# Decision for dispute CAC-UDRP-101759

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| Case number | **CAC-UDRP-101759** |
| Time of filing | **2017-11-09 10:42:32** |
| Domain names | **ccleanerdown.com** |

## Case administrator

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| Name | **Aneta Jelenová (Case admin)** |

## Complainant

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| Organization | **Piriform Limited** |

## Complainant representative

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| Organization | **Rudolf Leška, advokát** |

## Respondent

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| Name | **tran Dai** |

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant provided evidence that he owns a domain name, ccleaner.com, and several word trademarks containing the name “ccleaner”, registered well before the Respondent registered the disputed domain name.

FACTUAL BACKGROUND

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

The Complainant and his rights

The Complainant provides to its customers one of the world most popular PC optimization software named “CCleaner” which protects their privacy and makes their computers faster and more secure. This award-winning optimization tool was released in 2004 and has been already downloaded by more than two billion users. The Complainant is well known on the market globally as a reliable company with long history which develops software tools.

Furthermore, it is the owner of, inter alia, the following trademarks all of which are registered also for computer software programs:

- registered EU word mark “CCLEANER” no. 007562002 for goods and services in the class 9 (software) with priority from January 30, 2009;

- registered EU word mark “CCLEANER” no. 015100803 for goods and services in the class 9 (software) and 42 (cloud computing featuring software for use in analysis of computer systems, optimizing and maintaining the performance of computers and operating systems, adding and removing software, and removing unused files…) with priority from February 11, 2016;

- registered UK word mark “CCLEANER” no. 2486623 for goods and services in the class 9 (computers software) with priority from May 2, 2008;

- registered U.S. word mark “CCLEANER” no. 5099044 for goods and services in the class 9 (computer software) with priority from February 25, 2016;

- registered U.S. word mark “CCLEANER” no. 3820254 for goods and services in the class 9 (computer software) with priority from March 6, 2009;

The Complainant distributes its optimization tool “CCleaner” i.a. via its website www.piriform.com (registered from February 26, 2005) where a customer can find product information and can directly download CCleaner software. Through this website, the Complainant also provide support to its customers in case they need any help regarding CCleaner and other software tools provided by the Complainant.

This dispute concerns the domain name <ccleanerdown.com> created on March 24, 2017. It follows that the domain name was registered with the knowledge of all older above mentioned trademarks of the Complainant. The website under the disputed domain name is being used by the Respondent to offer Complainant´s CCleaner software for download for free or for a certain amount of money depending on the version of the software. The printscreen of the disputed domain name was attached to the Complaint as an evidence.

The domain name <ccleanerdown.com> is confusingly similar to the Complainant’s family of CCLEANER trade and service marks (both statutory and common law) named above, the Respondent has no rights or legitimate interests in respect of the disputed domain name which has been registered and is being used in bad faith.

A. The domain name is confusingly similar to the Complainant´s trademarks

Word CCLEANER is at the core of Complainant’s family of marks. It consists of the capital letter “C” and a part “-CLEANER” which indicates something that serves for cleaning. The capital “C” is very characteristic for the Complainant as it is also used in his logo with the picture of a broom.

Due to high popularity of the Complainant and its software, considering the leadership position of the Complainant on the market with the optimization software, the word “CCLEANER” acquired a distinctive character. CCLEANER trademark is a globally known brand with good reputation.

Based on a large number of the users of the Complainant´s optimization tool, it can be assumed that the word CCLEANER is automatically associated with the Complainant by an ordinary customer and Internet user.

The domain name registered by the Respondent is confusingly similar to the Complainant´s registered trademarks.

It is well established that the specific top level of a domain such as “.com”, “.org”, “.tv” or “.net” does not affect the domain name for the purpose of determining the identity or similarity of domain name and a trademark (Magnum Piercing, Inc. v D. Mudjackers and Garwood S. Wilson, Sr. WIPO Case No. D-2000-1525; Hugo Boss A.G. v. Abilio Castro, WIPO case No. DTV2000-0001; Radale Inc. v. Cass Foster, WIPO case No. DBIZ2002-00148. Carlsberg A/S v. Brand Live television, WIPO

case NO. DTV-2008-0003).

The Complainant´s mark “CCLEANER” is entirely reproduced in the disputed domain name. From the perspective of the average customer “CCLEANER” is the distinctive part in the disputed domain name. It is the first dominant part to which an attention of the public is concentrated. An additional part “-down” is descriptive in nature meaning direction (could be associated with downloading). Therefore, this additional part is not able to change overall impression and does not eliminate the confusing similarity with the older trademarks of the Complainant and this is even more true in a situation where Complainant itself offer CCleaner software for download on his own website on which he uses his trademarks. The dispute domain name is therefore confusing and diverting internet users.

