Decision for dispute CAC-UDRP-103163

Case number	**CAC-UDRP-103163**
Time of filing	**2020-07-22 09:07:14**
Domain names	**ccleanerportable.com**

Case administrator

Name	**Šárka Glasslová (Case admin)**

Complainant

Organization	**Piriform Software Limited**

Complainant representative

Organization	**Rudolf Leška, advokát**

Respondent

Organization	**Clickvister Ltd**

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

Complainant is the owner of, inter alia, the following trademarks all of which are registered for computer software programs:

- registered EU word mark “CCLEANER” no. 007562002 for goods and services in the class 9 (software) with priority from January 30, 2009;
- registered EU word mark “CCLEANER” 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;
- registered UK word mark “CCLEANER” no. 2486623 for goods and services in the class 9 (computers software) with priority from May 2, 2008;
- registered U.S. word mark “CCLEANER” reg. no. 5099044 for goods and services in the class 9 (computer software) with priority from February 25, 2016;
- registered U.S. word mark “CCLEANER” reg. no. 3820254 for goods and services in the class 9 (computer software) with priority from March 6, 2009.

FACTUAL BACKGROUND

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 the language of the Registration Agreement.

The Complainant and its rights

The Complainant provides to its customers one of the world most popular PC optimization software named “CCleaner” which protects their privacy and makes their 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 is well known on the market globally as a reliable company with long history which develops software tools, provides excellent technology and amazing service for customers and business. The Complainant provides different types of CCleaner software: CCleaner Pro, Ccleaner for Mac, CCleaner for Androit, CCleaner Portable. CCleaner Portable is a special edition of CCleaner which is mainly designed for advanced users, this version allows to run CCleaner without needing to install it (can be carried around on a removable drive and run on any computer). As explicitly stated under the official website of the Complainant this software is not for distribution.

The Respondent is clearly aware of the Complainant and its product CCleaner Portable which follows from the explicit reference to Piriform and to official website of the Complainant ccleaner.com under the disputed domain name.

Furthermore, the Complainant is the owner of, inter alia, the following trademarks all of which are registered also for computer software programs:

- registered EU word mark “CCLEANER” no. 007562002 for goods and services in the class 9 (software) with priority from January 30, 2009;
- registered EU word mark “CCLEANER” 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;
- registered UK word mark “CCLEANER” no. 2486623 for goods and services in the class 9 (computers software) with priority from May 2, 2008;
- registered U.S. word mark “CCLEANER” reg. no. 5099044 for goods and services in the class 9 (computer software) with priority from February 25, 2016;
- registered U.S. word mark “CCLEANER” reg. no. 3820254 for goods and services in the class 9 (computer software) with priority from March 6, 2009.

The Complainant distributes its optimization tool “CCleaner” as well as version “CCleaner Portable” i.a. via its website www.piriform.com and ccleaner.com where a customer can find product information and can directly download CCleaner software, including CCleaner Portable software. The authorization to use software downloaded from Complainant’s website is regulated by End User License Agreement and is strictly limited to personal use. Through these websites, the Complainant also provide support to its customers in case they need any help regarding CCleaner and other software tools provided by the Complainant. The Complainant owns tents of domains including the words piriform or ccleaner, such as CCLEANERCLOUD.COM, ccleaner.cloud, CCLEANERFORMAC.COM, CCLEANERMAC.COM.

This dispute concerns the domain name ccleanerportable.com created on September 26, 2019. It follows that the domain name was registered with the knowledge of older above mentioned trademarks of the Complainant. The website under the disputed domain name is being used by the Respondent to offer CCleaner Portable software for download in competition with the Complainant.

The domain name ccleanerportable.com is confusingly similar to the Complainant’s family of CCLEANER trade and service marks (both statutory and common law) named above, the Respondent has no rights or legitimate interests in respect of the

ccleanerfulldownload.com domain name which has been registered and is being used in bad faith.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

A. The domain name is confusingly similar to the Complainant´s trademarks

Word CCLEANER is at the core of Complainant's family of marks. It consists of the capital letter "C" and a part "-CLEANER" which indicates something that serves for cleaning. The capital "C" is very characteristic for the Complainant as it is also used in his logo with the picture of a broom.
Due to high popularity of the Complainant and its software, considering the leadership position of the Complainant on the market with the optimization software, the word "CCLEANER" acquired a distinctive character. CCLEANER trademark is a globally known brand with good reputation. The complainant (presenting CCleaner) has more than half a million of followers on Facebook and about 19,400 followers on Twitter. Furthermore, the Complainant´s website ccleaner.com was in last 6 months visited by approximately 22 million of Internet users.
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 domain name registered by the Respondent www.ccleanerportable.com is confusingly similar to the Complainant´s registered trademarks.

