Decision for dispute CAC-UDRP-102640

Case number	**CAC-UDRP-102640**
Time of filing	**2019-08-27 11:56:02**
Domain names	**ccleanerfulldownload.com**

Case administrator

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

Complainant

Organization	**Piriform Software Limited**

Complainant representative

Organization	**Rudolf Leška, advokát**

Respondent

Name	**Nguyen Thi Hong**

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

In this proceeding, the Complainant relies on the following trademarks:

- EU word trademark “CCLEANER” No. 007562002, registered on November 10, 2009;

- EU word trademark “CCLEANER” No. 015100803, registered on May 31, 2016;

- UK word trademark “CCLEANER” No. 2486623, registered on January 2, 2009;

- US word trademark “CCLEANER” No. 5099044, registered on December 13, 2016;

- US word trademark “CCLEANER” No. 3820254, registered on July 20, 2010.

FACTUAL BACKGROUND

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

THE DISPUTED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH THE COMPLAINANT HAS RIGHTS

The Complainant provides PC optimization software named “CCleaner” which protects privacy of its customers and makes their computers faster and more secure. The Complainant states that this software was released in 2004 and had been already downloaded more than two and a half billion times.

The Complainant owns a number of “CCleaner” trademarks and distributes its “CCleaner” software inter alia via its websites www.piriform.com and www.ccleaner.com where customers can find product information and directly download the software.

The disputed domain name was created on November 23, 2018. The Complainant alleges that the disputed domain name was registered with the knowledge of its earlier trademarks and the website under the disputed domain name is being used by the Respondent to offer CCleaner software for download in competition with the Complainant and to illegally distribute licenses keys with instructions on how to apply them.

The Complainant states that the disputed domain name is confusingly similar with its trademarks as its “CCLEANER” mark is entirely reproduced in the disputed domain name.

According to the Complainant, from the perspective of the average customer “CCLEANER” is the distinctive part in the disputed domain name.

It is the first dominant part to which public’s attention is concentrated. An additional part “-fulldownload” is descriptive and this additional part is not able to change overall impression and does not eliminate the confusing similarity with the trademarks of the Complainant.

THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Complainant contends that the Respondent has not been commonly known by the disputed domain name before the beginning of this dispute nor owes any identical or similar trademark nor has ever used any identical or similar brand before the registration.

The Complainant did not grant any license or authorization to register or use the disputed domain name by the Respondent. The use of the Complainant’s trademark and logo on every page of the website in the absence of Complainant’s authorization represents illegal unauthorized conduct of the Respondent.

Before the dispute the Respondent did not use the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services.

Competing use is not considered a bona fide offering of goods and services, nor a legitimate non-commercial or fair use. The Complainant states that the offer for download the complainant’s software in the absence of Complainant’s authorization and in violation of End User License Agreement negate any potential justification of the Respondent and emphasizes that the use of a domain name for illegal activity can never confer rights or legitimate interests.

The Complainant also alleges that the Respondent was seeking to create a false impression of association with the Complainant, which does not constitute a bona fide offering of goods or services or a legitimate non-commercial or fair use of the disputed domain name.

THE DISPUTED DOMAIN NAME WAS REGISTERED AND BEING USED IN BAD FAITH

According to the Complainant the Respondent was clearly aware of the Complainant's trademarks before the registration of the disputed domain name as follows from the Respondent's explicit references on his website to the logo, trademark and CCleaner software of the Complainant.

The Complainant also claims that the Respondent copied pictures and text from official website of the Complainant.

The Complainant refers to previous panels that found its trademarks well-known. The disputed domain name is used solely for the illicit distribution of the Complainant's CCleaner software. The Complainant did not provide an authorization for such distribution of its software protected by the copyright.

The Complainant states that the Respondent's unlawful placement of Complainant´s logo on every page as well as imitation of graphic design of Complainant's website indicates bad faith.

Bad faith of the Respondent is further supported by the fact that the Respondent concealed his/her identity.

The Complainant believes that the disputed domain name has no other purpose than to misleadingly divert the potential Complainant's consumers to illegal distribution of its software and to tarnish the trademarks at issue by creating the likelihood of confusion with the Complainant's marks.

Therefore, the Complainant alleges that the Respondent's conduct falls within par. 4 (b) (iv) of the Policy.

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.