It is well accepted that where the relevant trademark is recognizable within the disputed domain name, the addition of descriptive terms would not prevent a finding of confusing similarity under the first element (see par. 1.8 of WIPO Overview 3.0). Similarly, numerous prior panels have held that the fact that a domain name wholly incorporates a complainant´s registered mark is sufficient to establish identity or confusing similarity for purposes of the Policy despite the addition of other words to such marks. (e.g. EAuto, L.L.C. v. EAuto Parts, WIPO Case no. D2000-0096; Caterpillar Inc. v. Off Road Equipment Parts, WIPO Case no. FA0095497).

On balance, there is high presumption that an ordinary consumer will believe that the disputed domain name registered by the Respondent is owned by the Complainant and will access the website only due to its misleading character assuming that the CCleaner tool is provided directly by the Complainant or with its authorisation.

Moreover, the Respondent contributes to the confusion of the public by placing the official well known logo of the Claimant on the top of every page presumably in order to abuse this very famous logo in his favour and by illegally offering Complainant’s copyrighted software CCleaner for download.

On the basis of the above mentioned there can be no question but that the disputed domain name is confusingly similar to the Complainant´s family of marks “CCLEANER” for purposes of the Policy.

B. The respondent has no right or legitimate interests in respect of the domain name

There does not exist any evidence that the Respondent has been commonly known within the consumers by the disputed domain name or by the distinctive part “CCLEANER” included in the disputed domain name before the beginning of this dispute nor owes any identical or similar trademark nor has ever used any identical or similar brand before the registration.

The Complainant did not grant any license or authorization to register or use the disputed domain name by the Respondent. The use of the Complainant’s logo on every page of the disputed website in the absence of Complainant’s authorization represents illegal unauthorized conduct of the Respondent.

Before the dispute the Respondent did not 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 because he has not provided the trademarked goods and service but has used the trademark to bait Internet users and then switch them to his competing software (Nikon, Inc. v Technilab, WIPO Case no. D2000-1774).

Panels have found that use of complainant’s logo along with the offer for download the complainant’s software in the absence of complainant’s authorization and in violation of Software End User License Agreement negate any potential justification. The panels also note that the use of a domain name for illegal activity can never confer rights or legitimate interests on a respondent (Avast Software s.r.o. v Victor Chernyshov, CAC Case no. 101568).

The Respondent was seeking to create a false impression of association with the Complainant, which does not constitute a bona fide offering of goods or services or a legitimate non-commercial or fair use of the disputed domain name (Carrefour v Whois Agent, Whois Privacy Protection Service Inc. / Andres Saavedra, WIPO Case no. D2016-0608).

C. The domain name has been registered and is being used in bad faith

There is no indication that the disputed domain name was registered and is used in bona fide. The Respondent was clearly aware of the registration and the use of the Complainant´s trademarks before the registration of the domain name as follows from the Respondent´s explicit references on his website to the logo and CCleaner software of the Complainant

Panels have consistently found that the mere registration of a domain name that is confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith (see par. 3.1.3 of WIPO Overview 3.0).

Furthermore, the disputed domain name is used solely for the illicit distribution of the Complainant's CCleaner software. The Complainant did not provide an authorization for such distribution of its software protected by the copyright. With regard to the End User License Agreement (the EULA) art. 1, the user of the CCleaner software cannot resale or further distribute the CCleaner software. Unauthorized distribution of CCleaner software through the website <ccleanerdown.com> therefore violates the EULA as well as applicable copyright laws.

Evidence: End User License Agreement.

To conclude, the disputed domain name is used by the Respondent to reach the Complainant´s customers and offer them the optimization tool of the Complainant for download as is offered by the Complainant on its website. This could suggest (incorrectly) that the Respondent operates as an affiliate or a partner of the Complainant or has Complainant´s authorization to offer the software. This is supported by the Respondent´s unlawful placement of Complainant´s logo and copyright notice "© 2017 Ccleaner" at the bottom of his website. Moreover, the quality of the offered CCleaner tool provided by the Respondent is not under the Complainant´s control and therefore software offered by the Respondent can very easily harm good reputation built by the Complainant for years.

The Policy indicates in para 4 (b) (iv) that bad faith registration and use can be found in respect of a disputed domain name, where a respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent´s website or other online location, by creating a likelihood of confusion with a complainant´s mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

The disputed domain name has no other purpose than misleadingly diverting the potential Complainant´s consumers to illegal distribution of the CCleaner software and to tarnish the trademarks at issue by creating the likelihood of confusion with the Complainant´s marks.

Furthermore, the use of a proxy server by the true owner hidden behind the Respondent is markedly corroborate a finding of bad fight (Carrefour v Whois Agent, Whois Privacy Protection Service Inc. / Andres Saavedra, WIPO Case no. D2016-0608).

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PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

Complainant principally makes the following assertions:

The Complainant is a software company based in Nicosia, Cyprus and with office in London, Great Britain. The Complainant is active in the cleaning and PC Management business for many years and has 2 billion product downloads.

The most important product is the computer cleaning tool named CCLEANER. Therefore the Complainant registrated the <ccleaner.com> domain name and ccleaner word trademarks as well (EM Nr. 007562002 and 015100803, both active, and further US trademarks).

