Decision for dispute CAC-UDRP-102276

Case number	CAC-UDRP-102276
Time of filing	2018-12-20 13:52:27
Domain names	vivendi.club

Case administrator

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

Complainant

Organization	VIVENDI

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	Premier Equestre

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

Complainant, VIVENDI, is the owner of several International trademark registrations such as:

- The International trademark VIVENDI No. 687855 registered and duly renewed since February 23, 1998, in classes 09, 35 36, 37, 38, 39, 40, 41, 42. This trademark is inter alia protected in the United Kingdom, where Respondent is located.

- The International semi figurative trademark VIVENDI No. 706637 registered and duly renewed since December 22, 1998, in classes 01, 06, 09, 11, 17, 19, 35, 36, 37, 38, 39, 40, 41, 42, also protected in several territories, including the United Kingdom.

Complainant also owns the domain name <vivendi.com> registered on November 11, 1997 and communicates through it.

FACTUAL BACKGROUND

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

Please see for instance WIPO Case No. D2018-0674, Caesars License Company, LLC v. Registration Private, Domains By Proxy, LLC / XiDong Feng (“The addition of the generic Top-Level Domain (“gTLD”) “.club” does not impact the analysis of

whether the disputed domain name is identical or confusingly similar to the Complainant's trade mark in this case.")

Please see for instance FORUM Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com> ("Here, the WHOIS information of record identifies Respondent as "Chad Moston / Elite Media Group." The Panel therefore finds under Policy4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy 4(c)(ii).")

Please see FORUM Case No. 1785596, King Ranch IP, LLC v. E Miller ("Additionally, Respondent makes no material demonstrable preparations to use the <kingranchbbq.com> domain name. The domain name simply links to a parking page. Holding a confusingly similar domain name inactively, as does Respondent, is not indicative of any bona fide offering of goods or services under Policy 4(c)(i), nor of a non-commercial or fair use under Policy 4(c)(iii).")

Please see CAC Case No. 101875, VIVENDI v. Phoenix Global Organization Incorporated ("The Panel is convinced that the Trademarks [VIVENDI] are highly distinctive and well-established.")

Please see FORUM Case No. FA 1786533, Guess IP Holder L.P. and Guess, Inc. v. xi long chen ("As noted previously, Complainant offers screenshots of the resolving webpage for the disputed domain name. The Panel finds that Respondent's inactive use of the disputed domain name indicates bad faith registration and use per Policy 4(a)(iii).")

PARTIES CONTENTIONS

Complainant contends that the disputed domain name should be transferred because each of the three elements required in paragraph 4(a) of the Policy has been established.

Firstly, Complainant asserts that the disputed domain name is confusingly similar to its registered trademarks.

Secondly, Complainant claims that Respondent has no rights or legitimate interests in the disputed domain name, and that it does not know Respondent. Complainant asserts that Respondent does not carry out any activity on behalf of Complainant, nor does it have any business association with Respondent. Complainant further claims that no license or authorization has been granted to Respondent to make any use of Complainant's trademarks VIVENDI, or to apply for registration of the disputed domain name.

Furthermore, Complainant alleges that the disputed domain name is identical to its distinctive trademarks VIVENDI known worldwide. Furthermore, Complainant refers to a CAC decision which acknowledged Complainant's rights in the sign "VIVENDI" (see CAC Case No.101875, VIVENDI v. Phoenix Global Organization Incorporated).

Finally, Complainant provides a screenshot of the disputed domain name dated December 17, 2018 which shows that the disputed domain name redirects to a parking page featuring several pay-per-click links. Complainant states that such use of the disputed domain name does not characterize a bona fide offering of goods and services, nor is it a legitimate noncommercial or fair use. Complainant also argues that Respondent does not actively use the disputed domain name which is an evidence of bad faith.

Respondent did not reply to Complainant's contentions and is therefore in default.

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 that the Respondent has 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

A. The disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights

Complainant has demonstrated that it is the owner of the International trademark VIVENDI No. 687855 registered and duly renewed since February 23, 1998 in classes 09, 35 36, 37, 38, 39, 40, 41, and 42.

