Decision for dispute CAC-UDRP-101875

Case number	CAC-UDRP-101875
Time of filing	2018-02-06 09:51:26
Domain names	vivendimediagroup.com

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	VIVENDI

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Organization	Phoenix Global Organization Incorporated

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 inter alia the owner of the International trademark registrations no. 930935 "vivendi", registered on September 9, 2006 for various goods and services in classes 9, 16, 28, 35, 36, 38, 41 and 42, and no. 706637 “VIVENDI”, registered on December 22, 1998 for various goods and services in classes 1, 6, 9, 11, 17, 19, 35 - 42 (hereinafter referred to as the "Trademarks").

FACTUAL BACKGROUND

The Complainant is a French multinational mass media conglomerate headquartered in Paris, founded in 1853. The company has activities in music, television, film, video games, telecommunications, tickets and video hosting service. The Complainant provides information on its goods and services online under numerous domain names, such as <vivendi.net> and <vivendi.com>.

The disputed domain name was registered on January 16, 2018 and is being used in connection with a placeholder website of the Respondent's registrar.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS

COMPLAINANT

The Complainant contends that the disputed domain name is confusingly similar to the Trademarks.

Furthermore, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. In this regard, the Complainant states that the Respondent is not commonly known by the disputed domain name, is not affiliated with nor authorized by the Complainant in any way, that the Complainant does not carry out any activity for, nor has any business with the Respondent, and that neither license nor authorization has been granted to the Respondent to make any use of the Trademark or apply for registration of the disputed domain name by the Complainant.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. It contends that the disputed domain name clearly targets the Complainant's activity, that the Respondent must have been aware of the Complainant at the time of registration of the disputed domain name and that the Respondent registered the disputed domain name precisely to capitalize on the Trademark. In addition, the Complainant contends that the registration of the disputed domain name prevents the Complainant from reflecting the Trademarks in a corresponding domain name, that the Respondent's non-use of the disputed domain name is in bad faith and that the Respondent tries to attract internet users for commercial gain by creating a likelihood of confusion with the Complainant.

RESPONDENT:

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

Under paragraph 4(a) of the Policy, the Complainant must prove that each of the following three elements is present:

(i) the domain name is identical or confusingly similar to the Complainant's trademark; and

(ii) the Respondent has no rights or legitimate interests in respect of the domain name; and

(iii) the domain name has been registered and is being used in bad faith.

1. The Panel accepts that the disputed domain name is confusingly similar to the Trademarks as it fully includes the

trademarks. It is well established that a domain name that wholly incorporates a trademark may be confusingly similar to such trademark for purposes of the Policy despite the addition of generic terms, such as "mediagroup".

2. The Complainant has substantiated that the Respondent has no rights or legitimate interests in the disputed domain name. The Panel finds that the Complainant has fulfilled its obligations under paragraph 4(a)(ii) of the Policy. The Respondent did not deny these assertions in any way and therefore failed to prove any rights or legitimate interests in the disputed domain name.

3.1 The Panel is satisfied that the Respondent registered the disputed domain name with full knowledge of the Complainant and its rights in the Trademarks as the Trademarks are highly distinctive and well-established.

3.2 Finally, the Panel accepts the Complainant's contentions that the disputed domain name has been used in bad faith under the principles of passive holding. It is consensus view that the lack of an active use of a domain name does not as such prevent a finding of bad faith under the Policy. In such cases, the panel must examine all the circumstances of the case to determine whether a respondent is acting in bad faith. Examples of circumstances that can indicate bad faith include a complainant having a well-known trademark, no response to the complaint, respondent’s concealment of identity and the impossibility of conceiving a good faith use of the domain name (cf Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003; Jupiters Limited v. Aaron Hall, WIPO Case No. D2000-0574; Ladbroke Group Plc v. Sonoma International LDC, WIPO Case No. D2002-0131).

The Panel is convinced that the Trademarks are highly distinctive and well-established. Furthermore, the Respondent failed to file a Response and therefore did not provide evidence of any actual or contemplated good faith use of the disputed domain name. In the view of the Panel, the facts of this case do not allow for any plausible actual or contemplated active use of the disputed domain name by the Respondent in good faith. The Panel is therefore convinced that, even though the disputed domain name has not yet been actively used, the Respondent’s non-use of the disputed domain name equals to use in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **VIVENDIMEDIAGROUP.COM**: Transferred

PANELLISTS

Name	**Peter Müller**

DATE OF PANEL DECISION 2018-03-21

Publish the Decision