Decision for dispute CAC-UDRP-102073

Case number	CAC-UDRP-102073
Time of filing	2018-06-29 13:59:03
Domain names	vivendiafrica.com

Case administrator

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

Complainant

Organization	VIVENDI

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	James H Park

OTHER LEGAL PROCEEDINGS

The Complainant has declared that there are no other legal proceedings, pending or decided, which relate to the disputed domain name. The Panel is not aware of any such proceedings.

IDENTIFICATION OF RIGHTS

The Complainant's relevant trade mark registrations include VIVENDI (Madrid system, 687855, first registered 23 February 1998 and subsequently renewed), in various classes including class 42 (media services).

FACTUAL BACKGROUND

The Complainant is an international media enterprise, active in fields such as music, television, and telecommunications. One of its subsidiaries is 'Universal Media Group', which has specific activities in the music field (including publishing, recording, and merchandising) carried on through a portfolio of labels. It is established in Paris, France. It operates a website at the domain name <VIVENDI.COM>, registered since 12 November 1997.

The Respondent is an individual with an address in South Gyeongsang, Korea (Republic). It registered the disputed domain name <VIVENDIAFRICA.COM> on 23 June 2018. The language of the registration agreement is English.

PARTIES CONTENTIONS

No administratively compliant response has been filed. The Respondent did not access the online platform. The Czech

Arbitration Court is unaware whether the written notice was received by the Respondent or not; an e-mail sent to the WHOIS contact e-mail address was successfully relayed.

The Complainant argued that the disputed domain name is confusingly similar to its international trademarks. It confirmed that the Respondent, who is not commonly known as the disputed domain name, is not related to the Complainant, nor does it carry out any activity for, have any business with, or is licensed or authorised by, the Complainant. Finally, it argued that its trademark is distinctive, and was registered and is being used in bad faith by the Respondent. It requested the transfer of the disputed domain name to it. The Complainant has also provided evidence of its extensive activities across the world, including specific activities in Africa.

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).

The disputed domain name differs from the trade mark in which the complaint has rights in two respects. The first is the generic TLD .COM, which in accordance with the established practice under the UDRP is disregarded. The second is the addition of the text AFRICA, which must be considered in terms of the potential for confusing similarity.

This is therefore a case where the disputed domain name consists of the trade mark and a geographic term. The Complainant submits that 'the addition of a geographic term is not sufficient to distinguish a domain name from a trademark', relying upon decisions including WIPO Case D2018-0807, "Dr. Martens" International Trading GmbH / "Dr. Maertens" Marketing GmbH v Wallin Fransson (in which a disputed domain name <DRMARTENSROMANIA.COM> was transferred to the Complainant in that case). The Panel notes this and indeed a wide range of decided cases of this nature; see WIPO Jurisprudential Overview 3.0 at para 1.8; see further, with the present Provider, Case 101953 G&P Net v zheng zhang ('The Panel notes that the disputed domain name incorporates the Complainant's PEUTEREY trade mark in its entirety. Moreover, the addition of the geographical term "Japan" reinforces the likelihood of confusion as it could be considered by internet users as being connected to the Complainant's presence in Japan') and Case 100877 Pirelli v Registration Private - Domains By Proxy, LLC, Luis Javier Pelayo, Llantas Supremas S.A. ('There is no question that the addition of “Mexico” in the contested domain name, a country in which the Complainant moreover has a presence, merely indicates a geographical association with the name and does not detract from the basis for the name’s protection').

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).

As noted in the above summary of the submission, the Complainant declares that the Respondent is not related to the Complainant, nor carries out any activity for or has any business with it. Moreover, there is no licence or authorisation present in favour of the Respondent.

It has not been possible for the Panel, in light of the non-participation of the Respondent, to identify any plausible rights or legitimate interests of the disputed domain name. The examination of the content at the disputed domain name merely confirms this finding, as the only available content is a set of pay-per-click links (in the form of a domain parking page) and an offer of sale, and this is not a case where the links solely relate to (for instance) a dictionary word (the links have, at the time of the Complaint and decision, encompassed links related to the term Africa but also to (e.g.) 'africa in music' and 'universal music'. There is no evidence that the disputed domain name has been used in respect of, for instance, critical analysis of the Complainant's products, nor that the Respondent acts as a local reseller or agent in any way.

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).

The Complainant cites past decisions under the UDRP where the trade mark VIVENDI has been found to be distinctive, such as CAC Case 101875, VIVENDI v Phoenix Global Organization Incorporated. The Panel accepts that it is likely that the Respondent was aware of the Complainant in registering this name; the text VIVENDI was first used, it appears, as the name of the Complainant during corporate reorganisation in the late 1990s, and has been used extensively across multiple jurisdictions on a continuous basis since. The text VIVENDI does also appear in the Latin language (perhaps most familiar to English speakers as a part of the phrase 'modus vivendi' (derived from vivendus, which is the future passive participle of the basic term vivo (to live)). It is not impossible - albeit highly unlikely, on the evidence presented - that the Respondent had an alternative meaning in mind. The Respondent, through non-participation in the present proceedings, has not provided any support for this remote possibility.

Furthermore, the presence of pay-per-click advertising on the website at the disputed domain name, including in a way that appears to relate to the Complainant, points towards bad faith. This is therefore a case where the example given in paragraph 4(b)(iv) of the UDRP is relevant ('by using the domain name, [the Respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the] web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the] web site or location or of a product or service on [the] web site or location.'). The Respondent has taken no positive steps, to the knowledge of the Panel, to displace the likelihood of confusion through the use of a name corresponding closely to a trademark held by operated by the Complainant.

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 reasons for the decision are as set out under the various components, above.

In the absence 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. On the other hand, it is clear that the Complainant has rights in respect of the trade mark VIVENDI, which it has shown to be distinctive, and that the disputed domain name is confusingly similar to this mark, with the only material difference between the addition of the geographic term AFRICA. In light of the evidence presented regarding the use of the disputed domain name by the Respondent in this case, and the legal findings as set out above, the Panel can find that the disputed domain name was registered and is being operated in bad faith. The requirements for the acceptance of a Complaint under paragraph 4 of the UDRP have therefore been met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **VIVENDIAFRICA.COM**: Transferred

PANELLISTS

Name	**Prof Daithi Mac Sithigh**

DATE OF PANEL DECISION 2018-07-30

Publish the Decision