Decision for dispute CAC-UDRP-102736

Case number	**CAC-UDRP-102736**
Time of filing	**2019-10-22 09:05:30**
Domain names	**vivendimediaworks.com**

Case administrator

Name	**Šárka Glasslová (Case admin)**

Complainant

Organization	**VIVENDI**

Complainant representative

Organization	**Nameshield (Enora Millocheau)**

Respondent

Organization	**VARUNZ.COM**

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

The Complainant is the owner of several international trademark registrations for the wording “VIVENDI”, such as
- the international trademark VIVENDI® n° 687855, registered since February 23rd, 1998;
- the international trademark VIVENDI® n° 930935 registered since September 22nd, 2006.

The Complainant also owns various domain names, such as the domain name <vivendi.com> registered on November 12th, 1997.

The Complainant shows evidence for both rights.

FACTUAL BACKGROUND

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

The Complainant is a French multinational mass media conglomerate headquartered in Paris. The company has activities in music, television, film, video games, telecommunications, tickets and video hosting service. With 44,142 employees in 78

countries, the Complainant's total revenues amounted to €13,932 million worldwide in 2018.
The Complainant communicates on Internet through various domain names, such as the domain name <vivendi.com> registered on November 12th, 1997. On this official website (under <www.vivendi.com>) the Complainant also offers customer information relating to media and entertainment.

The disputed domain name <vivendimediaworks.com> was registered on October 11th, 2019. The website related to the disputed domain name displays the message "Our message is Coming Soon" and a countdown.

The Complainant states that the disputed domain name <vivendimediaworks.com> is confusingly similar to its international trademarks VIVENDI.

The disputed domain name is combined by the word parts "vivendi" and "media" and "works". Vivendi is the trademark of the Complainant, the distinguished and distinctive part of the disputed domain name. Media means the internet, newspapers, magazines, television, etc., considered as a group. Works means all the extra things that may be offered with something. Media and works are generic terms.

It is well-established that "a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP". Please see WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasiliy Terkin.

Please see WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A. ("It is also well established that the specific top level of a domain name such as ".com", ".org" or ".net" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.").

Please see for instance FORUM Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com> ("Here, the WHOIS information of record identifies Respondent as "Chad Moston / Elite Media Group." The Panel therefore finds under Policy paragraph 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy paragraph 4(c)(ii).")

Please see FORUM Case No. FA 1745446, UBS AG v. ZenonHost vs. ZenonHost, ("Complainant demonstrates that the disputed domain name resolves to a parked page that states "UBS Private & Wealth Management 2017" with a maintenance mode countdown to when the website will go live. Use of a confusingly similar domain name to divert Internet users seeking a complainant's website is not a bona fide offering of services or a legitimate noncommercial or fair use under Policy paragraph 4(c)(i) & (iii). See Bank of Am. Corp. v. Nw. Free Cmty. Access, FA 180704 (Forum Sept. 30, 2003) ("Respondent's demonstrated intent to divert Internet users seeking Complainant's website to a website of Respondent and for Respondent's benefit is not a bona fide offering of goods or services under Policy paragraph 4(c)(i) and it is not a legitimate noncommercial or fair use under Policy paragraph 4(c)(iii)."). The Panel finds that Respondent lacks rights and legitimate interests in the disputed domain name.").

Please see for instance CAC Case No. 101875, VIVENDI v. Phoenix Global Organization Incorporated ("The Panel is convinced that the Trademarks [VIVENDI] are highly distinctive and well-established.").

Please see for instance WIPO Case No. D2000-0277, Deutsche Bank AG v. Diego-Arturo Bruckner, ("The domain name is so obviously connected with the complainant and its services that its very use by someone with no connection with the complainant suggests opportunistic bad faith.").

Please see for instance:
- WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows;
- WIPO Case No. D2000-0400, CBS Broadcasting, Inc. v. Dennis Toeppen.

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.

PRINCIPAL REASONS FOR THE DECISION

Indeed, for the Panel the addition of the words “MEDIA” and “WORKS” to the word part which is the trademark VIVENDI is not sufficient to escape the finding that the domain name is confusingly similar to the trademark VIVENDI. On the contrary, it reinforces the similarity with the Complainant’s activity. Thus, the disputed domain name <vivendimediaworks.com> is confusingly similar to the Complainant's trademarks VIVENDI (e.g. WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasiliy Terkin; WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.).

The Respondent showed no rights or legitimate interests. He didn't even answer to the complaint. The Panel contends that the Respondent is not affiliated with nor authorized by the Complainant in any way. The Panel contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and he is not related in any way to its business (e.g. FORUM Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com>; FORUM Case No. FA 1745446, UBS AG v. ZenonHost vs. ZenonHost).

Overall the Respondent showed bad faith with the registration of a distinguished and well-known trademark in context and combination of generic terms in the Complainant's field of business. The disputed domain name is so obviously connected with the Complainant and its services that its very use by someone with no connection with the complainant suggests opportunistic bad faith (e.g. CAC Case No. 101875, VIVENDI v. Phoenix Global Organization Incorporated; WIPO Case No. D2000-0277, Deutsche Bank AG v. Diego-Arturo Bruckner).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **VIVENDIMEDIAWORKS.COM**: Transferred

PANELLISTS

Name	**Dr. jur. Harald von Herget**

DATE OF PANEL DECISION 2019-12-01

Publish the Decision