Decision for dispute CAC-UDRP-102284

Case number	CAC-UDRP-102284
Time of filing	2019-01-02 09:34:11
Domain names	kvivendi.com

Case administrator

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

Complainant

Organization	VIVENDI

Complainant representative

Organization	Nameshield (laurent Becker)

Respondent

Organization	K. Vivendi, LLC

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

In these proceedings, the Complainant relies on the following trademarks:

- VIVENDI (stylized), International Registration No. 706637, filed on December 22, 1998, in the name of VIVENDI UNIVERSAL (a parent company of the Complainant).

- VIVENDI (stylized), International Registration No. 930935, filed on September 22, 2006, in the name of VIVENDI (the Complainant).

It is worth noting that, the Complainant owns many similar trademarks in various countries (including in the U.S.A.), which have not been cited in these proceedings.

FACTUAL BACKGROUND

The Complainant is a French multinational mass media conglomerate, with headquarters in France. It has extensive activities in the entertainment business all around the world, including in the U.S.A.

The Complainant owns a large-sized portfolio of trademarks including the wording "VIVENDI", among which a French registration dating back to 1990. It also owns a multitude of related domain names, like <vivendi.com> since November 12, 1997.

The Respondent is a Florida-based company that assists small businesses and startups to figure out sustainable solutions for their business operations, as mentioned on their website www.kvivendillc.com.

The disputed domain name <kvivendi.com> was registered on December 18, 2018 by the Respondent.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends, in the sense of paragraph 4(a) of the Policy, that the disputed domain name is confusingly similar to its VIVENDI trademark; that the Respondent lacks rights or legitimate interests in the disputed domain name, and; that the disputed domain name has been registered and is being used in bad faith.

For all these reasons, the Complainant requests that the disputed domain name is transferred to the Complainant.

RESPONDENT:

The Respondent contends, on the contrary, that the Complainant does not have sufficient trademark rights on the disputed domain name; that the Respondent has rights and legitimate interests to the disputed domain name, and; that the Respondent has registered and used the disputed domain name in good faith. The Respondent is also claiming that the Complainant has shown behavior consistent with reverse domain name hijacking.

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).

While the international trademarks cited by the Complainant do not cover the United States of America, the Panel has used its discretionary power granted by Rule 10 of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules").

10 General Powers of the Panel

(a) The Panel shall conduct the administrative proceeding in such manner as it considers appropriate in accordance with the Policy and these Rules, in order to look for additional similar trademarks of the Complainant that eventually offer him protection in the U.S.A.

Indeed, the Panel has traced three US registrations for VIVENDI ENTERTAINMENT and two international registrations designating the US for VIVENDI, A WORLD OF MUSIC and VIVENDI, A WORLD OF IMAGE. Further, the existence of an active subsidiary of the Complainant in the U.S.A., together with its online presence, support the finding that the Complainant has trademark rights in the U.S.A.

On this basis, the Panel notes that the disputed domain name consists of the Complainant's whole trademark (VIVENDI), preceded by the single letter “K”.

As far as the gTLD ".com" is concerned, it is generally recognized that top level domains do not have any bearing in the assessment of identity or confusing similarity, according to paragraph 4(a)(i) of the Policy.

Hence, the Panel is satisfied that the first requirement under the Policy is met.

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).

Since proving a negative fact is almost impossible, panelists in UDRP proceedings have generally agreed that it is sufficient for the complainant to establish a prima facie case that the respondent lacks rights or legitimate interests in a domain name to shift the burden of proof to the respondent.

In the case at issue, the Complainant argued that it had never authorised the Respondent to register the VIVENDI trademark in a domain name, and that it had never licensed its trademark to the Respondent. For the Complainant, the Respondent is unknown and the disputed domain name resolved into an inactive website, in the sense that the Respondent has not demonstrated any use of the disputed domain name in connection with a bona fide offering of goods and services or a legitimate non-commercial or fair use of the disputed domain name.

On its part, the Respondent argued that it was active in a different field of business than the Complainant and that it only conducted business in the U.S.A., at regional level, where it is commonly known by the disputed domain name. The Respondent further argued that it registered its business regionally, as well as the disputed domain name with Google, which should be proof of its legitimate rights.

