Decision for dispute CAC-UDRP-106612

Case number	CAC-UDRP-106612
Time of filing	2024-06-18 14:48:12
Domain names	vitamlnwell.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	Vitamin Well AB

Complainant representative

Organization	SILKA AB

Respondent

Organization	Thor marble Grange llc

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant holds multiple trademarks for VITAMIN WELL, covering many jurisdictions worldwide. The Complainant owns the following trademark registrations for the mark "VITAMIN WELL," among others:

- European Union Intellectual Property Office (EUIPO) Reg. No. 006896831, registered on January 28, 2009, in classes 25, 30, 32;
- International Trademark Reg. No. 1055257, registered on August 11, 2010, in classes 25, 30, 32;
- US Trademark Reg. No. 4669127, registered on January 13, 2015, in classes 30, 32.

FACTUAL BACKGROUND

The Complainant is a Swedish company that produces, markets, and sells vitamin and mineral-enriched drinks under the VITAMIN WELL brand. Launched in 2008, VITAMIN WELL drinks are available at various locations including grocery stores, petrol stations, kiosks, pharmacies, cafes, gyms, sports facilities, and golf courses. The Complainant is part of the Vitamin Well Group, which, along with several other brands, has products in over 40 markets and offices in 10 countries across Europe, the United States, and the Asia-Pacific region.

The disputed domain name was registered on September 15, 2023.

PARTIES CONTENTIONS

COMPLAINANT:

i) The Complainant holds rights to the VITAMIN WELL trademark as outlined in the "Identification of Rights" section. The disputed domain name is confusingly similar to the Complainant's VITAMIN WELL mark because it incorporates the mark, with the only difference being the substitution of the second 'i' with the visually similar 'l'.

ii) The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent neither holds trademark rights for, nor is known by, 'vitamlnwell' or any similar term. The Respondent is not connected or affiliated with the Complainant and has not received any license or consent to use the VITAMIN WELL mark in any manner. Additionally, the Respondent does not use the disputed domain name for any bona fide offering of goods or services or for any legitimate noncommercial or fair use. Instead, the disputed domain name simply resolves to a parking page of the Registrar.

iii) The Respondent has registered and is using the disputed domain name in bad faith. Even the simplest due diligence would have made the registrant aware of the Complainant’s rights in the well-established VITAMIN WELL brand. The Respondent's misspelling of the Complainant's official domain name <vitaminwell.com> is further evidence of the Respondent’s prior awareness and intentional targeting of the Complainant. The Respondent failed to respond to the Complainant’s cease-and-desist letter. The Respondent’s failure to actively use the disputed domain name (e.g., by merely parking it) does not prevent a finding of bad faith use under the passive holding doctrine.

RESPONDENT:

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

Paragraph 15(a) of the Rules for the UDRP ('the Policy') instructs this Panel to "decide a complaint on the basis of the statements and documents submitted 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 that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

(1) the domain name registered by respondent is identical or confusingly similar to a trademark or service mark in which complainant has rights; and

(2) respondent has no rights or legitimate interests in respect of the domain name; and

(3) the domain name has been registered and is being used in bad faith.

In view of the Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory. See Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc., FA 95095 (FORUM July 31, 2000) (holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); see also Talk City, Inc. v. Robertson, D2000-0009 (WIPO Feb. 29, 2000) ("In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.").

Rights

The Complainant asserts that it owns the registered trademark VITAMIN WELL, as identified in the "Identification of Rights" section above. The Panel notes that trademark registration with a national trademark agency or an international organization such as the USPTO, EUIPO, or WIPO is sufficient to establish rights in that mark. Accordingly, the Panel finds that the Complainant has established its rights in the VITAMIN WELL mark. The Complainant further contends that the disputed domain name is confusingly similar to its VITAMIN WELL mark because the disputed domain name <vitamlnwell.com> incorporates the Complainant's mark, with the only difference being the substitution of the second 'i' with the visually similar 'l'. The substitution of a single letter, as well as the presence of a gTLD, fails to sufficiently distinguish the disputed domain name from the mark per Policy paragraph 4(a)(i). See Webster Financial Corporation and Webster Bank, National Association v. Tanya Moulton, FA2303002034214 (Forum April 11, 2023) ("When a disputed domain name wholly incorporates another's mark, adding a single letter is insufficient to defeat a finding of confusing similarity."; finding <fwebsteronline.com> domain name confusingly similar to WEBSTER and WEBSTER ONLINE trademarks); ModCloth, Inc. v. James McAvoy, FA 1629102 (Forum Aug. 16, 2015) ("The Panel finds that the disputed domain name is confusingly similar to Complainant's mark because it differs from Complainant's mark by merely adding the letter 'L' . . . ").

The Panel notes that the disputed domain name incorporates the Complainant's VITAMIN WELL mark, merely replacing the second letter "l" with the letter "L" and adding the ".com" gTLD. Therefore, the Panel finds the disputed domain name to be confusingly similar to the Complainant's VITAMIN WELL mark per Policy paragraph 4(a)(i).

No rights or legitimate interests

A complainant must first make a prima facie case that a respondent lacks rights and legitimate interests in the disputed domain name under Policy paragraph 4(a)(ii), then the burden shifts to the respondent to show it does have rights or legitimate interests. See Croatia Airlines d. d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455 (the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a) (ii) of the Policy). See also Advanced International Marketing Corporation v. AA-1 Corp, FA 780200 (FORUM Nov. 2, 2011) (finding that a complainant must offer some evidence to make its prima facie case and satisfy Policy paragraph 4(a)(ii).