The Respondent was in past a hidden domain holder who was represented by his Registry. He is based in Hanoi, Vietnam. On March 24th, 2017 the Respondent registered the disputed domain name. He uses the disputed domain for commercial purposes. He offers purchase of ”ccleaner” software. This information on <ccleanerdown.com> damages the reputation of Complainant's product and CCleaner trademarks.

The Complainant, represented by Rudolf Leška, legal representative based in Prague, filed a complaint against the Respondent claiming that the Respondent registered the disputed domain name without rights or legitimate interest and in bad faith. Therefore the registration should be declared abusive and the disputed domain name transferred to the Complainant.

Reference was made to following UDRP cases:

- Avast Software s.r.o. v Victor Chernyshov, CAC Case no. 101568
- Nikon, Inc. v Technilab, WIPO Case no. D2000-1774
- EAuto, L.L.C. v. EAuto Parts, WIPO Case no. D2000-0096;
- Caterpillar Inc. v. Off Road Equipment Parts, WIPO Case no. FA0095497)
- WIPO Case No. D-2000-1525 - Magnum Piercing, Inc. v D. Mudjackers and Garwood S. Wilson, Sr.;
- Hugo Boss A.G. v. Abilio Castro, WIPO case No. DTV2000-0001;
- Radale Inc. v. Cass Foster, WIPO case No. DBIZ2002-00148.
- Carlsberg A/S v. Brand Live television, WIPO case NO. DTV-2008-0003

The Respondent did not react to Complainant‘s contentions.

Therefore, he has not produced any arguments or provided any evidence of any actual or contemplated right or legitimate interest in the disputed domain name.

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

The Panel finds that the disputed domain name <ccleanerdown.com> is in the first and distinctive part of the domain identical to the word trademarks of the Complainant.

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Further he argues that the Respondent is not related to the Complainant.

It is necessary for the Complainant, if he is to succeed in this administrative proceeding, to prove each of the three elements referred to in paragraph 4(a) of the Policy, namely that:

(i) the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights; and
(ii) the Respondent has no rights or legitimate interest in respect of the disputed domain name; and
(iii) the disputed domain name has been registered and is being used in bad faith.

Moreover, the Complainant contends and provided evidence that the disputed domain name resolves to a website that offers CCleaner software in competition with the Complainant. It has to be taken in account that the Respondent's website used the Logo of the Complainant and did everything to look like an original Complainant's website. It looks like that competing use was prepared by the Respondent. The disputed domain is confusingly similar to Complainant's trademarks.

The Complainant further rightfully contends that the Respondent has not developed a legitimate use in respect of the disputed domain name. Competing use is not considered a bona fide offering of goods or services, nor a legitimate noncommercial or fair use, see WIPO Case D2017-0655 - NUOVARIVER.COM. Further the use of Complainants Logo "C" is illegal, without legitimate interest..

The Complainant contends that the Respondent was seeking to use the disputed domain name only to divert consumers to its own website and that the Respondent has no legitimate interests in respect of the disputed domain name.

In lack of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant also asserted and proved that the Respondent tried to attract internet users for commercial gain by creating a likelihood of confusion with the Complainant's trademarks. The Complainant rightfully contended that the disputed domain name is a composed domain name connecting the words "ccleaner" and "down". Though it is identical to the prior trademark "ccleaner" of the Complainant in the distinctive wordpart. The word "down" may have the meaning "download" or "out of service". Both meanings are describing and therefore not distinctive. Further "down" is more a suffix and therefore not as important as the first wordpart of the trademark. The Complainant also refers to the worldwide reputation of its CCLEANER trademarks.

This makes it highly unlikely that the Respondent had no knowledge of the Complainant's prior trademark rights at the time of registration of the disputed domain name. The Complainant rightfully contends that the Respondent has used the disputed domain name intentionally to attract visitors for commercial gain by creating confusion with the Complainant's trademarks, and that the Respondent has used the disputed domain name with that intention, namely in bad faith. Had the Respondent wanted to present a bona fide criticism site then it would have been well advised to have included some negative modifier in its domain name and to have restricted itself to objective and reasoned criticism on its website, see for example CAC Case No. 101394 - ALLIANZNOW.COM.

The Respondent registered the disputed domain name with full knowledge of Complainant's well known company name, trademarks and reputation. Where the Complainant's trademark is well known, see the following cases which stated bad faith, e.g. CAC Case No. 101524 - PIRELI.COM and WIPO Case D2016-0449 - MITTAL-INVESTMENT.COM.

Furthermore, the Respondent was using a hidden identity. But this argument is not to be discussed further because bad faith is evident, whatsoever.

Accordingly, the Panel finds that the disputed domain name was both registered and used in bad faith and that the Complaint succeeds under the third element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **CCLEANERDOWN.COM**: Transferred

## PANELLISTS

| Name | **Dr. jur. Harald von Herget** |
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DATE OF PANEL DECISION 2017-12-21

Publish the Decision