

ADMINISTRATIVE PANEL DECISION

Visual Supply Company (“VSCO”) v. Nice IT Services Group Inc., Customer Domain Admin and Aiden Salamon
Case No. D2023-3616

1. The Parties

The Complainant is Visual Supply Company (“VSCO”), United States of America (“United States”), represented by Sideman & Bancroft LLP, United States.

The Respondents are Nice IT Services Group Inc., Customer Domain Admin, Dominica, and Aiden Salamon, Canada.

2. The Domain Names and Registrars

The disputed domain name <vsco.club> is registered with NameCheap, Inc.; and the disputed domain name <vsco.page> is registered with NameSilo, LLC (collectively, the “Registrar(s)”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 29, 2023. On August 29, 2023, the Center transmitted by email to the Registrars requests for registrar verification in connection with the disputed domain names. On August 29, 2023, the Registrars transmitted by email to the Center verification responses disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Registrant Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 1, 2023, providing the registrant and contact information disclosed by the Registrars, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on September 6, 2023.

The Center sent an email communication to the Complainant on September 1, 2023, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrars, requesting the Complainant to either file separate complaints for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity. The Complainant filed an amended Complaint on September 6, 2023.

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 proceeding commenced on September 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 27, 2023. The Respondent Aiden Salamon sent email communications to the Center on September 7 and 14, 2023 in respect of the disputed domain name <vsco.club>. The Center notified the commencement of Panel appointment to the Parties on September 28, 2023.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on October 6, 2023. 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

A. Complainant

The Complainant is a company founded in 2011 and headquartered in the United States. The Complainant provides its downloadable photo and video editing products under the trade mark VSCO (the “Trade Mark”), via its website and via mobile apps.

The Complainant is the owner of numerous registrations for the Trade Mark, including United States registration No. 4273434 for the device Trade Mark, registered on January 8, 2013.

B. Respondents

The Respondent Nice IT Services Group Inc., Customer Domain Admin is located in Dominica.

The Respondent Aiden Salamon is located in Canada.

C. The Disputed Domain Names

The disputed domain name <vsco.page> was registered on July 19, 2019

The disputed domain name <vsco.club> was registered on December 10, 2021.

D. Use of the Disputed Domain Names

The disputed domain name <vsco.page> is resolved to an English language website, featuring photographs taken from the Complainant’s website, apparently offering downloads of the Complainant’s products, and also containing links to unrelated third party websites (the “vsco.page Website”).

The disputed domain name <vsco.club> was previously resolved to an English language website under the name “Glizzy Café”, containing food related postings, featuring photographs taken from the Complainant’s website, apparently offering downloads of the Complainant’s products, and also containing links to unrelated third party websites (the “vsco.club Website”). It was subsequently resolved to a Thai language website apparently promoting the Taco Bell Mexican food chain in Thailand.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain names are identical or confusingly similar to the Trade Mark; the Respondents have no rights or legitimate interests in respect of the disputed domain names; and the disputed domain names have been registered and are being used in bad faith.

B. Respondents

The Respondent Nice IT Services Group Inc., Customer Domain Admin did not reply to the Complainant's contentions.

The Respondent Aiden Salamon sent an informal email communications to the Center with respect to the disputed domain name <vsco.club> and contended that he is unrelated to the Respondent Nice IT Services Group Inc., Customer Domain Admin; that he does not own the disputed domain name <vsco.page>; and that he has ceased using the disputed domain name <vsco.club>.

6. Discussion and Findings

6.1. Preliminary Issue: Consolidation of Respondents

Section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)) provides as follows:

"Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario."