Complainant has also shown that it is the owner of the International trademark VIVENDI No. 706637 registered and duly renewed since December 2, 1998 in classes 01, 06, 09, 11, 17, 19, 35, 36, 37, 38, 39, 40, 41, and 42.

Both trademarks are protected in the United Kingdom, country of Respondent, among other territories. Furthermore, they both predate the registration of disputed domain name by more than twenty years.

Complainant has also proven that it owns the domain name <vivendi.com> registered on November 11, 1997.

The disputed domain name fully reproduces Complainant's trademark VIVENDI.

The addition of a generic Top-Level Domain (gTLD) in a domain name, such as "club", is a technical requirement. Therefore, such an element must be disregarded when assessing whether a domain name is identical or confusingly similar to a trademark (see Philipp Plein v. Leno Trade Company, CAC case No. 102184).

Consequently, the Panel finds that the disputed domain name is identical to Complainant's trademarks "VIVENDI" and that Complainant has met its burden of showing that the disputed domain name is confusingly similar or identical to the marks on which Complainant has valid rights, within the meaning of paragraph 4(a)(i) of the Policy.

B. Respondent has no Rights or Legitimate Interests

It is sufficient that Complainant establishes a prima facie case that Respondent lacks legitimate rights or legitimate interests in the disputed domain name in order to shift the burden of proof to Respondent (see e.g. Otokar Otomotiv ve Savunma Sanavi A.S. v. Gbenga Osoba, ADR Case No. 07202).

Complainant claims that Respondent has no rights or legitimate interests in the disputed domain name. Complainant further asserts that Respondent does not carry out any activity for Complainant, nor does it have any business with Complainant. Complainant claims that no license or authorization were granted to Respondent to make any use of Complainant's trademarks VIVENDI, nor to apply for registration of the disputed domain name.

In addition, the disputed domain name redirects to a parking page featuring several pay-per-click links. Complainant states that such use of the disputed domain name does not constitute a bona fide offering of goods and services nor is it a legitimate non-commercial or fair use of the disputed domain name. The Panel agrees.

Therefore, the Panel finds that Complainant has shown a prima face case that the Respondent lacks rights or legitimate interests in the disputed domain name.

For this reason, the burden of proof shifts from Complainant to Respondent, who has not answered the complaint. In this

respect, it should be noted that “Lack of any response is another element against Respondent’s legitimate use or interest in the disputed domain name” (See e.g. Loro Piana S.p.A. v. Robert Remy, CAC Case No. 101595).

Complainant has shown to the satisfaction of the Panel that the Respondent has no rights or legitimate interests in the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

C. Respondent registered and used the domain name in bad faith

The disputed domain name reproduces the “VIVENDI” trademark, which has been recognized as well-known by previous Panels: “The Panel is convinced that the Trademarks [VIVENDI] are highly distinctive and well-established” (see CAC Case No.101875, VIVENDI v. Phoenix Global Organization Incorporated).

Besides, the evidence on record shows that the disputed domain name redirects to a parking page with commercial links. Respondent’s use of the disputed domain name for a parking page is in itself sufficient to support a finding of bad faith use as Respondent is intentionally attempting to attract Internet users to its website for commercial gain, and is thus creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of Respondent’s website, in accordance with paragraph 4(b)(iv) of the Policy.

Previous Panels have considered that such use of a domain name demonstrates “some knowledge and an attempt to leverage the reputation of the trademark” (CAC Case No. 102233, Geox S.p.a. v. Jeongyong Cho).

Therefore, in view of the above, the Panel finds that Respondent registered the disputed domain name with Complainant’s rights in mind and that it did so with the intention of taking advantage of such rights, as shown by the subsequent use of the disputed domain name.

The Panel concludes that the Complainant has established all three elements required under paragraph 4(a) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **VIVENDI.CLUB**: Transferred

PANELLISTS

Name	**Nathalie Dreyfus**

DATE OF PANEL DECISION 2019-01-29

Publish the Decision