Decision for dispute CAC-UDRP-102555

Case number	**CAC-UDRP-102555**
Time of filing	**2019-07-02 10:40:13**
Domain names	**wwwccleaner.com**

Case administrator

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

Complainant

Organization	**Piriform Software Limited**

Complainant representative

Organization	**Rudolf Leška, advokát**

Respondent

Organization	**Domain Protection LLC**

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several trademarks, most of which are word trademarks and incorporate the term “CCLEANER” (hereafter the "CCLEANER trademark" or the "CCLEANER trademarks"). Said trademarks are registered in several countries around the world, including in the E.U., the U.K., and the U.S.:

– registered EU word mark “CCLEANER” no. 007562002 for goods and services in class 9 (software) with application date January 30, 2009 and registration date November 10, 2009;

– registered EU word mark “CCLEANER” no. 015100803 for goods and services in class 9 (software) and 42 (cloud computing featuring software for use in analysis of computer systems, optimizing and maintaining the performance of computers and operating systems, adding and removing software, and removing unused files, etc.) with application date February 11, 2016 and registration date May 31, 2016;

– registered UK word mark “CCLEANER” no. 2486623 for goods and services in the class 9 (computer software) with application date May 2, 2008 and registration date January 2, 2009;

– registered U.S. word mark “CCLEANER” no. 5099044 for goods and services in the class 9 (computer software) and 42 (cloud computing featuring software for use in analysis of computer systems, optimizing and maintaining the performance of computers and operating systems, adding and removing software, and removing unused files, etc.) with application date February 11, 2016 and registration date December 13, 2016;

– registered U.S. word mark “CCLEANER” no. 3820254 for goods and services in the class 9 (computer software) with application date January 30, 2009 and registration date July 20, 2010.

FACTUAL BACKGROUND

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

The Complainant is the provider of a computer optimization software named “CCleaner”. CCleaner protects the customers’ privacy and makes their computers faster and more secure. The tool was released in 2004, and the Complainant claims that it has been downloaded more than two and a half billion times. The Complainant also claims to be well-known on the global market as a reliable company with a long history, developing software tools as well as providing technology and services for individuals and businesses. The Complainant distributes its optimization tool “CCleaner” via its websites www.piriform.com and www.ccleaner.com.

The Complainant claims to own several other domains including the words Piriform or Ccleaner, such as <CCLEANERCLOUD.COM>, <CCLEANER.CLOUD>, <CCLEANERFORMAC.COM>, and <CCLEANERMAC.COM>.

The Complainant asserts that the content of the disputed domain name changed over time. The Complainant asserts that, at some point in time, the website under the disputed domain name mentioned the Complainant’s trademark and was used by the Respondent to distribute malware. Other times, the disputed domain name has been used for the advertisement of other products, such as “computer games” or “computer software”. Some links on the Respondent’s website relate to the Complainant´s software (or products competing with it), some refer to other products. The Complainant further asserts that a warning message is displayed by antivirus software before the viewer reaches the website available through the disputed domain name (the warning message states: “address was blocked”).

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The written notice of the Complaint was returned as undelivered. As far as the e-mail notice is concerned, the CAC received a notification that the e-mail sent to wwwcleaner.com- registrant@fabulouswhoiscompliance.com was not delivered. The e-mail notice was also sent to postmaster@wwwccleaner.com, but the CAC never received a proof of delivery or notification of non-delivery. No further e-mail address could be found on the website at the disputed site. The Respondent never accessed the online platform.

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

1. Confusing similarity

The disputed domain name consists of the Complainant's entire CCLEANER trademark, adding the acronym “www”, which is widely known to stand for “world wide web”.

The Complainant’s CCLEANER trademark is fully incorporated and recognisable in the disputed domain name. The fact that a domain name wholly incorporates a complainant´s registered mark is sufficient to establish identity or (confusing) similarity. In the case at hand, the addition of descriptive terms such as “www” does not prevent a finding of confusing similarity. These letters are widely identified as an acronym for “world wide web”. Therefore, Internet users will likely disregard the addition of the term “www”. This difference does not change the overall impression of the domain name.

The Panel concludes that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

2. Rights or legitimate interests

As regards paragraph 4(a)(ii) of the Policy, while the overall burden of proof rests with the Complainant, it is commonly accepted that this should not result in an often-impossible task of proving a negative. Therefore, numerous previous panels have found that the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of production shifts to a respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the Domain Name. If the respondent fails to come forward with such appropriate allegations or evidence, the complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy. If the respondent does come forward with some allegations or evidence of relevant rights or legitimate interests, the panel then has to weigh all the evidence, with the burden of proof always remaining on the complainant.

The Respondent did not file an administratively complaint (or any) response. In the circumstances, the Panel finds from the facts put forward that:

The Complainant contends that: (1) the Respondent has no connection with the Complainant, and has not received any licence or authorisation to use the CCLEANER trademarks and, by using the disputed domain name, the Respondent is seeking to create a false impression of association with the Complainant; (2) the Complainant's registered CCLEANER trademarks are being used on the website available via the disputed domain name (this website publishes links to other websites whereby the name “CCLEANER” is used in the links); and (3) the Complainant’s activities under his CCLEANER trademarks as well as his trademark registrations predate the day on which the Respondent became the owner of the disputed domain name.

The contentions of the Complainant are not contested by the Respondent.

