Decision for dispute CAC-UDRP-102693

Case number	**CAC-UDRP-102693**
Time of filing	**2019-10-08 10:36:40**
Domain names	**ccleaner2019.com**

Case administrator

Name	**Šárka Glasslová (Case admin)**

Complainant

Organization	**Piriform Software Limited**

Complainant representative

Organization	**Rudolf Leška, advokát**

Respondent

Name	**Milen Radumilo**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that are pending or decided and that relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant has submitted evidence, which the Panel accepts, showing that it is the registered owner of the following:

- the EU trademark CCLEANER (Registration n°007562002) dated January 30, 2009;
- the EU trademark CCLEANER (registration n°015100803) dated February 11, 2016;
- the UK trademark CCLEANER (registration n°UK00002486623) dated May 02, 2008;
- the US trademark CCLEANER (registration n°5099044) dated February 25, 2016;
- the US trademark CCLEANER (registration n°3820254) dated March 06, 2009.

Moreover, the Complainant is also the owner of the domain names bearing the sign “CCLEANER” such as the domain names ccleaner.com, ccleanercloud.com, ccleaner.cloud, ccleanerformac.com, ccleanermac.com.

FACTUAL BACKGROUND

The Complainant is a globally well-known company which develops software tools and provides technology services for customers. The Complainant provides to its customers one of the world’s most popular PC optimization software named

“CCLEANER” which protects the privacy and makes the computers faster and more secure. This award winning optimization tool was released in 2004 and has been already downloaded more than two and a half billion times.

The Complainant holds several trademark registrations for “CCLEANER” and the Complainant also holds the domain names bearing “CCLEANER”.

On September 10, 2019, the Respondent registered the disputed domain name <ccleaner2019.com>. The domain name is currently available on ccleaner2019.com.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant is a company specialized in software producing and is a well-known company in its sector. The Complainant provides one of the world’s most popular PC optimization software named “CCLEANER” which protects the privacy and makes the computers faster and more secure.

The Complainant holds international trademark registrations for the trademark “CCLEANER” and also is the owner of the domain names bearing the sign “CCLEANER” including ccleaner.com.

1. THE DISPUTED DOMAIN NAME IS CONFUSINGLY SIMILAR TO THE COMPLAINANT’S TRADEMARK „CCLEANER“

The Complainant states that CCLEANER is at the core of the Complainant’s family of marks and it has acquired a distinctive character. CCLEANER is a globally known trademark with good reputation. The Complainant has more than half a million of followers on Facebook and about 15.000 followers on Twitter. The Complainant’s website ccleaner.com was visited by 43 million users in last 6 months.

The disputed domain name is confusingly similar to the Complainant’s trademarks “CCLEANER” as it bears the Complainant’s “CCLEANER” trademark as a whole.

The Complainant alleges that the additional “2019” indicates current calendar year and reasonable Internet users will not attribute to it any importance and such difference does not eliminate the confusing similarity between the disputed domain name and the “CCLEANER” trademark.

The Complainant states that numerous prior Panel decisions have accepted the fact that the domain name which wholly incorporates a Complaint’s registered trademark is sufficient to establish the confusing similarity despite the addition of other descriptive words. The Complainant refers to earlier Panel decisions e.g. EAuto, LLC v. EAuto Parts, WIPO Case No. D2000-0096; Caterpillar Inc. v. Off Road Equipment Parts, WIPO Case No. FA0095497).

The Complainant also states that the addition of the “.com” does not change the overall impression of the designation as being connected to the Complainant’s trademark ‘”CCLEANER”. Such attempts have been disapproved in various decisions e.g. Magnum Piercing, Inc. V D. Mudjackers and Garwood S. Wilson, Sr. WIPO Case No. D-2000-1525; Hugo Boss A.G. v. Abilio Castro, WIPO case No. DTV2000-0001; Radale Inc. V. Cass Foster, WIPO case No. DBIZ2002-00148. Carlsberg A/S v. Brand Live television, WIPO case No. DTV-2008-0003.

The Complainant alleges that the “CCLEANER” trademark is a well-known trademark and its well-known status was established in previous decisions e.g. CAC Case No. 101759 and CAC Case No. 101760. Furthermore, the Complainant and its software has the leading position in its sector and widely known by the consumers. Accordingly, the Complainant states that “CCLEANER” term has acquired a distinctive character and the ordinary consumers are likely to believe that the disputed domain name <ccleaner2019.com> belongs to the Complainant.

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

The Complainant states that the Respondent has no rights on the disputed domain name as the Respondent is not known as the disputed domain name and the Respondent does not hold such trademark as the disputed domain name.

The Complainant also alleges that neither license nor authorization has been granted to the Respondent to use the Complainant's trademark "CCLEANER". The past panel decision Avast Software sro v, Victor Chernyshov, CAC Case no.101568 is precedent for the concrete case.

The Complainant argues that the disputed domain name looks like an updated version of official websites of the Complainant as it contains the Complainant's registered trademark "CCLEANER" with the year 2019. Thus, the Complainant argues that the Respondent is not using the domain name in connection with bona fide offering of goods or services or a legitimate noncommercial or fair use.