The Panel disagrees with the arguments of the Respondent, as having nothing substantial to do with any alleged legitimate interests of his. In fact, business name and domain name registrations both occur on separate registers from trademarks, without any cross-checking taking place with trademark registers. On the contrary, there are many examples of unfair practice from businesses, who try circumventing trademark rights by registering company / business / trade names.

Further, while the Respondent claims that it is only conducting business locally and that it has no interest to act elsewhere, it has not registered a national “.us” domain name. Instead, the Respondent has chosen to file and hereby fight for the disputed domain name <.com>, which is international.

On another note, the Respondent seems to be perfectly conducting its business through another website bearing its full company name <kvivendillc.com>, without the need of the disputed domain name.

In view of the foregoing, the Panel is satisfied that the Complainant has established a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name. The Respondent has failed to reverse this finding.

Therefore, the Panel is satisfied that also the second requirement under the Policy is met.

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 case of the Complainant is rather weak with regard to bad faith, but the Respondent has on its part given some shallow arguments, which have convinced the Panel of the Complainant’s rights.

As far as registration in bad faith is concerned, given the reputation of the Complainant's trademark, even in the U.S.A. where the Respondent is based, and the fact that the disputed domain name fully incorporates this trademark, it can be inferred that, at the time of the registration of the disputed domain name, the Respondent was most probably aware of the Complainant's trademark, despite the fact that the Respondent is not in the same field of business as the Complainant.

With respect to use in bad faith, the Complainant has alleged and the Respondent has not refuted this, that the disputed domain name resolves to an inactive website. This fact is to be combined with the full incorporation of the Complainant's reputable trademark in the disputed domain name. For this Panel, same as for many previous panels, such behaviour clearly amounts to use in bad faith. Therefore, it is impossible to conceive any plausible active use of the disputed domain name that would be legitimate.

Further, the Respondent asserts that it is honestly conducting its business in Florida. While the Panel has no reason to doubt this, the problem lies with the fact that the disputed domain name is an international one (.com) and not a local one (.us). Hence, the trademark rights of the Complainant are violated through the continued bad faith use of the disputed domain name.

The Panel cannot accept the Respondent's claim that the Complainant should have purchased all similar domain names (A. Vivendi, B. Vivendi, C. Vivendi, etc.), if he wanted to avoid cases like the present one. The Complainant's registered trademark rights provide sufficient protection in this respect to the Complainant.

The Panel also cannot accept the Respondent's position that "vivendi" is a common Latin word. If the Respondent meant that the Complainant's trademark has low distinctiveness, he could have said so, with the appropriate argumentation (not necessarily in legal terms). However, the Respondent's statement, as it currently stands, merely shows that the Respondent has no respect for registered trademark rights.

Therefore, the Panel finds it clear that the disputed domain name was used in bad faith.

For all circumstances mentioned above, the Panel is satisfied that also the third requirement under the Policy is satisfied.

Reverse Domain Name Hijacking

Paragraph 15(e) of the Rules provides that, if "after considering the submissions the panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding".

In this case, and taking into account that a finding of Reverse Domain Name Hijacking ultimately hinges on the conduct of the Complainant, the Panel in this case has found no evidence of harassment or attempt to mislead the Panel that would justify such finding.

Therefore, the Panel does not find that the Complainant attempted Reverse Domain Name Hijacking within the meaning 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

The disputed domain name wholly incorporates the Complainant's trademark, preceded by a single letter. The disputed domain name is therefore confusingly similar to the Complainant's trademark.

The Respondent was not authorised to include the Complainant's trademark in the disputed domain name, and the Complainant never licensed its trademarks to the Respondent. The Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services, or a legitimate non-commercial or fair use.

The Respondent registered the disputed domain name with knowledge of the Complainant's well-known trademark. His non-use of the disputed domain name is in bad faith as there is no conceivable use of the disputed domain name that could amount to a legitimate use.

Finally, the Panel does not find that the Complainant attempted Reverse Domain Name Hijacking within the meaning of the Policy.

As a general remark, the Panel would just like to point out that, evidence provided by the Complainant has not always been updated or exact, but this fact has not influenced the decision of the Panel in any way, as the Panel has also verified the various arguments through its own independent research, according to the UDRP Rules.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **KVIVENDI.COM**: Transferred

PANELLISTS

Name	**Sozos-Christos Theodoulou**

DATE OF PANEL DECISION 2019-02-19

Publish the Decision