

ADMINISTRATIVE PANEL DECISION

Rivian IP Holdings, LLC, Rivian Automotive, Inc. v. Venture Sales Pty Ltd
Case No. DAU2022-0021

1. The Parties

The Complainants are Rivian IP Holdings, LLC, and Rivian Automotive, Inc., United States of America ("United States"), represented by King & Wood Mallesons, Australia.

The Respondent is Venture Sales Pty Ltd, Australia.

2. The Domain Name and Registrar

The disputed domain name <rivian.com.au> is registered with Web Address Registration Pty Ltd.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on September 16, 2022. On September 16, 2022, the Center transmitted by email to Web Address Registration Pty Ltd a request for registrar verification in connection with the disputed domain name. On September 20, 2022, Web Address Registration Pty Ltd transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the .au Dispute Resolution Policy (the "Policy" or ".auDRP"), the Rules for .au Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for .au Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on September 26, 2022. In accordance with the Rules, paragraph 5(a), the due date for Response was October 16, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 18, 2022.

The Center appointed Andrew F. Christie as the sole panelist in this matter on November 1, 2022. 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 Complainants are related Delaware limited liability companies and, together, are an American-based electric automobile manufacturer and technology enterprise founded in 2009. The Complainants develop a range of vehicles focused on sustainable transportation and delivery, operate 19 physical service centers in 14 states in the United States, and have facilities in Canada and the United Kingdom. The Complainants' market capital as of April 2022 exceeded USD 35 billion.

The First Complainant, Rivian IP Holdings, LLC, is the owner of numerous trademark registrations around the world for the word trademark RIVIAN, including Australian Trade Mark No. 2057266 (filed on December 12, 2019, and entered into the register on October 21, 2020) and United States Registration No. 6075546 (filed on April 20, 2018, and registered on June 9, 2020).

The First Complainant is the owner of the domain name <rivian.com>, which the Complainants have used to operate a website since at least 2011.

The disputed domain name was registered on November 28, 2018. The Complainants have provided a screenshot, taken on October 29, 2020, showing that the disputed domain name resolved to a website with the heading "Rivian RV Furniture", purporting to offer "customized designs for fitting out your DIY caravan or motorhome", displaying three photographs, and providing a contact email address using the disputed domain name. The Complainants provided another screenshot, taken on September 1, 2022, showing that the disputed domain name no longer resolved to an active website. At the time of this decision the disputed domain name does not resolve to an active website.

5. Parties' Contentions

A. Complainant

The Complainants made the following contentions to establish that the disputed domain name is confusingly similar to a trademark in which the Complainants have rights. The disputed domain name is identical in appearance, pronunciation, meaning, and overall commercial impression to the Complainants' RIVIAN trademark, reproducing it in its entirety and only adding the Second-Level Domain ("2LD") and country-code Top-Level Domain ("ccTLD") extension ".com.au". The Complainants' RIVIAN trademark is a coined term, with no meaning in any language, devised by the Complainants to evoke timelessness and the natural environment. There is no issue of priority as the Respondent registered the disputed domain name in 2018, long after the Complainants adopted the RIVIAN brand in 2011, obtained the <rivian.com> domain name, began operating the "Rivian" website, launched social media pages, and filed trademark applications for the RIVIAN trademark around the world. Any reasonable person, when viewing the disputed domain name, would conclude that it leads to a website that is connected to the Complainants.

The Complainants made the following contentions to establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has owned operations in the motor and recreational vehicle industry under several registered business names since 2004, and is the owner of the domain name <rvservicecentre.com.au>, which it uses for a website at which it has offered its recreational vehicle-related goods and services since 2013. RIVIAN is a coined term that has no meaning other than to identify the Complainants' business and brand. The Respondent has not acquired any rights to, or interests in, any name consisting of or containing "rivian", the disputed domain name, or the Complainants' trademark. The Complainants have not licensed or otherwise permitted the Respondent to use the RIVIAN name or trademark (or any variations thereof), whether as a domain name or otherwise. In June 2020, after becoming aware the Respondent had registered the disputed domain name, the Complainants engaged a representative to make a purchase offer, which was refused. Shortly after this exchange, the Respondent attempted to make use of the disputed domain name by pointing it to a very rudimentary website titled "Rivian RV Furniture", which offered goods and services that closely resembled those the Respondent already advertised and supplied on its website located at "www.rvservicecentre.com.au". These goods and services are also closely related to those offered by the

Complainants under the RIVIAN trademark. By pointing the disputed domain name to a website featuring the Complainants' trademark in connection with the offering of the Respondent's related goods and services, the Respondent clearly intended to derive benefit by misleading consumers as to the source of its goods and services. The Respondent already had a fully functioning website at "www.rvservicecentre.com.au", using a domain name reflective of one of its registered business names, and can only have registered the disputed domain name to capitalise on the goodwill of the Complainants' RIVIAN trademark. As the Respondent previously engaged in conduct that trades off the goodwill of the RIVIAN trademark, and as the disputed domain name currently does not resolve to a functioning website, the Respondent has not and is not making a *bona fide* use of, or a legitimate noncommercial or fair use of, the disputed domain name.

