Decision for dispute CAC-UDRP-101416

Case number	CAC-UDRP-101416
Time of filing	2017-01-24 14:32:03
Domain names	biovela.com

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	BIOVELA, LTD

Complainant representative

Organization	Professional Law Partnership METIDA Law Firm Zaboliene and Partners

Respondent

Name	TaeYoung Jung

OTHER LEGAL PROCEEDINGS

The panel is not aware of any other legal proceedings related to the Disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the following trademarks:

- Lithuanian figurative trademark “BIOVELA", No. 49663 (registered on July 25, 2005) for goods in the class 29,31, and services in the class 35,40 (Nice classification).

- Lithuanian word trademark “BIOVELA", No. 65575 (registered on July 23, 2012) for goods in the class 29,30,31, and services in the class 35,39,40 (Nice classification).

- International trademark “BIOVELA” No. 1142039 (registered on July 3, 2012) for goods in the class 29,30,31, and services in the class 35,39,40 (Nice classification).

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

Factual and Legal Grounds

(Policy, Paragraphs 4(a), (b), (c); Rules, Paragraph 3)

The Complaint is based on the following grounds:

1. BIOVELA, LTD (hereinafter – the Complainant) is Lithuania's largest and the most advanced meat processing company and one of the biggest meat manufacturers in Central Europe. Having started operations in 1994, it now enjoys the biggest market share of the meat production sector in Lithuania. (Annex 1).

2. It has come to the Complainant's attention that there is a website with the domain name <biovela.com>, the subject of this Complaint (hereinafter- the Domain Name).

3. According to WHOIS database (accessed on January, 19, 2017), the Registrant for the <biovela.com> Domain Name is TaeYoung Jung (hereinafter- the Respondent).

4. The use of TaeYoung Jung as the Registrant for the Domain Name is confusing in that it violates Complainant's trademark rights to the "BIOVELA" mark as well as right to a company name.

5. The administrative and technical contact listed in the WHOIS database is TaeYoung Jung, who is operating the Domain Name under the name of the Respondent (Annex 2).

6. BIOVELA, LTD has not given TaeYoung Jung any authority to operate under the name BIOVELA and has not given any authority to operate, maintain, or register a website in its name.

7. Paragraph 4(a) of the UDRP Policy (hereinafter- Policy) provides that to obtain the transfer of the disputed domain name, complainant must prove that each of the following elements is present:
(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
(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.

A. The domain name is identical to a trademark or service mark in which the Complainant has rights as well as to a company name;
(Policy, Paragraph 4(a)(i); Rules, Paragraphs 3(b)(viii), (b)(ix)(1))
8. The Complainant is the owner of the trademark rights to the "BIOVELA" trademark and all other intellectual property rights associated with the use of the "BIOVELA" trademark and the company name "BIOVELA".

9. In particular, the Complainant is the proprietor of the Lithuanian figurative trademark "BIOVELA", No. 49663 (registered on July 25, 2005) which is registered and used for goods in the class 29,31, and services in the class 35,40 (Nice classification) (Annex 3).

10. Moreover, the Complainant is the owner of the Lithuanian word trademark "BIOVELA", No. 65575 (registered on July 23, 2012) which is registered and used for goods in the class 29,30,31, and services in the class 35,39,40 (Nice classification) (Annex 4).

11. Furthermore, the Complainant is the owner of the International trademark "BIOVELA" No. 1142039 (registered on July 3, 2012) which is registered and used for goods in the class 29,30,31, and services in the class 35,39,40 (Nice classification) (Annex 5).

12. It should also be noted that the Complainant is also the owner of the company name "BIOVELA" (Annex 8).

13. The Complainant owns and mainly communicates on the Internet via notably the website <biovela.lt> (Annex 1).

14. The Domain Name, <biovela.com>, was registered on April 10,2006, by the Registrant (Annex 6).

15. The Domain Name was registered by means of Internet domain registrar <godaddy.com>, and was generated using Sedo Domain Parking (<sedo.com>).

16. When calling up the page, a notice appears that the domain is offering for sale with the invitation: <the owner of biovela.com is offering it for sale for an asking price of 10000 USD!> (Annex 7). In other words, Respondent is offering 10,000.00 USD for the transfer of the domain. It also contains a link to the website sedo.com. At this website, an offer to purchase a domain name could be made by submitting name, email address and password"(Annex 9).

