Decision for dispute CAC-UDRP-102116

Case number	**CAC-UDRP-102116**
Time of filing	**2018-07-30 11:09:31**
Domain names	**viivendl.com**

Case administrator

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

Complainant

Organization	**VIVENDI**

Complainant representative

Organization	**Nameshield (Daria Baskova)**

Respondent

Name	**Eduardo Fernandez**

OTHER LEGAL PROCEEDINGS

This Panel is not aware of any other proceeding, pending or decided, which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several international trademark registrations for the wording “VIVENDI”, such as the international word trademark n°687855, registered and renewed since February 23, 1998 and the international figurative trademark n° 706637 registered and renewed since December 22, 1998.

The Complainant also owns and communicates on Internet through various domain names, such as the domain name <vivendi.com> registered on November 12, 1997.

The Complainant is a world wide operator and VIVENDI, besides being a registered well-known trademark in many jurisdictions, it is also an unregistered trademark. It is also a famous trademark and this is confirmed by the evidence filed by the Complainant as well as by many of the precedent CAC and WIPO decisions.

FACTUAL BACKGROUND

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

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.

The Complainant's total revenues amounted to € 12,444 million all over the world, € 4,396 million in France, € 2,836 million in the rest of the Europe, € 3,008 million in the United States and € 2,204 million in the rest of the world in 2017.

The disputed domain name was registered on July 24, 2018.

It resolves to the inactive webpage with a"403 Forbidden error".

The Complainant states that the disputed domain name is confusingly similar to its international trademarks VIVENDI®.

The Complainant claims that the addition of the letter "I" and the replacement of the letter "I" with the letter "L" at the end of the word in the disputed domain name is not sufficient to avoid the likelihood of confusion with the Complainant's trademarks.

The Respondent also based in USA, registered the disputed domain name on July 24, 2018. As staded by the Complainant "It resolves to the inactive webpage with a 403 Forbidden error".

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

According to paragraph 4(a) of the Policy the Complainant is required to prove each of the following three elements to obtain the transfer of the disputed domain name:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

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

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

I. RIGHTS OF THE COMPLAINANT AND IDENTITY OR CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAME TO THE COMPLAINANT'S MARK

The Complainant has indicated, as the chosen Jurisdiction, that one of the Registrar which is the US Jurisdiction, indeed also the Respondent is based in USA. However the Complainant has indicated, in order to prove the registration of the trademark VIVENDI, only two International Registrations that do not cover the US Jurisdiction. Luckily enough in the evidence submitted by the Complainant there are documents that prove that VIVENDi is strongly present in a number of international markets and among them also in the USA. The Panel checking the Complainant's rights have come across the International Registration No. 924751 for VIVENDI TELECOM that covers also USA.

Given that the Respondent has decided not to participate to the proceeding the evidenciary documents have to be accepted and considered by this Panel. In the light of the above premises, this Panel is satisfied that VIVENDI is an established trademark also in the USA (being the second world largest market of the French Company) and it is internationally well-known.

In assessing identity or confusing similarity the Panel finds that both the disputed domain name and the Complainant's mark consist of 7 letters and the only difference between them is the last one in the Respondent's domain name that is „L" instead of Iinversion of the letters "I" . It is easy to infer that a domain name consisting of a common, obvious, or intentional misspelling of a trademark is confusingly similar to the relevant mark for purposes of the first element of the UDRP Policy (so called typosquatting). Examples of such typos include (i) adjacent keyboard letters, (ii) substitution of similar-appearing characters as they are in the case at issue, (e.g., upper vs lower-case letters or numbers used to look like letters). Precedents can be found just in relation to the trademark VIVENDI in the following decisions: Cac Case No. 102029 <ARCELMITTAL.COM>; CAC Case No. 101999 <MYPEPSICOO.COM>; CAC Case No. 101918 <NOVARTIIS.COM>; CAC Case No. 101786 <DEISEL.COM> and last but not least CAC Case No. 101874 <VIIVENDI.COM>.

