Decision for dispute CAC-UDRP-102639

Case number	**CAC-UDRP-102639**
Time of filing	**2019-08-27 09:53:00**
Domain names	**ccleanerssupport.com**

Case administrator

Name	**Šárka Glasslová (Case admin)**

Complainant

Organization	**Piriform Software Limited**

Complainant representative

Organization	**Rudolf Leška, advokát**

Respondent

Name	**Deep Narayan Yadav**

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant provides PC optimization software named “CCleaner” and is the owner of an international portfolio of registered trademarks including the following:
EU Trademark CCLEANER, registration no. 007562002 for goods and services in the class 9 (software) with priority from January 30, 2009;
EU Trademark CCLEANER, registration no. 015100803 for goods and services in the 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…) with priority from February 11, 2016;
UK registered trade mark CCLEANER, registration no. 2486623 for goods and services in the class 9 (computers software) with priority from May 2, 2008;
U.S. registered trademark CCLEANER, registration no. 5099044 for goods and services in the class 9 (computer software) with priority from February 25, 2016;
U.S. registered trademark “CCLEANER” no. 3820254 for goods and services in the class 9 (computer software) with priority from March 6, 2009.
The Complainant is the owner a portfolio of Internet domain names incorporating its CCLEANER mark including

<ccleanercloud.com>, <ccleaner.cloud>, <ccleanerformac.com>, <ccleanermac.com> and the < ccleaner.com> domain name which resolves to a website which provides access to downloads of, information about, and support for, its computer optimisation tool CCLEEANER.

FACTUAL BACKGROUND

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

Language of the proceeding

In accordance with the para. 11 of the Rules, the language of this proceeding shall be English. English is also the language of the Registration Agreement which is available on the registrar´s website.
Evidence: Registration agreement.

This disputed domain name <ccleanerssupport.com> created on September 26, 2018 and resolves to website that has changed its content during the preparation of this Complaint.
There is no information available about the Respondent, except for that submitted in the Complaint, the Registrar's WhoIs and the Registrar's reply to the Centre's procedure verification email.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:
The Complainant claims rights in the CCLEANER trademark based on its ownership of the above mentioned trademark registrations and its use of the mark on its software products and services. The Complainant submits that it is well known on the market globally as a reliable company.

Since its launch in 2004, in addition to its trademark registrations, the Complainant has registered the above mentioned portfolio of Internet domain names and asserts that its CCLEANER program has been downloaded more than two and a half billion times from the Complainant's website <www.piriform.com> and <www.ccleaner.com>.

The Complainant submits that its CCLEANER trademark has acquired a global reputation. The Complainant, presenting CCleaner, has more than half a million of followers on Facebook and about 15,000 followers on Twitter. Furthermore, the Complainant´s website at <www.ccleaner.com> has been visited approximately 43 million times in the past 6 months.

The Complainant submits that the disputed domain name <ccleanerssupport.com> is confusingly similar to the Complainant's CCLEANER trade and service mark, asserting that its trademark consists of the capital letter "C" and the word "cleaner" which indicates something that serves for cleaning. The capital "C" is very characteristic for the Complainant as it is also used in its logo with the picture of a broom.

The Complainant argues that the Complainant and its software, the word "CCLEANER" acquired a distinctive character and based on a large number of the users of the Complainant´s optimization tool, it can be assumed that the word CCLEANER is automatically associated with the Complainant by an ordinary customer and Internet user.

The Complainant´s mark "CCLEANER" is entirely reproduced in the disputed domain name. 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 an attention of the public is concentrated. The only distinction between the dispute domain name and the Complainant´s mark is added word <ssupport> which is descriptive in nature meaning providing help to the customers. The Complainant adds that the gTLD <.com> extension may be ignored for the purposes of comparison.

The Complainant submits that on balance, there is high presumption that ordinary consumers will believe that the domain name registered by the Respondent is owned by the Complainant and will access the website only due to its misleading character assuming that the credible CCLEANER tool and professional support could be provided directly by the Complainant or with its authorisation. Instead of this, malware may be installed to their PC and advertisement promoting illegal hacking organization will get into their attention.

Arguing that the Respondent has no right or legitimate interests in respect of the domain name, the Complainant submits that there does not exist any evidence that the Respondent has been commonly known by consumers by the disputed domain name before the beginning of this dispute nor owns any identical or similar trademark nor has ever used any identical or similar brand before the registration. Furthermore, the Complainant asserts that it did not grant any license or authorization to the Respondent to register or use the disputed domain name and argues that the use of the Complainant's trademark in the absence of Complainant's authorization represents illegal unauthorized conduct of the Respondent.

The Complainant submits that the Respondent is using the disputed domain name for hacking and the distribution of malware and that such use can never confer rights or legitimate interests on a respondent (Avast Software s.r.o. v Victor Chernyshov, CAC Case no. 101568).

The Complainant adds that before the commencement of this 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 because he has not provided the trademarked goods and service but has used the trademark to bait Internet users and then switch them to his/her websites under which distributed malware and promotes illegal Turkish hacking organization turkz.org (Nikon, Inc. v Technilab, WIPO Case no. D2000-1774).