The Complainant also alleges that the Respondent used the disputed domain name bearing the Complainant's "CCLEANER" trademark in order to increase pay-per-click revenues which cannot be evaluated as bona fide offering of goods or services.

3. THE DISPUTED DOMAIN NAME WAS REGISTERED AND IS USED IN BAD FAITH

The Complainant states that the "CCLEANER" is a well-known trademark and its notoriety has been accepted within the earlier decisions such as CAC Case No. 101759 and CAC Case No. 101760.

The Complainant asserts that considering the well-known status of the Complainant's trademarks, the Respondent knew about the Complainant and its rights before the registration of the disputed domain name. Accordingly, the disputed domain name was registered and is being used in bad faith.

The Complainant alleges that the bad faith of the Respondent is supported within the fact that the Respondent concealed his/her identity.

Furthermore, the Complainant states that the disputed domain name is currently offered for sale.

RESPONDENT:

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

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In this context, the Panel also notes that the burden of proof is on the Complainant to make out its prima facie case and past UDRP panels have consistently said that a Complainant must show that all three elements of the Policy have been made out before any order can be made to transfer a domain name.

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

A. The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

B. The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and

C. The Disputed Domain Name has been registered and is being used in bad faith.

The Panel will therefore deal with each of these requirements in turn.

A. IDENTICAL OR CONFUSINGLY SIMILAR

The Policy simply requires the Complainant to demonstrate that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. The Panel is satisfied that the Complainant is the owner of registration of the CCLEANER trademarks.

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s CCLEANER trademarks since it contains the Complainant’s trademark as a whole.

Further, the addition of the „2019“ is not enough to abolish the similarity as it refers to a year and moreover, it increases the confusion since it may be evaluated as the updated domain name of the Complainant for the year 2019.

The Panel is of the opinion that the internet users will easily fall into false impression that the disputed domain name is an official domain name of the Complainant. The Panel recognizes the Complainant's rights and concludes that the disputed domain name is confusingly similar with the Complainant's trademarks. Therefore, the Panel concludes that the requirements of paragraph 4(a)(i) of the Policy is provided.

B. NO RIGHTS OR LEGITIMATE INTERESTS

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

It is open to a Respondent to establish its rights or legitimate interests in a domain name, among other circumstances, by showing any of the following elements:

(i) before any notice to the respondent of the dispute, the use or making demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a bone fide offering of goods or services; or

(ii) the respondent of the dispute (as an individual, business, or other organization) has been commonly known by the domain name, even if it has have acquired no trademark or service mark rights; or

(iii) the respondent of the dispute is making a legitimate non-commercial or fair use of the domain name, without an intent

for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Thus, if the Respondent proves any of these elements or indeed anything else that shows that it has a right or legitimate interest in the disputed domain name, the Complainant will have failed to discharge its burden of proof and the Complaint will fail. The burden is on the Complainant to demonstrate a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain name. Once the Complainant has made out a prima facie case, then the Respondent may, inter alia, by showing one of the above circumstances, demonstrate rights or legitimate interests in the disputed domain name.

The Complainant contends that the Respondent has nothing to do with the Complaint and any use of the trademark CCLEANER has to be authorized by the Complainant and there is no such authorization. Moreover, the disputed domain name has no relation with the Respondent and the Respondent is not commonly known as the disputed domain name. Finally, there is no fair or non-commercial uses of the disputed domain name found as well.

In the absence of a response, the Panel accepts the Complainant's allegations as true that the Respondent has no authorization to use the Complainant’s trademarks in the disputed domain name. Hence, as the Complainant has made out its prima facie case, and as the Respondent has not demonstrated any rights or legitimate interests as illustrated under paragraph 4(c) of the Policy, nor has the Panel found any other basis for finding any rights or legitimate interests of the Respondent in the disputed domain dame, the Panel concludes that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. BAD FAITH

The Panel concludes that the Complainant's CCLEANER trademark has a significant reputation and is of distinctive character. Therefore, the Panel is of the opinion that due to the earlier rights of the Complainant in the CCLEANER trademarks and the associated domain names, the Respondent, was aware of the Complainant and its trademarks at the time of registration of the disputed domain name (see e.g., Ebay Inc. v. Wangming, WIPO Case No. D2006-1107). Referring to Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net, WIPO Case No. D2000-0226, the Panel believes that the awareness of the Complainant’s trademark at the time of the registration of the disputed domain name is to be considered an inference of bad faith registration.

Moreover the <ww38.ccleaner2019.com> link refers to <sedo.com> link and it is seen that the disputed domain name is presently offered for sale.

Therefore, in light of the above-mentioned circumstances in the present case, the Panel finds that the disputed domain dame has been registered and is being used in bad faith and that the Complainant has established the third element under 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. **CCLEANER2019.COM**: Transferred

PANELLISTS

Name	**Mrs Selma Ünlü**

DATE OF PANEL DECISION 2019-11-18

Publish the Decision