



URS | DETERMINATION
(URS Procedure 9, URS Rules 13)

URS DISPUTE NO. 5A2984DD

Determination DEFAULT

I. PARTIES

Complainant: VEOLIA ENVIRONNEMENT – VE (FR)
Complainant's authorized representative(s): IP TWINS SAS, Tristan Verna, (FR)

Respondent(s): Marika van Noordwyk (ZA)

II. THE DOMAIN NAME(S), REGISTRY OPERATOR AND REGISTRAR

Domain Name(s): VEOLIA.AFRICA
Registry Operator: ZA Central Registry NPC trading as Registry.Africa
Registrar: Diamatrix C.C.

III. PROCEDURAL HISTORY

Complaint submitted: 2020-07-09 18:24
Lock of the domain name(s): 2020-07-14 09:37
Notice of Complaint: 2020-07-14 15:55
Default Date: 2020-07-29 00:00
Notice of Default: 2020-07-29 22:13
Panel Appointed: 2020-07-29 22:19
Default Determination issued: 2020-07-30 18:27

IV. EXAMINER

Examiner's Name: Nathalie Dreyfus

The Examiner certifies that she has acted independently and impartially and to the best of her knowledge has no known conflict in serving as the Examiner in this administrative proceeding.

V. RELIEF SOUGHT

The Complainant requests that the domain name be suspended for the balance of the registration period.

The Respondent has not submitted a Response.

VI. STANDARD OF REVIEW

Clear and convincing evidence.

VII. DISCUSSIONS AND FINDINGS

A. Complainant:

Complainant claims to be the holder of the well-known VEOLIA trademark, protected worldwide in relation to water, waste and energy services. Complainant asserts that it sent a cease and desist letter to the registrar but did not receive any answer from Respondent. Complainant alleges that the disputed domain name is confusingly similar to its trademark since it reproduces in its entirety the VEOLIA sign, with the mere addition of the gTLD <.africa>.

Complainant further alleges that Respondent is not affiliated with or authorized by Complainant to register the disputed domain name and use its trademark. It also argues that Respondent has no prior right or legitimate interests in the disputed domain name. Complainant states that Respondent could not have ignored the VEOLIA trademark since it is well-known.

Furthermore, Complainant alleges that Respondent registered the disputed domain name despite the fact that it necessarily received a notification, since the VEOLIA trademark is registered in the Trademark Clearinghouse. It states that Respondent would have registered the disputed domain name for the purpose of selling it to Complainant.

Hence, Complainant claims that the fact the disputed domain name points to the registrar webpage can constitute bad faith, since bad faith does not require positive action by Respondent.

Moreover, Complainant does not consider the use by Respondent of the VEOLIA trademark in the disputed domain name to be a coincidence: it is neither generic nor descriptive. Complainant claims that the disputed domain name generates a likelihood of confusion and diverts Internet consumers from Complainant.

B. Respondent:

Respondent did not reply to Complainant's contentions and is therefore in default.

C. Procedural findings:

Having reviewed the communications records, the Examiner finds that MFSD has discharged its responsibility under the URS Procedure paragraphs 3 and 4 and URS Rules paragraph 4.

In absence of a response and in accordance with URS Procedure Paragraph 9(d) , the language of the Determination shall be English.

C. Findings of fact:

Complainant has trademark rights in "VEOLIA" sign since it owns the following trademarks :

- United States trademark VEOLIA number 3543738 in classes 16, 35, 37, 39, 40 and 42 ;
- International trademark VEOLIA No. 814678, of September 11, 2003, registered in classes 1, 6, 9, 11, 17, 19, 32, 35, 36, 37, 39, 40, 41 and 42 ;
- AIPO trademark VEOLIA number 53371, of August 31, 2006, registered in classes 35, 36, 37, 38, 39, 40, 41 and 42 and duly renewed since then ;
- AIPO trademark VEOLIA number 53372, of August 31, 2006, registered in classes 9, 11, 16 and 32 and duly renewed since then.

Respondent registered the disputed domain name <veolia.africa> on January 31, 2020.

E. Reasoning:



For the Complainant to succeed, it must establish that each of the three following conditions under Paragraph 1.2.6 of the URS Procedure are met:

- That the registered domain name is identical or confusingly similar to a word mark;
- That the Registrant has no legitimate right or interest to the domain name;
- That the domain was registered and is being used in bad faith.

