Decision for dispute CAC-UDRP-101866

Case number	CAC-UDRP-101866
Time of filing	2018-02-01 09:58:23
Domain names	VIVENDISPORTS.COM

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	VIVENDI

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	Luce Khen

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings pending or decided between the same parties and relating to the Disputed Domain Name.

IDENTIFICATION OF RIGHTS

The Complainant is the registered owner of various trademark registrations containing the term “VIVENDI”, in particular international trademark no. 930935 registered on 22 September 2006 for goods and services in classes 9, 16, 28, 35, 36, 38, 41 and 42, where the term VIVENDI is registered in stylized letters and French wordmark no. 4374471 “Vivendi Sports”, registered on 26 January 2018 for goods and services in classes 18, 25, 28, 35, 36, 41 and 45.

Moreover, it owns and communicates on internet through various domain names including the wording “VIVENDI”, in particular the domain name <vivendi.com>, created on 12 November 1997.

FACTUAL BACKGROUND

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

1. The Complainant is a French multinational mass media conglomerate headquartered in Paris. The company has activities in music, television, film, video games, telecommunications, tickets and video hosting service. In addition, “Vivendi Sports” is a Vivendi Village unit whose aim is to design and organize sporting events on the African continent and - according to the

Complainant’s non-contested allegations - the terms “VIVENDI SPORTS” are related only to the Complainant.

2. The Disputed Domain Name was created on 15 January 2018 and - according to the Complainant’s non-contested allegations - it resolves to a parking page: the only content displayed on the website is a so called coming-soon page (“vivendisports.com is coming soon”).

3. On 23 January 2018, the Complainant’s authorized representative sent to the Respondent a cease and desist letter asking for the voluntary transfer of the Disputed Domain Name to the Complainant. The Respondent replied as following: “We were not aware of this issue. We talked with our attorney and found that it will be costly and take long time for both of us. So we are willing to transfer the domain at EUR 3500”.

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. The Panel finds that the Disputed Domain Name is confusingly similar to the Complainant’s international trademark no. 930935 “VIVENDI”. Many panels have found that the Disputed Domain Name is confusingly similar to a Complainant’s trademark where the Disputed Domain Name incorporates the Complainant’s trademark in its entirety. This is the case in the case at issue where the Complainant’s registered trademark “VIVENDI” is fully included in the Disputed Domain Name followed by the generic term "SPORTS", that is related to the Complainant’s area of commercial activity and is likely to increase the possibility of confusion amongst consumers.

2. In the absence of any Response, or any other information from the Respondent indicating the contrary, the Panel further holds that the Complainant successfully presented its prima facie case and that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

In particular, the Respondent is not affiliated with nor authorized by the Complainant in any way, and he is not related in any way to the Complainant’s business. In addition, the Respondent is not commonly known by the Disputed Domain Name. Finally, no true content is displayed on the website to which the Disputed Domain Name resolves. Such a coming soon-page can neither be considered as bona fide offering of goods or services nor a legitimate non-commercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

3. Finally, the Panel finds that the Disputed Domain Name has been registered and is being used in bad faith.

It is the view of this Panel that the Respondent has intentionally registered the Disputed Domain Name, which totally reproduces the Complainant's trademark "VIVENDI". By the time the Disputed Domain Name was registered, it is unlikely that the Respondent did not have knowledge of the Complainant's rights on its trademark.

In addition, the Panel considers that the fact that the Disputed Domain Name resolves to an inactive website does not prevent a finding of bad faith, taking into consideration not only the distinctiveness of the Complainant's trademark, but also the Respondent's failure to submit a Response or to provide any evidence of any actual or contemplated good faith use of the Disputed Domain Name, and finally the Respondent's reply to the Complainant's cease and desist letter offering to sell the Disputed Domain Name at a price in excess of the Respondent's costs related to the domain name.

On this regard, this Panel shares the view expressed in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0"), at point 3.3. "Can the "passive holding" or non-use of a domain name support a finding of bad faith?: "From the inception of the UDRP, panellists have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. While panellists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put".

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **VIVENDISPORTS.COM**: Transferred

PANELLISTS

Name	**Dr. Federica Togo**

DATE OF PANEL DECISION 2018-03-14

Publish the Decision