Decision for dispute CAC-UDRP-102287

Case number	**CAC-UDRP-102287**
Time of filing	**2019-01-07 12:05:06**
Domain names	**vivendicbd.com**

Case administrator

Name	**Šárka Glasslová (Case admin)**

Complainant

Organization	**VIVENDI**

Complainant representative

Organization	**Nameshield (Enora Millocheau)**

Respondent

Name	**jd mcdaniels**

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 the owner of several international trademark registrations “VIVENDI”, such as the international trademark VIVENDI No. 687855, registered on February 23, 1998 and the international trademark VIVENDI No. 706637 registered on December 22, 1998.

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

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 Complainant has activities in music, television, film, video games, telecommunications, tickets and video hosting service.

In 2017, the Complainant’s revenues amounted to € 12,444 million all over the world, € 4,396 million in France, € 2,836

million in the rest of Europe, € 3,008 million in the United States and € 2,204 million in the rest of the world.

The Complainant is the owner of several international trademark registrations “VIVENDI”, such as the international trademark VIVENDI No. 687855, registered and renewed since February 23, 1998 and the international trademark VIVENDI No. 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 disputed domain name <vivendicbd.com> was registered on December 20, 2018. It redirects to a registrar parking page.

Complainant states that the disputed domain name is confusingly similar to its international trademarks VIVENDI, because the Complainant’s trademark is included in its entirety.

The mere addition of the letters “cbd” which could in view of Complainant be interpreted as indicating a location or some other abbreviation, does not detract from a finding of confusing similarity in the circumstances. Complainant states that its trademark is immediately recognisable and prominent in the disputed domain name, and its combination with “cbd” does not give it a new or different meaning, or result in the formation of some other term with its own distinct and inherent significance.

The mere addition of the letters “cbd” which could in view of Complainant be interpreted as indicating a location or some other abbreviation, does not detract from a finding of confusing similarity in the circumstances. Complainant states that its trademark is immediately recognisable and prominent in the Disputed domain name, and its combination with “cbd” does not give it a new or different meaning, or result in the formation of some other term with its own distinct and inherent significance.

Moreover, the Complainant contends that the addition of the generic Top-Level Domain suffix “.COM” does not change the overall impression of the designation as being connected to the trademark VIVENDI. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated.

The Complainant furthermore asserts that the Respondent is not known as the disputed domain name, but as “jd mcdaniels”.

The Respondent is not known by the Complainant. The Complainant contends that the Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Neither license nor authorization has been granted to the Respondent to make any use of the Complainant’s trademarks VIVENDI, or apply for registration of the disputed domain name <vivendicbd.com>.

The disputed domain name redirects to a registrar parking page. The Complainant contends that Respondent did not make any use of disputed domain name since its registration, and it confirms that Respondent has no demonstrable plan to use the disputed domain name. It demonstrates a lack of legitimate interests in respect of the disputed domain name.

The Complainant contends furthermore that the Respondent has registered and is using the disputed domain name in bad faith.

The Complainant contends that the disputed domain name <vivendicbd.com> is confusingly similar to its distinctive and worldwide known trademarks VIVENDI.

Given the distinctiveness of the Complainant's trademarks and reputation, it is reasonable to infer that the Respondent has

registered the disputed domain name with full knowledge of the Complainant's trademarks.

Moreover, the disputed domain name redirects to a Registrar parking page. The Complainant contends that the Respondent fails to make an active use of the disputed domain name. Failure to make an active use of a disputed domain name is in the view of the Complainant evidence of bad faith.

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

A. Confusing Similarity

The Complainant has rights in the mark by virtue of its registered trademark VIVENDI.

The disputed domain name incorporates the whole of the Complainant’s VIVENDI trademark, and adds the letters or term “CBD" at the end of the disputed domain name and the gTLD suffix “.com".

Many UDRP panels have found that a disputed domain name is confusingly similar to a complainant’s trademark where the disputed domain name incorporates the complainant’s trademark in its entirety (e.g.Volkswagen AG v. Nowack Auto und Sport - Oliver Nowack, WIPO Case No. D2015-0070; Chloé S.A.S. v. DVLPMNT Marketing, Inc., WIPO Case No. 2014-0039). The Panel shares this view in the case at issue where the Complainant’s registered trademark VIVENDI is fully included in the disputed domain name and combined with the addition of the letters or the term "CBS", and the gTLD suffix “.com”.

The Panel agrees with the Complainant that the addition of the letters or term "CBD" without space or hyphen at the end of the disputed domain name and the gTLD “.com” is not sufficient to escape the finding that the disputed domain name is confusingly similar to the Complainant's trademark and does not change the overall impression of the designation as being connected to the trademark VIVENDI, as the trademark VIVENDI at the more important beginning of the disputed domain name is the only distinctive part of the disputed domain name.

It is the consensus practice of past UDRP panels that TLDs, in this case ""“.com"”", should be disregarded when comparing domain names with trademarks.

Therefore the Panel finds, that the disputed domain name is confusingly similar to the Complainant’s trademark VIVENDI.

B. Rights or Legitimate Interests

When a respondent remains completely silent in the face of a prima facie case that it lacks any rights or legitimate interests in respect of a domain name, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy. Here the Complainant has presented an abundance of evidence to show that the Respondent has no plausible right or legitimate interest in respect of the disputed domain name and the Panel so finds.

C. Bad Faith

The Panel believes that Respondent registered the disputed domain name with knowledge of Complainant's rights. The Disputed domain name was registered more than two decades after the registration of the trademarks and the domain names of the Complainant and Complainant used it widely since then.

Past panels have confirmed the notoriety of the trademark VIVENDI: “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).

Given the distinctiveness of the Complainant's trademarks and reputation, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark.

Moreover, the Respondent is not making an active use of the disputed domain name. The disputed domain name was registered on December 20, 2018, and redirects to a registrar parking page.

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.

On these grounds, the Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith.

For the reasons stated above, it is the decision of this Panel that the Complainant has satisfied all three elements of 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. **VIVENDICBD.COM**: Transferred

PANELLISTS

Name	**Jan Christian Schnedler, LL.M.**

DATE OF PANEL DECISION 2019-02-04

Publish the Decision