

URS DISPUTE

Dispute number: **7E129AAA**
Determination **FINAL**

I. PARTIES

Complainant: **VEOLIA ENVIRONNEMENT**
Olivier Poulin
21 rue la Boetie, 75008 Paris

Complainant's Authorized Repr.: **IP TWINS SAS**
Tristan Verna
78 rue de Turbigo, 75003 Paris

Respondent:

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

Domain name: **veolia.vip**
minds machines group limited
alibaba cloud computing ltd. d/b/a hichina (www.net.cn)

III. PROCEDURAL HISTORY

Complaint Submitted: 2019-10-30 17:08
Lock of the Domain name(s): 2019-11-01 14:43
Notice of Complaint: 2019-11-04 09:38
Response Submitted: 2019-11-29 07:34
Default Date: 2019-11-19 00:01
Notice of Default: 2019-11-19 10:47
Panel Appointed: 2019-11-19 11:12
Default Determination issued: 2019-11-21 05:31
Final Determination issued: 2019-12-04 11:12

IV. EXAMINER

Examiner's Name: **Paddy Tam**

The Examiner certifies that he/she has acted independently and impartially and to the best of his/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 requests that the domain name be unlocked and returned to its full control

The Respondent requests to make a finding that the Complaint was brought in abuse of the proceedings in accordance with the URS Procedure paragraphs 11.2 and/or 11.3

VI. STANDARD OF REVIEW

Clear and convincing evidence.

VII. DISCUSSIONS AND FINDINGS

A. Complainant

The Complainant is Veolia Environnement of Paris, France.

The Complainant is the owner of the trademark VEOLIA with several international and national trademark registrations worldwide, including:

- American trademark VEOLIA number 3543738 in classes 16, 35, 37, 39, 40 and 42;
- International trademark VEOLIA number 814678 in classes 1, 6, 9, 11, 17, 19, 32, 35, 36, 37, 39, 40, 41 and 42, protected in China;
- Community trademark VEOLIA number 0910325 in classes 9, 11, 16, 32, 35, 36, 37, 38, 39, 40, 41, 42 and 44.

The trademark VEOLIA has also been registered as SMD file for the Trademark Clearinghouse.

B. Respondent

The Respondent is Xu Xiao Dong of Zhe Jiang, China.

The Respondent is the owner of the trademark VEOLIA in China (Number 16039907, class 2).

The Respondent submitted a formal Response on November 29, 2019 which is after the Default Determination was published.

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

Language of the Final Determination: The Complaint was filed in English and the Response was filed in Chinese. Having considered the circumstances and in absence of an agreement between the parties, the Examiner decides that the language of the Final Determination be English.

Unsolicited additional submission: Given the rapid nature of this Procedure, unsolicited additional submission is not acceptable. However, either party shall have a right to seek a de novo appeal of the Determination based on the existing record within the URS proceeding. [URS 12.1]

Examination Standards and Burden of Proof: The burden of proof shall be clear and convincing evidence. [URS 8.2]

D. Findings of Fact

The Registration Date of the Disputed Domain Name is September 24, 2019.

The Registration Date of the VEOLIA trademark owned by the Respondent is February 28, 2016.

The Default Determination was published on November 21, 2019 and the Respondent filed the formal Response on November 29, 2019.

E. Reasoning

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

To satisfy URS 1.2.6.1, a Complainant needs to prove its rights in a word mark and the domain name is identical or confusingly similar to the word mark. It is an objective test.

In the present case, the Examiner satisfies that the Complainant is a well-known company who also owns valid trademark registrations for VEOLIA in different jurisdictions.

The Complainant claims that the Disputed Domain Name is confusingly similar to the VEOLIA trademark. In addition, the Examiner also finds that the ".vip" generic top-level domain ("gTLD") does not reduce the likelihood of confusion.

The Examiner does not accept the explanation provided by the Respondent that the class of its trademark differentiates the Disputed Domain Name and the trademark owned by the Complainant.

For the foregoing reasons, the Panel finds the Complainant has satisfied URS 1.2.6.1.

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

To satisfy URS 1.2.6.2, the Complainant must first make a prima facie case that the Respondent lacks rights and legitimate interests in the domain name, and the burden of proof then shifts to the Respondent to show it does have rights or legitimate interests.

The Complainant asserts that the Respondent is not a licensee or authorized user of the Complainant nor has been authorized by the Complainant to use the trademark VEOLIA in the Disputed Domain Name or in any other manner. The Complainant is not in possession of, nor aware of the existence of, any evidence demonstrating that the Respondent might have any prior rights or legitimate interest in the domain name or in the trademark VEOLIA.

The Examiner finds that the Complainant has established a prima facie case that the Respondent has no rights or legitimate interests in the Disputed Domain Name and the burden of proof shifts to the Respondent to show it does have rights or legitimate interests.

The Respondent responds that it has registered a trademark on VEOLIA with the Chinese Trademark Office on February 28, 2016 (Number 16039907, class 2). In addition, the Respondent further claims that Complainant does not have any products or goods under trademark class 2 so it does not lead to confusingly similar to the Complainant. Despite trademark class is not one of the considerations in assessing this element, the Examiner accepts that being a trademark owner of the term VEOLIA, Respondent has rights or legitimate interests to the domain name.

For the foregoing reasons, the Panel finds the Complainant failed to satisfy URS 1.2.6.2.

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

Due to the Respondent has successfully proved that it has rights or legitimate interests to the domain name and lack of clear and convincing evidence to prove that the domain name was registered and is being used in bad faith, it is not necessary for the Examiner to look at the third element.

4. Abusive Complaint

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

This Final Determination is made without prejudice to the parties to proceed with another administrative procedure or litigation process. The URS is not intended for use in any proceedings with genuine contestable issues, but only clear cases of cybersquatting and trademark abuse.

VIII. DETERMINATION

A. Demonstration of URS elements

After reviewing the entire record of the URS proceeding and the Parties submissions, the Examiner shall determine if the Complainant has or has not demonstrated all three elements of the URS by a standard of clear and convincing evidence

Demonstration of URS elements **Not demonstrated**

B. Response and remedy

The Examiner shall decide whether to accept or reject the Response, to change or uphold the Default Determination and, therefore, order the domain name(s) be suspended for the balance of the registration period or be unlocked and returned to the full control of the Registrant

Response **Accepts**

Default Determination **Changes**

Domain Name(s) **Unlocks and returns to the full control of the Registrant**

C. Abuse of proceeding

The Examiner may find that a Complaint is abusive or contains deliberate material falsehood

Finding of abuse of proceedings **Not finds**

Ban from utilization of URS

D. Suspension or Termination

If legal proceedings were initiated by a Party or the Parties prior to or during the URS proceeding, the Examiner may order the suspension or termination of the URS dispute or decide to proceed to the Determination

URS proceeding **Proceeds to the Determination**

E. Publication

Publication **Publish the Final Determination by replacing the Default Determination**

SIGNATURE

Name **Paddy**

Surname **Tam**