Decision for dispute CAC-UDRP-102987

Case number	CAC-UDRP-102987
Time of filing	2020-03-24 08:50:19
Domain names	virbact.com

Case administrator

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

Complainant

Organization	VIRBAC S.A.

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	MONDIAL CONSTRUCTION AS

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, inter alia, of the following trademark registrations consisting of, or comprising, VIRBAC:

- International trademark registration No. 420254 for VIRBAC (figurative mark), registered on December 15, 1975, in class 5;

- International trademark registration No. 793769 for VIRBAC (figurative mark), registered on March 11, 2002, in classes 5, 38, 42 and 44.

FACTUAL BACKGROUND

Founded in 1968 in France by Pierre-Richard Dick, the Complainant is an old and well-established company dedicated exclusively to animal health.

With a turnover of €869 million in 2018, the company ranks today as the 7th largest animal health company worldwide. Its wide range of vaccines and medicines are used in the prevention and treatment of the main pathologies for both companion and food-producing animals.

Present through health products in more than 100 countries, the company has more than 4,900 employees.

The Complainant owns several domain names incorporating the trademark VIRBAC, including <virbac.com>, registered on January 15, 2000, at which the Complainant operates its official website.

The disputed domain name <virbact.com> was registered on March 13, 2020 and redirects to a registrar parking page.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the disputed domain name <virbact.com> is confusingly similar to its trademark VIRBAC as it includes the trademark in its entirety with the sole addition of the letter “t”, which does not change the overall impression of the disputed domain name as being connected to the trademark. The Complainant also submits that this is a clear case of "typosquatting“, as the disputed domain name contains an obvious misspelling of the Complainant’s trademark.

The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name since:

- the Respondent has no relationship with the Complainant and does not carry out any activity for, or have any business with, the Complainant;

- the Respondent has not been authorized by the Complainant to make any use of the trademark VIRBAC or apply for registration of the disputed domain name on behalf of the Complainant; and

- the Respondent is not making a bona fide use or legitimate non-commercial or fair use of the disputed domain name, as the disputed domain name resolves to a registrar parking page which only confirms that Respondent has no demonstrable plan to use the disputed domain name.

Moreover, the Complainant states that the Respondent deliberately registered the disputed domain name using the Complainant’s trademark, to purposely cause confusion amongst Internet users who land on the corresponding parking page, with the sole aim of profiting from the renown of the VIRBAC mark, thus clearly acting in bad faith, whilst giving the impression of being in some way affiliated to the Complainant in order to disrupt the Complainant’s business.

Lastly, the Complainant points out that, given the distinctiveness and reputation of its trademark VERBAC, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark and with the Complainant in mind.

RESPONDENT:

The Respondent did not reply to the Complainant’s contentions.

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. The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark VIRBAC, as it includes the dominant part of the Complainant's trademark, constituted by the denominative element "Virbac", with the mere addition of the letter "t" and the Top-Level domain ".com". As stated in a number of prior decisions rendered under the UDRP, these minor changes are not sufficient to prevent a finding of confusing similarity.

2. The Complainant stated that the Respondent is not affiliated with or authorized by the Complainant in any way. There is no evidence of the fact that the Respondent might have been commonly known by the disputed domain name or by a name corresponding to the disputed domain name. The Panel finds that, since the Respondent has merely redirected the disputed domain name to a parking page, the Respondent did not make use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services, or a legitimate non-commercial or fair use. Therefore, and in the absence of a Response, the Panel finds that the Complainant has made a prima facie case that the Respondent has no rights or legitimate interest in the disputed domain name.

3. As to the bad faith at the time of the registration, the Panel finds that, in light of the distinctiveness of the Complainant's trademark, with which the disputed domain name is confusingly similar, and of the prior registration and use of the trademark VIRBAC in connection with the Complainant's veterinary products, the Respondent was more likely than not aware of the Complainant's trademark at the time of registration.

By pointing the disputed domain name to a registrar parking page, the Respondent has in fact not used the disputed domain name in connection with an active web site. As established in a number of prior cases, the concept of "bad faith use" in paragraph 4(b) of the Policy includes not only positive action but also passive holding, especially in cases of domain name registrations corresponding to distinctive and/or well-known trademarks; see i.a. the landmark case Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **VIRBACT.COM**: Transferred

PANELLISTS

Name	**Luca Barbero**

DATE OF PANEL DECISION 2020-04-29

Publish the Decision