The Panel finds that the Complainant has at least made a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain name. This finding is based on a combination of the following facts and arguments: (1) the Respondent does not seem to be related to the Complainant, and seems not to have received any licence or authorisation to use the CCLEANER trademarks or any variation of them; (2) the Complainant's registered CCLEANER trademarks are being used on the website available via the disputed domain name, where this website contains several links to alleged CCleaner products or services, which might lead a potential customer to believe that there is a link of affiliation between the Complainant and the Respondent; and (3) the Respondent does not seem to be commonly known by the disputed domain name.

On the balance of probabilities, and in the absence of any evidence to the contrary or any administratively compliant response being put forward by the Respondent, the Panel finds that the Respondent does not have any rights or legitimate interests in the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

3. Bad faith

The Panel finds that there is sufficient evidence to conclude that the disputed domain name was registered and is being used in bad faith. In the absence of any evidence to the contrary (or any administratively compliant response) being put forward by the Respondent, the Panel believes from the facts in this case that the Respondent had the CCLEANER trademarks of the Complainant in mind when registering and using the disputed domain name. The Panel accepts that the CCLEANER trademark of the Complainant is well-known in the sector of software optimization tools. The Panel also points out that the Complainant has registered several CCLEANER trademarks, before the date on which the disputed domain name was transferred to the Respondent.

The Complainant has submitted a so called 'history report', drafted by DomainTools, which gives an overview of the Whois records for the disputed domain name, indicating the various registered owners ("registrants") and registration dates. From page 11 of this report, it follows that the Whois records of September 26, 2018 showed the Respondent ("Domain Protection LLC" of Texas, USA) as the "registrant" of the disputed domain name. From page 9 of this report, it follows that the Respondent also was the "registrant" of the domain name on January 3, 2019. From the registrar verification, it follows that the Respondent currently still is the "registrant" of the disputed domain name.

The Complainant has also submitted several print screens of the website linked to the disputed domain name. According to the Complainant, these screenshots show that this website contains several links to other websites where internet users can download illegal versions of CCLEANER software and/or other software and/or malware.

The Panel notes that the Complainant has submitted screenshots of January 3, 2019 (when the Respondent was the "registrant" of the disputed domain name – see above), from which it follows that the website available via the disputed domain name contained links labelled as follows: "Ccleaner Free Download", "Ccleaner Free", "Ccleaner Download", "CC Cleaner", "Ccleaner.com", and "The Computer Software". Other screenshots mention "2019 copyright" and show links to "Computer Programs", "For PC Software", "Software Mobile Applications", "Where to Get Computer Software", and "Computure Games" (sic).

From this evidence, the Panel accepts that the Respondent has used the disputed domain name to offer illegal versions of the Complainant's trademarked software or at least products or services that compete with the Complainant's products or services (as covered by the CCLEANER trademarks).

The Complainant also asserts that its registered CCLEANER trademark is a well-known and famous mark. Based on the exhibits submitted, the Panel finds that the Complainant has sufficiently shown that the CCleaner mark is well-known. The Complainant registered these trademarks in various countries around the globe. The Complainant submitted evidence proving or at least indicating with a sufficient degree of credibility that a substantial number of users worldwide have downloaded its CCLEANER software tool. The Complainant provided evidence that its website www.ccleaner.com was visited by approximately several millions of internet users between November 2018 and April 2019. The Complainant also submitted evidence showing that it has a substantial number of followers on social media platforms, and that its social media accounts are linked to its CCLEANER trademarks. In the given circumstances, and based on these large numbers of visitors and followers of the Complainant's website and social media accounts, and in particular the large number of users of the Complainant´s optimization tool CCLEANER, the Panel accepts that the Complainant's CCLEANER trademarks are indeed famous and well-known. Lastly, the Panel notes that previous CAC cases also recognized the well-known character of the Complainant´s name and trademark CCLEANER (no. 101759 and no. 101760: the Panel notes that the complainant in these cases was a different company, namely "Piriform Limited" of Cyprus instead of "Piriform Software Limited" of the UK. However, the trademarks that were invoked were the same trademark as in the current dispute).

Given the well-known character of the Complainant's CCLEANER trademarks and given the fact that the website available via

the disputed domain name contains links to illegal versions of the CCLEANER trademarks software (or at least to competing products/services), the Panel accepts that the Respondent had indeed the CCLEANER trademarks in mind when registering and using the disputed domain name.

The Panel believes that this is a typical case of cybersquatting or typosquatting whereby the Respondent reflects a registered trademark in a domain name, while adding the acronym “www”, which is generally known to stand for “world wide web”. The Panel finds that the inclusion of the acronym “www” (without dot) in the domain name itself, coupled with the well-know registered CCLEANER trademark of the Complainant, was solely intended to divert potential customers of the Complainant who mistakenly type wwwccleaner.com instead of www.ccleaner.com in their browser to the Respondent’s website (where they find links to illegal or at least competing software).

Finally, the Panel notes that there is an indication that the Respondent used false contact details (the written notice of the Complaint returned back to the Czech Arbitration Court as undelivered because the recipient was unreachable at the indicated address).

For all of the reasons set out above, the Panel determines that the disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **WWWCCLEANER.COM**: Transferred

PANELLISTS

Name	**Bart Van Besien**

DATE OF PANEL DECISION 2019-08-15

Publish the Decision