The Complainant contends that there should be consolidation of the Respondents in the present proceeding, for the following reasons:

- (i) the disputed domain names were initially registered through the same Registrar, NameCheap, Inc.;
- (ii) the domain name <glizzy.cafe> to which the disputed domain name <vsco.club> resolved is also registered through NameCheap, Inc.;
- (iii) the disputed domain names resolved to websites that were visually the same and were substantially identical in layout, each of which impersonated the Complainant's website;
- (iv) the disputed domain names resolved to websites using nearly identical text, for example, "change <https://vsco.co> to <https://vsco.page> for quick access"; and "change <https://vsco.co> to <https://glizzy.cafe> for quick downloads."; "VSCO Downloader & Viewer, download/view HD versions of VSCO pictures and videos" and "VSCO Downloader and VSCO Viewer! Download HD full size VSCO media and profile photos and videos"; and
- (v) when the Complainant first reported the disputed domain name <vsco.page> to the Registrar for trademark infringement on May 17, 2023, comments were posted on the Patreon account "VSCO.CLUB" available at "www.patreon.com/vscoclub", namely statements that there was "bad news" on May 18, 2023, a "vsco lawyer saga" on June 3, 2023, and a "new website" was created on June 20, 2023. The Respondent promoted the "VSCO.CLUB" Patreon account on the vsco.club Website.

The Respondent Aiden Salamon contended that:

- (i) he does not own or control the vsco.page Website, he does not know who owns that platform, nor did he ever have any business relationship with them;
- (ii) the websites for the disputed domain names are registered using different registrars, and hosting providers;
- (iii) the contact person on file for both of the websites are not only different, but also have different email addresses. Even when visiting both websites, they have different contact email addresses;
- (iv) if the vsco.club Website was operated by the same person as the vsco.page Website, why would the vsco.club Website shut down but the vsco.page Website continue to operate?;
- (v) after receiving a letter of demand from the Complainant's lawyers, he forwarded the disputed domain name <vsco.club> to a website promoting Taco Bell in Thailand.

For the above reasons put forward by the Complainant, the Panel concludes that there are sufficient grounds to support the conclusion that the disputed domain names are subject to common control and that consolidation would be fair and equitable to all Parties. In particular, the postings on the "VSCO.CLUB" Patreon account immediately after the Complainant's lawyers had reported the <vsco.page> to the Registrar cannot be coincidence and demonstrate common ownership.

In all the circumstances, the Panel does not find the email communications sent on behalf of the Respondent Aiden Salamon convincing.

Save where the context suggests otherwise, the Respondents will accordingly be referred to as the "Respondent" hereinafter.

6.2 Substantive Elements of the Policy

The Complainant must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has rights in the Trade Mark.

Disregarding the generic Top-Level Domains, each of the disputed domain names is identical to the Trade Mark.

The Panel therefore finds that the disputed domain names are identical to the Trade Mark.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to the respondent of the dispute, the respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name even if the respondent has acquired no trade mark or service mark rights; or

- (iii) the respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

The Complainant has not authorised, licensed, or permitted the Respondent to register or use the disputed domain names or to use the Trade Mark. The Panel finds on the record that there is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain names, and the burden of production is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that he has acquired any trade mark rights in respect of the disputed domain names or that the disputed domain names have been used in connection with a *bona fide* offering of goods or services. To the contrary, the disputed domain names have been used in respect of the vsco.page Website and the vsco.club Website, featuring photographs taken from the Complainant's website, apparently offering downloads of the Complainant's products, and also containing links to unrelated third party websites; and in addition the disputed domain name <vsco.club> has been resolved, for commercial gain, to a website promoting Taco Bell in Thailand.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain names; and there has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain names.

In addition, the nature of the disputed domain names (which is identical to the Complainant's Trade Mark) carries a high risk of implied affiliation with the Complainant (see [WIPO Overview 3.0](#), section 2.5.1).

The Panel finds that the Respondent has failed to produce any evidence to rebut the Complainant's *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Panel therefore finds that the Respondent lacks rights or legitimate interests in the disputed domain names.

C. Registered and Used in Bad Faith

In light of the manner of use of the disputed domain names highlighted in section 6.2.B above, the Panel concludes that the disputed domain names have been registered and used in bad faith pursuant to paragraph 4(b)(iv) of the Policy.

The evidence suggests that the Respondent has targeted the Complainant in registering the disputed domain names; and that there cannot be any actual or contemplated good faith use of the inherently misleading disputed domain names by the Respondent.

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 names <vsco.page> and <vsco.club> be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Dated: October 20, 2023