Moreover, in accordance with Paragraph 12(f) of the URS Rules, *“if a Party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, these Rules, the URS Procedure or the Provider’s Supplemental Rules, the Examiner shall draw such inferences therefrom as it considers appropriate”*.

1. The domain name(s) is(are) identical or confusingly similar to a word mark

Complainant has shown it has trademark rights in “VEOLIA” sign at least through the US and AIPO trademarks. The international trademark cannot be taken into consideration in this proceeding considering that Complainant does not provide information as to the countries where it has been accepted for registration.

The domain name reproduces the trademark VEOLIA with the adjunction of the TLD <.africa>. Panel finds that the TLD <.africa> should be considered as a technical element and does not prevent any likelihood of confusion, and concludes the domain name is identical to the trademark VEOLIA.

Complainant provided a proof of registration of the trademark VEOLIA in the Trademark Clearinghouse and a proof that the Trademark Clearinghouse has validated the use of said trademark.

Hence, the Examiner finds that the requirements of Paragraph 1.2.6 (i) of the URS Procedure have been satisfied.

2. Respondent has no rights or legitimate interests to the domain name(s)

Complainant asserts that Respondent has no affiliation with the “VEOLIA” trademark, no authorization to use it and no right to register the disputed domain name.

Respondent did not respond to Complainant’s contentions and therefore has failed to demonstrate it has rights or legitimate interests.

In these circumstances and in the absence of contradictory evidence, the Examiner finds that the Respondent does not have rights or legitimate interests in the Disputed Domain Name and that the requirements of Paragraph 1.2.6 (ii) of the URS Procedure have been satisfied.

3. The domain name(s) was(were) registered and is(are) being used in bad faith

Complainant must demonstrate Respondent's bad faith, both at the time of registration and in use. The URS Procedure provides that the burden of proof shall be clear and convincing evidence (Article 8.2) and that the Complainant must present evidence that the disputed domain name was registered and is being used in bad faith.

Complainant argues that Respondent could not have ignored its rights in the VEOLIA sign when it registered the disputed domain name, since the said trademark is registered in the Trademark Clearinghouse. Indeed, Respondent is supposed to receive an alert at the time of registration.

Panel has no evidence of the notification that should have been sent to Respondent in order to assess the bad faith requirement at the time of registration. The Trademark Clearinghouse registration provided is valid from July 7, 2020 to May 22, 2021.

As the disputed domain name was registered on January 31, 2020, Panel cannot deduct from the Trademark Clearinghouse registration that a notification was sent to Respondent.

Furthermore, Panel cannot rely on Complainant's trademark rights to assess a potential registration in bad faith as Respondent is located in South Africa which is not part of the AIPO.

In such circumstances, Panel cannot conclude the disputed domain name was registered in bad faith.

Complainant has argued that there is no need for positive action from Respondent in order to prove the use in bad faith. Complainant states the mere failure to make an active use of the disputed domain name is indicative of bad faith registration and use.

However, as stated in Article 1.2.6.3 of the URS rules, Complainant has to demonstrate active use of Respondent to establish the use in bad faith.

The domain name redirects to a default page of the registrar, which does not constitute a proof of bad faith use under URS criteria. The URS Procedure provides indication on assessing bad faith use, all of them requiring actual evidence of bad faith use. Intended or potential use of the domain name are not proof of bad faith use under URS criteria.

Hence, Panel finds that Complainant has failed to demonstrate Respondent is using the disputed domain name in bad faith.

In these circumstances, the Examiner finds that the requirements of Paragraph 1.2.6 (iii) of the URS Procedure have not been satisfied.

4. Abusive Complaint

The Examiner finds that the Complaint was neither abusive nor contained material falsehoods.

VIII. DETERMINATION

A. Demonstration of URS elements

Not demonstrated

B. Complaint and remedy

Complaint: Rejects

Domain Name(s): VEOLIA.AFRICA unlocks and returns to the full control of the Registrant

C. Abuse of proceedings

Finding of abuse of proceedings: Not finds



D. Publication

Publication: Publish the Determination

SIGNATURE

Name: Nathalie
Surname: Dreyfus
Date: 2020-07-30