The Complainant further submits that the Respondent has sought 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 (Carrefour v Whois Agent, Whois Privacy Protection Service Inc. / Andres Saavedra, WIPO Case no. D2016-0608).

The Complainant concludes by submitting that once such a prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant may be deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant submits that the registrant of disputed domain name <ccleanerssupport.com> was aware of the Complainant and its rights in the CCLEANER trademark and service mark when it was created on September 26, 2018. This follows from the Respondent´s explicit references to the trademarks of the Complainant on the Respondent's website before the content was changed, in or about June 2019.

The Complainant argues that there is no reasonable justification why the disputed domain name should include the Complainant´s trademark. Furthermore, the Respondent's bad faith is evident as the Respondent uses the Complainant´s trademark to promote an illegal organization of hackers whereas the Complainant´s software serves for the protection of computer against attacks of hackers. Using of Complainant´s trademark for the promotion of such organization damages good reputation of the Complainant and its trademark.

The Complainant refers to Policy Paragraph 4(b)(iv) and submits that there is no plausible explanation why the Respondent selected the disputed domain name other than for the purpose of intentionally attempting to attract, for commercial gain, Internet users to his web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of his web site or location or of a product or service on his web site or location.

The Complainant states that the content on the website to which the disputed domain name resolves has changed during the preparation of this Complaint. In May 2019 the content on the Respondent's website purported to offer a paid technical support service for the Complainant's software to the Complainants customers. The website contained the text officially

published on the Complainant´s website at its <ccleaner.com> address and referenced the Complainant by stating “Get in touch with Piriform”.

The Complainant submits that the Respondent’s website presently serves for the promotion of what appears to be an organization of hackers. The Complainant has annexed information regarding alleged illegal hacking activity of this organization.

RESPONDENT: The Respondent has not made any submissions.

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

The Complainant has produced unrefuted evidence of its rights in the CCLEANER trade and service mark through its above mentioned trademark registrations and extensive use of the trademark in association with its software products since 2004. The Complainant´s mark “CCLEANER” is reproduced in its entirety in the disputed domain name. The only distinction between the dispute domain name and the Complainant´s mark is added element “ssupport”. The first “s” in the context of the disputed domain name is likely to be taken as a marker of the genitive case in the English language and the word “support” is descriptive of typical customer support services in the software industry. In the context of this Complaint, the gTLD <.com> extension may be ignored for the purposes of comparison.

This Panel finds therefore that as the Complainant submits, on balance, there is high presumption that ordinary consumers will believe that the domain name registered by the Respondent is owned or its use is authorised by the Complainant. This Panel finds that the disputed domain name was is confusingly similar to the CCLEANER trademark in which the Complaint has rights.

The Complainant has made out a prima facie case that the Respondent has no right or legitimate interests in respect of the domain name, arguing that there is no evidence that the Respondent has been commonly known within the consumers by the disputed domain name; or that the Respondent owns any identical or similar trademark nor has ever used any identical or similar brand before the registration of the disputed domain name. The Complainant asserts that it did not grant any license or authorization to the Respondent to register or use the disputed domain name and argues that the use of the Complainant’s trademark in the absence of Complainant’s authorization represents illegal unauthorized conduct of the Respondent; that the Respondent has allowed the disputed domain name has been for hacking and the distribution of malware; that the Respondent has not used the disputed domain name in connection with a bona fide offering of goods or services or any legitimate non-commercial or fair use.

There is a consensus among panelists appointed under the Policy, that once such a prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. The Respondent has failed so to do so and in the circumstances this Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

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).

There is no plausible explanation why the disputed domain name would have been chosen and registered other than to take predatory advantage of the Complainant and its goodwill. The CCLEANER trademark was well known and Internet users had accessed the Complainant's website billions of times before the disputed domain name was registered.
The registrant of the disputed domain name must have been aware of the Complainant, its name, mark and product when the disputed domain name was registered.

Immediately prior to the commencement of this proceeding, the content on the Respondent's website purported to offer a paid technical support service for the Complainant's software to the Complainants customers. The website contained the text officially published on the Complainant´s website at its <ccleaner.com> address and referenced the Complainant by stating "Get in touch with Piriform". This finding that the Respondent has used the disputed domain name to impersonate the Respondent is sufficient to require this Panel to make a finding of bad faith use of the disputed domain name.
The Complainant has submitted that the Respondent's website has been used for hacking and the distribution of malware. There is a substantial amount of unrefuted evidence to support these allegations also but perhaps not sufficient to allow this Panel to confidently make a finding with regard to these allegations. Being a large software company, it should have been capable of providing comprehensive evidence to support its allegations. Instead it has merely provided screenshots, some of which are not in the English language without translations.

Because the Respondent has established, on the balance of probabilities, that the disputed domain name was registered for the purpose of intentionally attempting to attract, for commercial gain, Internet users to his web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of his web site or location or of a product or service on his web site or location, it is not necessary to make a finding in relation to the allegations of malware or hacking.

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).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **CCLEANERSSUPPORT.COM**: Transferred

PANELLISTS

Name	**Mr James Jude Bridgeman**

DATE OF PANEL DECISION 2019-10-22