Decision for dispute CAC-UDRP-101760

Case number	**CAC-UDRP-101760**
Time of filing	**2017-12-22 10:02:16**
Domain names	**cccleaner.com**

Case administrator

Name	**Aneta Jelenová (Case admin)**

Complainant

Organization	**Piriform Limited**

Complainant representative

Organization	**Rudolf Leška, advokát**

Respondent

Name	**Pham Dinh Nhut**

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 is the owner of several trademark registrations for CCLEANER (word mark), including the following:

- European Union trademark registration No. 007562002, filed on January 30, 2009, in class 9;
- European Union trademark registration No. 015100803, filed on February 11, 2016, in classes 9 and 42;
- United Kingdom trademark registration No. 2486623, filed on May 2, 2008, in class 9;
- United States trademark registration No. 5099044, filed on February 25, 2016, in International classes 9 and 42;
- United States trademark registration No. 3820254, filed on March 6, 2009, in International class 9.

The Complainant is also the owner of the domain name <ccleaner.com>, registered on May 13, 2004.

FACTUAL BACKGROUND

The Complainant is a company active in the development of software tools, including one of the world's most popular optimization software for personal computers named CCLEANER, which protects users' privacy and makes their computers faster and more secure. This award-winning optimization tool was released in September 2003 and has been downloaded

more than two billion times since then.

The Complainant's CCLEANER optimization tool is distributed through the Complainant's website www.piriform.com, providing product information, a direct link to download the CCLEANER software as well as support to the Complainant's customers in connection with the Complainant's software tools. Moreover, the Complainant's CCLEANER software is also distributed through the Complainant's website www.ccleaner.com.

This disputed domain name <cccleaner.com> was registered on September 21, 2004. According to the historical WhoIs records of the disputed domain name submitted by the Complainant, the disputed domain name was registered since November 30, 2011 in the name of the proxy service which was indicated in the WhoIs records at the time of the filing of the Complaint and was removed upon the CAC's request for Registrar Verification. From January 15, 2010 to November 30, 2011, the disputed domain name was registered in the name of another privacy service located in the United States. Before January 15, 2010, the disputed domain name was formally owned by a company located in the United States whose name and contact details have no similarities with the Respondent in this case.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS

COMPLAINANT

The Complainant contends that the disputed domain name is confusingly similar to the Complainant's trademark since it incorporates the mark in its entirety with the sole addition of a letter "c" and the generic Top-Level domain suffix ".com", which are insufficient to change the overall impression and do not eliminate the confusing similarity with the Complainant's prior trademark.

The Complainant states that the Respondent has no rights or legitimate interests in respect of the disputed domain name because:

i) Due to the high popularity of the Complainant and its CCLEANER software, the CCLEANER trademark is a globally known brand with good reputation and automatically associated with the Complainant by ordinary customers and Internet users;
ii) The Complainant did not grant the Respondent any license or authorization to register or use the disputed domain name, and the Respondent's use of the Complainant's trademark on every page of the website at the disputed domain name in the absence of Complainant's authorization represents an illegal unauthorized conduct of the Respondent;
iii) 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 or a legitimate non-commercial or fair use of the disputed domain name, because it has used the disputed domain name to create a false impression of an association with the Complainant.

The Complainant submits that the Respondent registered and used the disputed domain name in bad faith for the following reasons:
i) Although the disputed domain name was registered in 2004, the Respondent acquired the disputed domain name after the registration of the Complainant's trademark CCLEANER;
ii) 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;
iii) The fact that the Respondent was clearly aware of the registration and the use of the Complainant´s trademarks before the registration of the disputed domain name follows from the Respondent´s explicit references to the CCLEANER software on the website to which the disputed domain name resolves;
iv) The disputed domain name is pointed to a website which consists solely of hyperlinks that have the appearance of enabling the download of the Complainant's CCLEANER software but after clicking on the website Internet users are transferred to different websites which are often automatically blocked by the antivirus system in an ordinary computer. As such, the disputed domain name is used by the Respondent to reach the Complainant´s customers and direct them to the

commercial websites of third parties or to unauthorized download of the Complainant´s software. The Complainant invokes the application of paragraph 4(b)(iv) of the Policy and concludes that the disputed domain name has no other purpose than misleadingly diverting the potential Complainant´s consumers to Internet websites of third parties and to tarnish the trademarks at issue by creating the likelihood of confusion with the Complainant´s marks;
v) The use of a proxy service to hide the registrant's contact details corroborates the Respondent's bad faith;
vi) The Respondent has been subject of several prior ADR proceedings concerning speculative purchases of domain names infringing upon others' trademarks.

RESPONDENT

The Respondent did not reply to the Complainant's contentions.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that 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 that 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.

The language of the Registration Agreement is Vietnamese. However, in view of the circumstances of the case, including the undisputed allegations of the Complainant that the website corresponding to the disputed domain name is entirely in English, and the fact that Respondent has been given a fair chance to object but has not done so, the Panel determines in accordance with paragraph 11(a) of the UDRP Rules that the language of the proceeding be English.

PRINCIPAL REASONS FOR THE DECISION

1. The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark CCLEANER, as it reproduces the trademark in its entirety, with the mere addition of the letter "c" and the Top-Level Domain ".com", which is usually disregarded in the assessment of confusing similarity. As stated in a number of prior cases decided under the Policy, a domain name which consists of an obvious or intentional misspelling of a trademark is considered to be confusingly similar to the relevant mark for purposes of the first element.

2. The Complainant stated that the Respondent is not affiliated with or authorized by the Complainant in any way. There is no evidence of the fact that the Respondent might have been commonly known by the disputed domain name or by a name corresponding to the disputed domain name. The Panel also notes that the Respondent's use of the disputed domain name in connection with a pay-per-click website with sponsored links expressly referring to the Complainant's trademark and products does not amount to a bona fide offering of goods or services or to a legitimate non-commercial or fair use.
3. According to the evidence submitted by the Complainant, which the Respondent has not challenged, the Respondent acquired the disputed domain name after the Complainant established trademark rights over the sign CCLEANER, based on the trademark registrations cited above and its use of the mark in connection with the Complainant's software tool since the end of 2003. In view of the substantial identity of the disputed domain name with the Complainant's trademark CCLEANER and its domain name <ccleaner.com>, the Panel finds that the Respondent was likely aware of the Complainant's trademark

at the time of registration. The Respondent's registration of a domain name encompassing a well-known trademark also suggests opportunistic bad faith.

In view of the current use of the disputed domain name described above, the Panel finds that the Respondent intentionally attempted to attract Internet users to its website for commercial gain, by causing a likelihood of confusion with the Complainant's trademark CCLEANER as to the source, sponsorship, affiliation or endorsement of its website according to paragraph 4(b)(iv) of the Policy.

Moreover, the Respondent's use of a privacy service and the circumstance that it has engaged in a pattern of domain name registrations corresponding to registered trademarks are further circumstances demonstrating the Respondent's bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **CCCLEANER.COM**: Transferred

PANELLISTS

Name	**Luca Barbero**

DATE OF PANEL DECISION 2018-02-19

Publish the Decision