The Complainants made the following contentions to establish that the disputed domain name was registered and is being used in bad faith. The Complainants publicly debuted their RIVIAN-branded prototype vehicles on November 27, 2018, garnering significant press in established Australian news publications and automotive and recreational vehicle publications. The Respondent registered the disputed domain name on November 28, 2018, one day after the Complainants' well-publicised RIVIAN vehicle unveiling, despite not having any rights to the Complainants' coined, fanciful, well-known trademark and name, and not being authorized to use either. The Respondent was clearly well aware of the Complainants and of the RIVIAN name when it registered the disputed domain name, and knew that its registration would preclude the Complainants from owning the domain name corresponding to their trademark in the ".com.au" space. The Respondent's registration of the disputed domain name is part of a pattern of conduct of registering domain names identical or confusingly similar to the names of other well-known, third-party automotive and recreational vehicle industry brands and trademarks. In June 2020, despite having no affiliation to the Complainants, and no rights to the RIVIAN trademark, the Respondent launched the website at "www.rivian.com.au", where it displayed the Complainants' RIVIAN trademark in conjunction with an offering of goods and services that were directed at the same or related markets as the Complainants', and attempted to derive a commercial benefit for the Respondent's own vehicle business. Despite the Complainants' prior-filed RIVIAN trademark application, on June 15, 2020, the Respondent filed an Australian trademark application for RIVIAN in respect of goods highly related to those of the Complainants. On November 18, 2021, following an adverse report from IP Australia, the Respondent's trademark application lapsed. By taking advantage of the reputation in the RIVIAN trademark to redirect consumers to competitive goods and services, coupled with the attempt to register the RIVIAN trademark for related goods, the Respondent's actions aimed to disrupt the Complainants' business interests in Australia. The Respondent touts itself as a knowledgeable expert in the automotive and vehicle field, so there is no plausible circumstance under which the Respondent could have legitimately registered, and subsequently used, the disputed domain name, which is identical to the coined RIVIAN trademark, other than to create an impression of a false association with the Complainants. The disputed domain name is not a form of the Respondent's name or any current trademark registration or pending trademark application owned by the Respondent, is not closely connected to the Respondent, and was the Complainants' brand name at the time of its registration. As the Respondent does not currently meet the relevant eligibility requirements for registration of the disputed domain name, and did not meet them when it first registered the disputed domain name, the Respondent is in breach of the policies for the ".au" ccTLD.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

Once the 2LD and ccTLD extension ".com.au" is disregarded (which is appropriate in this case), the disputed domain name consists solely of the First Complainant's registered word trademark RIVIAN. Accordingly, the Panel finds that the disputed domain name is identical to a trademark in which the First Complainant has rights.

B. Rights or Legitimate Interests

The Respondent is not a licensee of the Complainants, is not otherwise affiliated with the Complainants, and has not been authorized by the Complainants to use the RIVIAN trademark. The Respondent has not provided any evidence that it has been commonly known by, or has made a *bona fide* use of, the disputed domain name, or that it has, for any other reason, rights or legitimate interests in the disputed domain name. The evidence provided by the Complainants shows that the disputed domain name has been used to resolve to a website purporting to offer “Rivian RV Furniture” for sale. Given the identity of the disputed domain name to the Complainants’ trademark, the absence of any relationship between the Respondent and the Complainants, and the failure to avoid the implied false affiliation with the Complainants, the Respondent’s use of the disputed domain name is neither a *bona fide* use nor a legitimate noncommercial or fair use.

The Complainants have put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, and the Respondent has not rebutted this. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered or Subsequently Used in Bad Faith

The disputed domain name was registered after the First Complainant first filed for registration of the RIVIAN trademark, many years after the Complainants’ enterprise was founded using the RIVIAN name, and one day after the Complainants’ publicised unveiling in Australia of the RIVIAN vehicle. It is inconceivable that the Respondent registered the disputed domain name ignorant of the existence of the First Complainant’s nascent trademark rights, given that the disputed domain name consists solely of the First Complainant’s trademark, the particular timing of the Respondent’s registration of the disputed domain name, and that the Respondent used the disputed domain name to resolve to a website which purported to offer for sale goods and services directed at the same or related markets as the Complainants’ goods. Given the Respondent’s lack of rights or legitimate interests in the disputed domain name and the identity of the disputed domain name to the First Complainant’s trademark, any use of the disputed domain name by the Respondent almost certainly implies an affiliation with the Complainants that does not exist. The Respondent’s registration of the disputed domain name in these circumstances is a bad faith registration.

The evidence on the record provided by the Complainants indicates that the Respondent has used the disputed domain name in an attempt to attract, for commercial gain, Internet users to a website by creating confusion in the minds of the public as to an association between the website and the Complainants. The Respondent’s use of the disputed domain name in this manner is a bad faith use.

Accordingly, the Panel finds that the disputed domain name was registered and has been used in bad faith.

7. Decision

For all the foregoing reasons, and noting that the First Complainant appears eligible to hold the disputed domain name by virtue of its Australian Trade Mark registration, in accordance with Paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the domain name, <rivian.com.au>, be transferred to the First Complainant.

/Andrew F. Christie/

Andrew F. Christie

Sole Panelist

Date: November 15, 2022