17. First of all, it should be noted that the Domain Name is identical to the name of the Complainant's company (Annex 8).

18. Secondly, the disputed Domain Name <biovela.com> is identical and confusingly similar to the trademarks in which the Complainant has rights as it relates directly to BIOVELA. In particular, the disputed Domain Name is identical to the Lithuanian word trademark "BIOVELA", No. 65575 and the International trademark "BIOVELA" No. 1142039, and confusingly similar to the Lithuanian figurative trademark "BIOVELA", No. 49663.

19. The disputed Domain Name consists of the word "biovela" and the generic top level domain (hereinafter- gTLD) .com.

20. In fact the domain name at issue <biovela.com> is identical to the Lithuanian word trademark "BIOVELA", No. 65575 and the International trademark "BIOVELA" No. 1142039, and confusingly similar to the Lithuanian figurative trademark "BIOVELA", No. 49663, since it fully incorporates the Complainant's BIOVELA trademark, i.e. contains the BIOVELA mark in its entirety, and the only difference between the disputed domain name and the Complainant's mark is the suffix ".com". It is a well-established principle that the top-level suffix in the domain name is to be disregarded (as it is a technical requirement) under the test for identity or confusing similarity (see paragraph 1.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition). In other words, the addition of the gTLD ".com" is not of legal significance from the standpoint of comparing the disputed domain names to the trademark.

21. Thus, as the suffixes only indicate that the domain name are registered under the respective gTLD and are not distinctive, the Panel should find Respondent's domain names to be identical with the Lithuanian word trademark "BIOVELA", No. 65575 and the International trademark "BIOVELA" No. 1142039, and confusingly similar to the Lithuanian figurative trademark "BIOVELA", No. 49663 (WIPO Case No. D2003-0598, MADRID 2012, S.A. v. Scott Martin-MadridMan Websites – Annex 18).

22. The Complainant has not authorized the use of the identical and confusingly similar domain name by the Respondent. Therefore, there is an abusive registration and use of an Internet domain name in the generic top level domains (gTLDs) (.com).

23. It is respectfully submitted that the Complaint has satisfied Policy, Paragraph 4(a)(i) and Rules, Paragraph 3(b)(viii) and 3(b)(ix)(1) that the Domain Name is identical and/or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy) and identical to the name of the company.

B. The Respondent has no rights or legitimate interests in respect of the domain name(s);
(Policy, Paragraph 4(a)(ii); Rules, Paragraph 3(b)(ix)(2))

24. The Respondent has no rights or legitimate interests in the Domain Name because the Complainant has not granted any permission to the Respondent to use the Domain Name. In other words, the Respondent has no connection or affiliation with the Complainant, which has not licensed or otherwise authorized Respondent to use or apply for any domain name incorporating Complainant's trademark and a company name.

25. The Complainant respectfully submits that the Respondent cannot meet any of the situation enumerated in Paragraph 4(c) of the Policy:

- Respondent’s use of the Domain Name has no connection with a bona fide offering of goods and services. The Complainant has not entered into any business relation with the Respondent. In fact, neither a license nor any other authorization has been granted to Respondent to make any use of Complainant’s trademarks "BIOVELA" or apply for the registration of the disputed domain name.
- The Respondent has not been commonly known by the Domain Name. The Respondent is not commonly known as “BIOVELA” and is not owner of trademarks consisting of the word “biovela". Moreover, the name and the contact details of the Respondent contain no reference to the word “biovela".
- The Respondent is not making legitimate non-commercial or fair use of the Domain Name. It rather only uses the domain biovela.com to receive buying offers for the domain, which is supported by evidentiary documents submitted with the Complaint (Annex 8). Moreover, Respondent’s use of the disputed Domain Name served the purpose of generating revenue via advertised pay-per-click products and links and it has been held in previous cases that such use in the circumstances does not represent a use in connection with a bona fide offering of goods and services under paragraph 4(c)(i) of the Policy nor a legitimate noncommercial or fair use under paragraph 4(c)(iii) of the Policy (WIPO Case D2008-0627, Société Nationale des Chemins de Fer Français v. ostrid company, Domains by Proxy, Inc.; WIPO Case D2007-0449, Educational Testing Service (ETS) v. International Names Ltd; WIPO Case D2007-1389, Pepperdine University v. The CJ Group, LLC; WIPO Case D2008-1721, L’Oreal v. Tracey Johnson).