It is well established that the specific top level of a domain such as ".com", ".org", ".tv" or ".net" does not affect the domain name for the purpose of determining the identity or similarity of domain name and a trademark (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´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. An additional part "-portable" is descriptive in nature, meaning software that can be moved to another system without it being changed. The disputed domain name is identical to Complainant´s product CCleaner Portable, which is offered by the Responded for download under the disputed domain name. Therefore, this additional part is not able to change overall impression and does not eliminate the confusing similarity with the older trademarks of the Complainant and this is even more true in a situation where Complainant itself offer CCleaner Portable software for download under its own website on which uses its trademarks. The dispute domain name is therefore confusing and diverting Internet users. Furthermore, the website to which the disputed domain name resolves displays the Complainant's well known CCleaner logo which is also used as a favicon.

It is well accepted that where the relevant trademark is recognizable within the disputed domain name, the addition of descriptive terms would not prevent a finding of confusing similarity under the first element (see par. 1.8 of WIPO Overview 3.0). Similarly, numerous prior panels have held that the fact that a domain name wholly incorporates a complaint´s registered mark is sufficient to establish identity or confusing similarity for purposes of the Policy despite the addition of other words to such marks. (e.g. EAuto, L.L.C. v. EAuto Parts, WIPO Case no. D2000-0096; Caterpillar Inc. v. Off Road Equipment Parts, WIPO Case no. FA0095497).

Well known character of the Complainant´s trademark was established in previous CAC case no. 101759 (regarding illegal offer of CCleaner for download) and CAC case no. 101760, as well as in CAC case no 102555 (regarding the domain wwwccleaner.com) in which Panel states: "The Panel accepts that the CCLEANER trademark of the Complainant is well-known in the sector of software optimization tools."
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 Portable tool could be provided directly by the Complainant or with its authorisation. However, instead of CCleaner tool, the Internet user can be attacked by the Respondent´s malware what can damage good reputation of the Complainant as software offered by the Respondent under Complainant´s trademark is not under Complainant´s control.

Moreover, the Respondent contributes to the confusion of the public by placing the trademark “CCLEANER” of the Complainant on the websites available under the disputed domain name and uses Complainant´s logo also as a favicon and mimics graphic design and trade dress of the Complainant used under its official website ccleaner.com presumably in order to abuse this very famous trademark, logo and Complainant´s reputation in his favour.

On the basis of the above mentioned there can be no question but that the disputed domain name is confusingly similar to the Complainant´s family of marks “CCLEANER” for purposes of the Policy.
B. The respondent has no right or legitimate interests in respect of the domain name

There does not exist any evidence that the Respondent has been commonly known within the consumers by the disputed domain name (by “CCLEANER”) 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 disputed website in the absence of Complainant’s authorization represents illegal unauthorized conduct of the Respondent (copyright and trademark infringement).

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 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 competing software (Nikon, Inc. v Technilab, WIPO Case no. D2000-1774). Competing use is not considered a bona fide offering of goods and services, nor a legitimate non-commercial or fair use, see WIPO case no. D2017-0655-NUOVARIVER.COM.

At the very bottom of the pages in small grey (hardly readable) letters it is stated that: “CCleaner Portable is a trademark of Piriform. Ccleanerportable.com is not affiliated, sponsored or endorsed by Piriform in any ways. This is an unofficial fan website created for general information/educational purpose only. Any context found in this website is our personal opinions and do not purport to reflect the opinions or views of Piriform or its representatives. All other trademarks are the property of their respective owners.” Such disclaimer will barely get into attention of average Internet users. The average Internet user will not notice the disclaimer as it is situated at the very bottom of the page. Average Internet user usually not read and analyse all content of every page before downloading the software. In such a case the existence of the disclaimer cannot by itself cure the lack of bona fide (Thirty & Co. v. Jake Marcum, Marcum Creative, LLC, WIPO Case no. D2016-1212). The disclaimer is not effective as it comes after a full page of marketing where the mark "CCLEANER" appears many times and is placed under the download button (and is not perceptible immediately by the public (Dr. Ing. h.c. F. Porsche AG v. Sabatino Andreoni, WIPO Case No. D2003-0224; Pliva, Inc. v. Eric Kaiser, WIPO Case No. D2003-0316; DRS Number 02801 Parties The Emigration Group Limited v Sanwar Ali). In such a case the existence of the disclaimer cannot by itself cure the lack of bona fide (Thirty & Co. v. Jake Marcum, Marcum Creative, LLC, WIPO Case no. D2016-1212). It is worth pointing out that it is only by unauthorised use of the trademark that the potential customer is brought to the website (containing the disclaimer) in the first place. Moreover, the disclaimer falsely states that the website is created for educational purposes while the true is that the purpose of the website is illegal distribution of CCleaner software of the Complainant.