The Complainant contends that the Respondent does not have any relationship with the Complainant, nor has the Complainant ever granted the Respondent with any rights to use the VITAMIN WELL trademark in any forms, including the disputed domain name; and there is no evidence that the Respondent has acquired any rights in a trademark or trade name corresponding to the disputed domain name. Where a response is lacking, WHOIS information may be used to determine whether a respondent is commonly known by the disputed domain name under Policy paragraph 4(c)(ii). See State Farm Mutual Automobile Insurance Company v. Dale Anderson, FA1504001613011 (Forum May 21, 2015) (concluding that because the WHOIS record lists "Dale Anderson" as the registrant of the disputed domain name, the respondent was not commonly known by the <statefarmforum.com> domain name pursuant to Policy paragraph 4(c)(ii)). Additionally, lack of authorization to use a complainant's mark may indicate that the respondent is not commonly known by the disputed domain name. See Alaska Air Group, Inc. and its subsidiary, Alaska Airlines v. Song Bin, FA1408001574905 (Forum Sept. 17, 2014) (holding that the respondent was not commonly known by the disputed domain name as demonstrated by the WHOIS information and based on the fact that the complainant had not licensed or authorized the respondent to use its ALASKA AIRLINES mark). The WHOIS information for the disputed domain name lists the registrant as "Thor marble Grange llc." Therefore, the Panel finds the Respondent is not commonly known by the disputed domain name pursuant to Policy paragraph 4(c)(ii).

The Complainant further contends that the Respondent does not use the disputed domain name for any bona fide offering of goods or services or legitimate noncommercial or fair use. The disputed domain name is not directed to an active website. The Complainant has provided a screenshot of the disputed domain name's resolving webpage showing that the domain name is currently redirected to a parking page.

The Panel finds that the Complainant has made out a prima facie case that arises from the considerations above. All of these matters go to make out the prima facie case against the Respondent. As the Respondent has not filed a Response or attempted by any other means to rebut the prima facie case against it, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

Bad faith

Paragraph 4(b) of the Policy provides a non-exclusive list of circumstances that evidence registration and use of a domain name in bad faith. Any one of the following is sufficient to support a finding of bad faith:

(i) circumstances indicating that the respondent has registered or 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 the complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 the respondent's website or location or of a product or service on the respondent's website or location.

The Complainant contends that the Respondent has registered and is using the disputed domain name in bad faith. The simplest degree of due diligence would have otherwise made a registrant of the disputed domain name aware of the Complainant's rights in the well-established VITAMIN WELL brand. The Respondent's misspelling of the string for the Complainant's official domain name <vitaminwell.com> constitutes additional evidence of the Respondent's prior awareness and targeting of the Complainant through its registration of the disputed domain name. While constructive knowledge is insufficient for a finding of bad faith, per Policy paragraph 4(a)(iii), registration of an infringing domain name with actual knowledge of another's trademark rights is sufficient to establish bad faith, and can be shown by the notoriety of the mark and the use Respondent makes of the disputed domain name. See Orbitz Worldwide, LLC v. Domain Librarian, FA 1535826 (Forum February 6, 2014) ("The Panel notes that although the UDRP does not recognize 'constructive notice' as sufficient grounds for finding Policy paragraph 4(a)(iii) bad faith, the Panel here finds actual knowledge through the name used for the domain and the use made of it."); see also AutoZone Parts, Inc. v. Ken Belden, FA 1815011 (Forum December 24, 2018) ("Complainant contends that Respondent's knowledge can be presumed in light of the substantial fame and notoriety of the AUTOZONE mark, as well as the fact that Complainant is the largest retailer in the field. The Panel here finds that Respondent did have actual knowledge of Complainant's mark, demonstrating bad faith registration and use under Policy paragraph 4(a)(iii).").

The Panel agrees and infers that, due to the global notoriety of the Complainant's VITAMIN WELL mark and the typosquatting nature of the disputed domain name, the Respondent had actual knowledge of the Complainant's rights in the VITAMIN WELL mark at the time of registering the disputed domain name. Thus, the Panel finds that the disputed domain name was registered in bad faith.

The Complainant further contends that the disputed domain name resolves to an inactive page. The Panel observes that passive holding of a domain name does not necessarily prevent a finding of bad faith use under paragraph 4(a)(iii) of the Policy. As established in Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003, when considering whether passive holding satisfies the requirements of paragraph 4(a)(iii) following a bad faith registration, a panel must closely examine all the circumstances of the respondent's behavior. A remedy under the Policy can be obtained if those circumstances demonstrate that the respondent's passive holding amounts to acting in bad faith.

The specific circumstances of this case considered by the Panel are:

i) The Complainant's VITAMIN WELL mark is well-known and reputable, as noted previously;

ii) The Respondent engaged in typosquatting with the disputed domain name; and

iii) The Respondent has provided no evidence of any actual or contemplated good faith use of the disputed domain name, despite receiving a cease-and-desist letter from the Complainant.

Considering all of the above, the Panel concludes that the Respondent's passive holding of the disputed domain name constitutes bad faith registration and use under paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **vitamlnwell.com**: Transferred

PANELLISTS

Name	**Mr. Ho-Hyun Nahm Esq.**

DATE OF PANEL DECISION 2024-07-15