The Panel agrees with the Complainant that the language of this proceeding shall be English taking into account paragraph 10 (c) and paragraph 11 (a) of the UDRP Rules and circumstances of this case including evidence provided by the Complainant that the website under the disputed domain name was in English (see e.g. CAC Case No. 102493 and CAC Case No. 101760).

PRINCIPAL REASONS FOR THE DECISION

A. Identical or confusingly similar with Complainant's trademark

The Complainant owns various “CCLEANER” trademark registrations in different jurisdictions.

As confirmed by WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”), see paragraph 1.2.1: “Where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case”.

The disputed domain name entirely incorporates the Complainant’s trademark with the addition of the “fulldownload” element in the end.

As stated in WIPO Overview 3.0 “where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element” (see par. 1.8).

In the present case, the Complainant’s trademark is clearly recognizable in the disputed domain name. The addition of the descriptive element “fulldownload” does not change an overall impression of the disputed domain name. “Download” is a term commonly used in software industry and its use in conjunction with the word “full” indicates that the website possibly offers Complainant’s software product for full or complete download.

The .com domain zone shall be disregarded under the identity or the confusing similarity test as it does not add anything to the distinctiveness of the disputed domain name.

Therefore, the Panel finds that the first requirement of the Policy has been satisfied.

B. Rights or Legitimate Interests

The general rule is the following:

(i) a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests; and

(ii) once such prima facie case is made, the burden shifts to the respondent who has to demonstrate his rights or legitimate interests in respect of the domain name under paragraph 4 (c) of the Policy.

If the respondent fails to do so, the second element of the Policy is satisfied (see Julian Barnes v. Old Barn Studios, WIPO Case No. D2001-0121; Belupo d.d. v. WACHEM d.o.o., WIPO Case No. D2004-0110; Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455 and CAC Case No. 101284).

The Respondent did not respond.

While failure to respond does not per se demonstrate that the Respondent does not have rights or legitimate interests, it allows all reasonable inferences of fact in the allegations of the complaint to be deemed true (see paragraph 14(b) of the Rules and FORUM Case No. FA0006000095095, Vertical Solutions Management, Inc. v. webnet-marketing, inc.).

The Complainant alleges that the website under the disputed domain name offered Complainant’s software for download and provided evidence in this regard (screenshots from the Respondent’s website with date and time).

It also appears from the evidence provided by the Complainant that its logo was also used on the website under the disputed domain name that could create a false impression of association with the Complainant.

As confirmed in WIPO Overview 3.0 “the use of a domain name for illegal activity can never confer rights or legitimate interests on a respondent” (see paragraph 2.13.1 of WIPO Overview 3.0).

Therefore, the Panel finds that the Complainant has satisfied the second requirement of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists non-exhaustive circumstances indicating registration and use in bad faith.

These circumstances are non-exhaustive and other factors can also be considered in deciding whether the disputed domain name is registered and used in bad faith.

Some of such factors are listed in par. 3.2.1 of WIPO Overview 3.0 and are relevant in the present dispute (i.e. the nature of the domain name, the content of the website).

Complainant's trademarks were previously recognized as well-known (see CAC Case No. 102555) and evidence available in this case indicates that the Respondent targeted the Complainant and was clearly aware of its trademarks and its software product. Besides, the Complainant's "CCLEANER" mark has already been targeted by cybersquatters (see CAC Case No. 102555, CAC Case No. 101760 and CAC Case No.101759).

The Panel finds that Respondent's behavior falls within 4(b) (iv) and by using the disputed domain name the Respondent is attempting to attract for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's mark as to the affiliation or endorsement of the Respondent's website.

Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith (see par. 3.1.4. of WIPO Overview 3.0).

Evidence available before this Panel indicates that the Respondent was engaged in some competing activities (offering software for download) and attempted to create a false association with the Complainant by using Complainant's logo on the website under the disputed domain name.

Under these circumstances it is hard if not impossible to imagine any conceivable good faith use of the disputed domain name by the Respondent (see e.g. CAC Case No. 101568 - "Factors finding in favor of this conclusion are inter alia similarity between the Complainant's official web site and the web site under the disputed domain name (in particular, use of Complainant's logo by the Respondent) as well as the content of the web site").

The Panel holds that the third requirement of the Policy has been satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **CCLEANERFULLDOWNLOAD.COM**: Transferred

PANELLISTS

Name	**Igor Motsnyi**

DATE OF PANEL DECISION 2019-10-03