v. SHIRISH PATEL

Case No. D2025-2189

1. The Parties

The Complainant is Thesy LLC, United States of America ("United States"), represented by Troutman Pepper Locke, United States.

The Respondent is SHIRISH PATEL, United States.

2. The Domain Name and Registrar

The disputed domain name <elementvapestore.com> is registered with GoDaddy.com, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 4, 2025. On June 5, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 6, 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 ("Registration Private (Domains By Proxy, LLC) / DomainsByProxy.com") and contact information in the Complaint. The Center sent an email communication to the Complainant on June 6, 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 June 9, 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 June 16, 2025. In accordance with the Rules, paragraph 5, the due date for Response was July 6, 2025. The Respondent sent email communications to the Center on June 10, 13, and 19, 2025. However, the Respondent did not file any formal response. Accordingly, the Center notified the commencement of panel appointment process on July 9, 2025.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on July 11, 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 is a limited liability company established under the laws of the State of California, United States and headquartered in Alhambra, California. Founded in 2013, the Complainant has operated an ELEMENT VAPE website at “www.elementvape.com” since 2013 selling e-cigarettes, vape hardware, and e-liquid products, with linked social media accounts. The record shows that the Complainant’s website attracts millions of visits, ranking at or near the top in Internet search results for vaping-related keywords. In addition to direct searches, the Complainant’s website receives traffic from affiliates, product reviews, forums, and social media. The brand has some 550 videos on YouTube, for example, with nearly three million views, and is the subject of approximately 300,000 online customer reviews. *Baystreet Wire* referred to the Complainant in 2021 as “one of the world’s largest Vape retailers”.

The Complainant repeatedly refers to its ELEMENT VAPE “mark”, “both in stylized and standard character format”, but the Complainant evidently has no registered trademark or service mark. The Complainant’s website displays a logo comprised of an illustration combining the stylized letters “EV”; followed by the letters “LEMENT VAPE”. The browser tab and social media sites display the stylized letters “EV”, sometimes in a circle, followed by the entire words “Element Vape” in large and small letters.

The Respondent stated in email correspondence that “the Complainant” in 2016 abandoned its application to the United States Patent and Trademark Office (“USPTO”) (serial number 85965433) for an ELEMENT VAPE trademark. The abandoned application was for a design logo slightly different from what now appears on the Complainant’s website. This consisted of the same stylized “EV” letters, but followed by the entire words “ELEMENT VAPE” in capital letters in a particular font. Abandonment followed the USPTO’s determination that the composite mark applied for was confusingly similar to three standard-character ELEMENTS marks already registered to “the same registrant”, “because the marks are very similar, some of the goods are identical and otherwise are related, and the goods are used by and targeted to the same consumers”.

Actually, the trademark application was filed not by the Complainant but by the individuals Dustin Tombo and Christopher Sy, and the prior trademark registrations to which the USPTO referred, numbers 3471137, 4229954, and 4668271 (for the word mark ELEMENTS) are all held by BBK Tobacco & Foods, LLP, an Arizona limited liability partnership, which the USPTO examining attorney referred to as “the same registrant”.¹ The Panel notes that Christopher Sy is listed as the principal of BBK Tobacco & Foods, LLP in the online database of the Arizona Corporation Commission and that Christopher Sy is also named as the Complainant’s organizer and agent in filings with the California Secretary of State available on its online database.

The Panel notes that screenshots of the Complainant’s website from the Internet Archive’s Wayback Machine show that the Complainant was using the new version of its logo by 2019 and has used it since.

The disputed domain name was created on January 25, 2024, and is registered to the Respondent Shirish Patel, listing no organization, a postal address in the State of Alabama, United States, and a Yahoo contact email address.

¹ Noting the general powers of a panel articulated in paragraphs 10 and 12 of the Rules, it is commonly accepted that a panel may undertake limited factual research into matters of public record, as the Panel has done in this proceeding. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“WIPO Overview 3.0”](#)), section 4.8.

As detailed further below, the Respondent claims to be the operator of a “brick and mortar” retail vape store who registered the disputed domain name in order to support its retail business. The disputed domain name resolves to a website headed with a logo consisting of a photo depicting a colorful collection of vape liquid bottles in a circle over the word “ELEMENT” over the smaller words “VAPE STORE”. The Respondent’s website offers a variety of vape products for sale online. The site does not clearly identify the site operator, referring only to “Element Vape Store” and providing a map with a pin showing an address in New York City. Some of the captions on the site are in Vietnamese, and some of the pages appear to be undeveloped from templates; for example, one is labelled “Sample Page” and refers to an architectural firm. The Panel finds no registered business corresponding to the names “Element Vape Store” or “Element Vape” in the online database of business entities maintained by the Alabama Secretary of State or the New York Secretary of State. The Complainant points out that the telephone number provided on the Contacts page of the Respondent’s website is actually the same number listed on the Contacts page of a third-party vape website, “www.gopuffstore.com”, a competitor in online vape products. The Complainant also demonstrates that the social media links on the Respondent’s website are not genuine; they resolve to Shopify’s social media accounts. The Gridinsoft cybersecurity application rates the Respondent’s website as “Suspicious”, partly because it seems to have been created with AI tools and lack genuine contacts and content.