UDRP Panels also agree that the top-level domain (TLD), in this case <.COM>, is usually to be ignored for the purpose of determination of identity or confusing similarity between the disputed domain name and the Complainant's trademark as it is a technical requirement of registration (see paragraph 1.11.1 WIPO Overview 3.0).- CAC Case No. 101874, VIVENDI v. Mohammed Benyakhlef, <viivendi.com> ("…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.");

Hence, this Panel finds that the disputed domain name is confusingly similar to the Complainant's mark.

Accordingly, the Panel finds that the Complainant has proven the first element of the paragraph 4(a) of the Policy.

II. LACK OF RIGHTS OR LEGITIMATE INTERESTS

It is a consensus view of UDRP Panel that the Complainant shall establish a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name to shift the burden of proof to the Respondent (see paragraph 2.1 of the WIPO Overview 3.0: "[...] where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.")

The Panel finds that the Respondent lacks rights or legitimate interests in the disputed domain name for the following reasons.

The Complainant states that the Respondent has no relationship with the Complainant whatsoever; and has not received any authorisation or licence to use and adopt VIVENDI or VIVENDL or similar signs from the Complainant.

Furthermore there is no evidence that the Respondent has been commonly known by the disputed domain name or has acquired any rights in a trademark or trade name corresponding to the disputed domain name.

The disputed domain name points to an inactive website and it seems that it was just registered not to offer goods and services or a legitimate non-commercial or fair use activites but on the contrary to divert internet users from VIVENDI to his web page.

The Panel is satisfied that the Complainant has met the second requirement of the paragraph 4(a) of the Policy.

III. BAD FAITH REGISTRATION AND USE

This Panel finds that the disputed domain name has been registered and is being used in bad faith for the following cumulative circumstances. VIVENDI is a famous brand and this was constantly established by precedent decsions such as CAC Case No. 102073 <VIVENDIAFRICA.COM>; CAC Case No. 102062 <VIVENDI.OOO>; CAC Case 102048 <CAMPUSVIVENDI.COM>; CAC Case No. 101866 <VIVENDISPORT.COM> and CAC Case No. 101874 <VIIVENDI.COM>.

The Respondent has registered the disputed domain name, which is a mispelling (replacement of the last “I” with the last “L”) of the Complainant's prior trademark and, hence, confusingly similar to such mark. Given the distinctiveness and reputation of the Complainant's trademark and activity, it is inconceivable that the Respondent could have registered the disputed domain name without actual knowledge of the Complainant's rights in such well-known mark and the intention to exploit such reputation. See the above CAC cases plus WIPO Case No. D2011-0154, VIVENDI v. vivendi-mena.com Private Registrant/ Mr. Arshad Mohamed (“…the Panel finds that Respondent registered the disputed domain name <vivendi-mena.com> on August 24, 2010 in bad faith with knowledge of Complainant’s rights in it’s well-known trademark VIVENDI.”);

Considering the non use of the disputed domain name it is clear that the registration at issue had only the intention to obstacle the activities of the Complainant and divert for this Panel that the Respondent had the Complainant and divert the VIVENDI consumers to the disputed domain name.

The employment of an intentional misspelling during the registration by the Respondent corroborated by the use of the disputed domain name for infringing website content shows the intention of the Respondent to confuse Internet users seeking or expecting the Complainant. Thus, by registering and using the disputed domain name, the Respondent has intentionally attempted to attract, internet users and this is the best evidence that the Registrant was in bad faith at the moment of the regvistration and he is right now failing to present any kind of defence. The non sue of the disputed domain name as well as the decision of the Respondent not to join the proceeding are other supporting indications that the disputed domain name was registered and is still owned in bad faith by the Respondent itself.

Considering each and all of the above-mentioned circumstances, this Panel finds that the Complainant has discharged the burden of proof under paragraph 4(a)(iii) of the Policy and the disputed domain name has been 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. **VIIVENDL.COM**: Transferred

PANELLISTS

Name	**Massimo Cimoli**

DATE OF PANEL DECISION 2018-08-30

Publish the Decision