26. It is respectfully submitted that the Complainant has satisfied Policy, Paragraph 4(a)(ii) and Rules, Paragraph 3(b)(ix)(2) that the Respondent has no rights or legitimate interests in the Domain Name that is subject of the Complaint.

C. The domain name was registered and is being used in bad faith.
(Policy, Paragraph 4(a)(iii); Rules, paragraph 3(b)(ix)(3))
27. The Complainant respectfully submits that the Respondent registered the Domain Name and is being used in bad faith.

28. The concept of the domain name “being used in bad faith” is not limited to positive action, but rather incorporates inaction. According to paragraph 4 (b) (i) – (iii) of the Policy the circumstances of registering a domain name to, inter alia, sell it, to prevent the owner of a trademark from reflecting the mark in the corresponding domain name, provided, that one has engaged in a pattern of such conduct, or the registration for the primary purpose of disrupting the business of a competitor indicate registration and use in bad faith.

29. The bad faith regarding the registration and use of <biovela.com> domain name is clearly evident from the fact that the web page (<sedo.com>) to which <biovela.com> domain name resolves is a so-called “parking page” designed for the purpose of selling, renting, or otherwise transferring the domain name registration to the owner of the trademark BIOVELA or to a competitor of that owner, and generating “click-through” fees.

30. Moreover, the registration of the protected trademark No. 49663 precedes the registration of the domain “biovela.com", which is proved by an evidentiary document submitted with the Complaint (Annex 3).

31. Therefore, the domain name is so obviously connected with the Complainant’s trademarks and its services that their very use by someone with no connection with the Complainant suggests "opportunistic bad faith" (WIPO Case No. D2000-0226, Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net - Annex 36, WIPO Case No. D2000-0163, Veuve Cliquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co., net - Annex 37, WIPO Case No. D2001-0781, Fortuneo v. Johann Guinebert - Annex 38).

32. It is respectfully submitted that Complainant has satisfied the UDRP Policy, Paragraph 4(a)(iii), 4(b) and Rules, Paragraph 3(b)(ix)(3) that the Respondent has registered the Domain Name for the purpose of using the Domain Name in bad faith.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the Disputed domain name (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the Disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

I. RIGHTS

The Disputed domain name is confusingly similar to the Complainant's registered trademarks since it reproduces the Complainant's mark 'BIOVELA', merely adding the generic top level domain identifier '.COM' at the end.

II. NO RIGHTS OR LEGITIMATE INTERESTS

The Respondent has not submitted any reply. Therefore, it has submitted no information on possible rights or legitimate interests it might hold. On its part, the Complainant has submitted information and arguments which allow it to be reasonably assumed that the Respondent has no rights or legitimate interest in the Disputed domain name.

As the WIPO Arbitration and Mediation Center pointed out in UDRP case No. D2002-0856:

"As mentioned above in section 3, the Respondent has not filed a Response and is therefore in default. In those circumstances when the Respondent has no obvious connection with the disputed Domain Names, the prima facie showing by the Complainant that the Respondent has no right or legitimate interest is sufficient to shift the burden of proof to the Respondent to demonstrate that such a right or legitimate interest exists. WIPO Case No. D2002-0273 <sachsen-anhalt>; WIPO Case No. D2002-0521 <volvovehicles.com>".

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed domain name.

III. BAD FAITH

Respondent has, as a result of his default, not invoked any circumstances which could invalidate Complainant´s allegations and evidence with regard to the Respondent´s registration and use of the contested domain name in bad faith.

The Respondent's offer of the Disputed domain name for sale by a price of 10,000 US$ is a clear evidence of bad faith registration and use of the Disputed domain name within the meaning of Paragraph 4(b)(i) of the Policy:

(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name.

As stated in VENTURUM GmbH v. Coventry Investments Ltd., DomainCollection Inc, WIPO Case No. D2003-0405, “By offering the contested domain name through a publicly accessible website, Respondent is offering it for sale to Complainant, any of Complainant´s competitors, and others“. Furthermore, there seems to be no plausible explanation of why the Respondent chose BIOVELA as a domain name, since BIOVELA is not an existing word and it only corresponds to the Complainant´s trademark and company name. This seems to show a clear intention of getting an economic profit from the Complainant or one of its competitors.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **BIOVELA.COM**: Transferred

PANELLISTS

Name	**José Ignacio San Martín**

DATE OF PANEL DECISION 2017-02-27

Publish the Decision