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 common law ELEMENT VAPE mark, which the Respondent has no permission to use. The Complainant asserts that the Respondent has not shown that it is actually operating a functioning vape products business, online or offline, and its website includes false contact information and links to third parties such as Shopify and GoPuffStore. This does not reflect a bona fide commercial offering by the Respondent but rather bad faith misdirection of Internet users for commercial gain.

B. Respondent

The Respondent did not submit a formal Response. In emails to the Center, the Respondent first made this demand and statement on June 10, 2025:

“If you want the domain it’s \$100,000.

No negotiation.

We are www.elementvapestore.com

It’s an online vape store.”

The Respondent followed up with a June 13, 2025, email indicating that the Respondent misunderstood the purpose of the UDRP and the role of the Center and confused about possible interaction with regulation of the vape industry, referring to the FDA (the United States Food and Drug Administration):

“We are a brick and mortar retailer who chose this online store name. If you wish to buy it, it’s \$100,000, as far as i see with all the research i did, Element Vape is just an online retailer, we are a brick and mortar store with support of our online retail store. You can not carve out my store from online. I am sure this is not the business ICANN is in. If you do not wish to sell the domain name, why did you put it up for sale! You sold it, i bought it. Selling vapes to states is in a gray business area anyway, so since when did anyone have the right to judge not permitted(not licensed) online vape sales business by FDA! Please save me your sorrows. Once vape sales are authorized by the FDA, we will speak, until then, everyone can suck on a lemon. I promise

there is no protection for me today, but the minute my domain name is touched, there's nothing that will save ICANN or not FDA authorized online vape business by 'Element Vape'."

After the Center ascertained that the Parties were not interested in pursuing settlement and the proceedings commenced, the Respondent sent another email dated June 19, 2025, with the following message:

"Oct. 17, 2016

'Element Vape' trademark was abandoned on the date mentioned above as per USPTO.

Please give exact clarity on your claims as 'trademark' infringement is not an option for you."

6. Discussion and Findings

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 Panel finds the Complainant has established unregistered trademark or service mark rights for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3. The record shows that the Complainant quickly established a broad online consumer base in the vaping products market from 2013 with the ELEMENT VAPE brand. In 2016, the USPTO refused to register a composite mark featuring those words on the grounds of confusing similarity with the registrant's existing trademark registrations for ELEMENT for cigarette-related products. Nevertheless, the Panel finds it likely on this record that by 2024, when the Respondent registered the disputed domain name, the Complainant's ELEMENT VAPE word mark and its current composite mark were sufficiently established in the United States market for online vaping products to have acquired distinctiveness and to be protected under common law against third-party infringers. The abandonment of an earlier trademark application for a similar composite mark by parties evidently associated with the Complainant does not preclude the subsequent accretion of common law rights in connection with the word mark ELEMENT VAPE or the corresponding textual elements of the Complainant's current composite mark.

The Panel finds the mark is recognizable within the disputed domain name. The entirety of the word mark ELEMENT VAPE is included in the disputed domain name, as well as the textual element of the composite mark. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), sections 1.7, and 1.11.

Although the addition of other terms (here, "store") may bear on assessment of the second and third elements, the Panel finds the addition of such a term 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.

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

B. Rights or Legitimate Interests

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 Respondent did not file a certified Response but claimed in emails to be operating a "brick and mortar" vape business for which the disputed domain name is used. However, as noted above, there is no supporting evidence that such a retail vape business exists in either Alabama or New York. Thus, there is no basis for finding that the Respondent is known by a correspondent name or is using, or preparing to use, the disputed domain name in connection with a bona fide offering of goods or services, consistent with the Policy, paragraphs 4(c)(i) or (ii).

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 the present case, the Panel notes that the Respondent purports to be in the business of "brick and mortar" retail vape product sales and has published an online vape products website. As such, it can be safely assumed that the Respondent was aware of the Complainant's mark, one of the best known online in the same industry. The Respondent chose a domain name virtually identical to that mark, adding the word "store", which merely suggests a site where such products can be purchased. The Respondent does not deny prior awareness of the Complainant or its mark but argues that the Complainant's abandonment of a composite mark in 2016 obviates any potential infringement claims today. The Panel concludes, as discussed above, that the Complainant's mark had acquired distinctiveness by the time the Respondent registered the disputed domain name in 2024 and that the Respondent more likely than not registered the confusingly similar domain name in an effort to attract Internet users for commercial gain, an example of bad faith under the Policy, paragraph 4(b)(iv). This inference of bad faith is supported by the lack of authentic information identifying the operator of the Respondent's website and representing genuine business activity through the website.

Panels have held that the use of a domain name for illegitimate or illegal activity, here claimed to involve phishing for personal information on a phony website, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

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 <elementvapestore.com> be transferred to the Complainant.

/W. Scott Blackmer/

W. Scott Blackmer

Sole Panelist

Date: July 21, 2025