Decision for dispute CAC-UDRP-101874

Case number	**CAC-UDRP-101874**
Time of filing	**2018-02-06 09:26:31**
Domain names	**viivendi.com**

Case administrator

Organization	**Iveta Špiclová (Czech Arbitration Court) (Case admin)**

Complainant

Organization	**VIVENDI**

Complainant representative

Organization	**Nameshield (Laurent Becker)**

Respondent

Name	**Mohammed Benyakhlef**

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several international trademark registrations for the term “VIVENDI” since 1998.

Likewise, the Complainant also owns several domain names incorporating the wording "VIVENDI", registered since 1997.

FACTUAL BACKGROUND

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

The Complainant – a French multinational mass media conglomerate – owns a portfolio of brands including the international trademark registration no. 706637 "VIVENDI", filed on December 22, 1998 and duly renewed, in several classes.

The Complainant also owns of a portfolio of domain names including the wording "VIVENDI" since 1997.

The Respondent has registered the disputed domain name on January 30, 2018, which, as of this day, is being used in connection with a parking page containing commercial links.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

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

1. IDENTICAL OR CONFUSING SIMILARITY

In particular, the Panel finds that the disputed domain name is confusingly similar to the trademark “VIVENDI” and to the relative domain name registered by the Complainant, which has proven to have prior rights since 1997.

With no argumentation at all provided by the disputed domain name holder, the Panel shall keep in mind the established WIPO case-law, according to which the addition of a single letter may not avoid confusing similarity with a Complainant’s mark. In this regard, the Panel would like to remind WIPO Case No. D2006-0650 (ACCOR v. I&M Raamatupidamise O/Accora Consult OÜ), in which it has been underlined how “the mere addition of the single letter […] which moreover makes no difference with the Complainant's trademarks and may also be interpreted to be a misspelled suffix of [the trademark]. Indeed the single letter […] is an obvious attempt to “typosquat” the Domain Name and is insufficient to avoid confusion”.

See along the same lines ACCOR v. Eduardo Marchiori Leite, WIPO Case No. D2004-0680, where the panel stated “Respondent's domain name <thalassar.com> incorporates Complainant's registered trademark THALASSA in its entirety, and adds only the letter “r” to the mark. The addition of the letter “r” adds nothing distinctive, and the emphasis remains on the name THALASSA to attract the attention of Internet users. The deletion or addition of one letter is an insignificant change for the purposes of the Policy paragraph 4(a)(i)”.

The Panel believes the above cases are particularly fitting for the present dispute.

2. NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

According to the information provided by the Complainant, the Respondent is not affiliated nor authorized by the Complainant in any way. Likewise, the Complainant neither licensed nor authorized the Respondent to make any use of its trademark “VIVENDI”, or to apply for registration of the disputed domain name on behalf of the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent. The Complainant also affirms that Mohammed Benyakhlef is not commonly known by the disputed domain name.

It is undeniable that the Complainant is only required to make out a prima facie case that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. Once such prima facie case is made, the Respondent carries

the burden of demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP.

Given all the above, the Panel accepts the contentions of the Complainant that the Respondent has no such rights or legitimate interests in the disputed domain name.

3. THE DISPUTED DOMAIN NAME HAS BEEN REGISTERED AND IS BEING USED IN BAD FAITH

The Panel finds that the Complainant successfully submitted prima facie evidence that the Respondent has made no use of, or demonstrable preparations to use, neither of the disputed domain name in connection with a bona fide offering of goods or services, nor is making a legitimate non-commercial or fair use of the disputed domain name.

As a matter of fact, the existence of pay per click advertising on the website is an indication of commercial gain. The Respondent has taken no positive steps, to the knowledge of the Panel, to displace the possible likelihood of confusion through the use of a name corresponding closely to a trademark held by and existing website operated by the Complainant (see, among others, WIPO Case no. D2013-1409).

In the absence of a response from the Respondent and given the reputation of the Complainant and its trademarks, the Panel infers that the Respondent had the Complainant's trademarks "VIVENDI" in mind when registering the disputed domain name. Consequently, the Panel believes that the same was registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **VIIVENDI.COM**: Transferred

PANELLISTS

Name	**Tommaso La Scala**

DATE OF PANEL DECISION 2018-03-06

Publish the Decision