Panel have found that use of complainant’s trademark and logo along with 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. The Panel also notes that the use of a domain name for illegal activity can never confer rights or legitimate interests on a respondent (Avast Software s.r.o. v Victor Chernyshov, CAC Case no. 101568).

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 (Carrefour v

Whois Agent, Whois Privacy Protection Service Inc. / Andres Saavedra, WIPO Case no. D2016-0608).

Under the Policy, a complainant may make out a prima facie case that the respondent lacks rights or legitimate interests in the domain name at issue. 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.

C. The domain name has been registered and is being used in bad faith

There is no indication that the disputed domain name was registered and is used in bona fide. The Respondent was clearly aware of the registration and the use of the Complainant´s trademarks before the registration of the domain name as follows from the Respondent´s explicit references on his website to the logo, trademark, CCleaner software and official website of the Complainant.

In the previous CAC cases as stated above the Panel held that the Complainant´s trademarks are well-known. Panels have consistently found that the mere registration of a domain name that is confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith (see par. 3.1.3 of WIPO Overview 3.0).

Furthermore, the disputed domain name is used solely for the illicit distribution of the Complainant's CCleaner Portable software. The Complainant did not provide an authorization for such distribution of its software protected by the copyright. With regard to the End User License Agreement (the EULA) art. 2, the user of the CCleaner software cannot resale or further distribute the CCleaner software. Unauthorized distribution of CCleaner software through the website www.ccleanerportable.com therefore violates the EULA as well as applicable copyright laws.
To conclude, the disputed domain name is used by the Respondent to reach the Complainant´s customers and offer them the optimization tool of the Complainant for download as is offered by the Complainant on its website. This could suggest (incorrectly) that the Respondent operates as an affiliate or a partner of the Complainant or has Complainant´s authorization to offer the software. This is supported by the Respondent´s unlawful placement of Complainant´s logo on every page as well as imitation of graphic design of Complainant´s website ccleaner.com. Moreover, the quality of the offered CCleaner tool provided by the Respondent is not under the Complainant´s control and therefore software offered by the Respondent can very easily harm good reputation built by the Complainant for years.

Bad faith of the Respondent is further supported by the fact that the Respondent concealed his/her identity. Websites under the disputed domain name do not contain any information about the provider of service.

The Policy indicates in para 4 (b) (iv) that bad faith registration and use can be found in respect of a disputed domain name, where a respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent´s website or other online location, by creating a likelihood of confusion with a complainant´s mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

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

Furthermore, the use of a proxy server by the true owner hidden behind the Respondent is markedly corroborate a finding of bad fight (Carrefour v Whois Agent, Whois Privacy Protection Service Inc. / Andres Saavedra, WIPO Case no. D2016-0608).

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). The domain name registered by the Respondent <ccleanerportable.com> is confusingly similar to the Complainant´s registered trademarks, listed above.

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). UDRP panels have found that use of complainant's trademark and logo along with the offer for download the complainant's software in the absence of complainant's authorization, and in violation of End User License Agreement, negates any potential justification of the Respondent.

The Respondent is 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. E.g., Carrefour v Whois Agent, Whois Privacy Protection Service Inc. / Andres Saavedra, WIPO Case no. D2016-0608.

At minimum, Complainant has made a prima facia case that Respondent lacks rights or legitimate interest in the domain name, and Respondent has failed to appear or otherwise rebut Complainant's assertions. Therefore, Complainant has satisfied this element 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). The disputed domain name apparently is used solely for the illicit distribution of the Complainant's CCleaner Portable software. The Complainant did not provide an authorization for such distribution of its software protected by the copyright. With regard to the End User License Agreement (the EULA) art. 2, the user of the CCleaner software cannot resell or further distribute the CCleaner software. Unauthorized distribution of CCleaner software through the website www.ccleanerportable.com therefore violates the EULA as well as applicable copyright laws.

Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent´s website or other online location, by creating a likelihood of confusion with a Complainant´s mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

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 disputed domain name apparently is used solely for the illicit distribution of the Complainant's CCleaner Portable software. Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent´s website or other online location, by creating a likelihood of confusion with a Complainant´s mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **CCLEANERPORTABLE.COM**: Transferred

PANELLISTS

Name	**Mike Rodenbaugh**

DATE OF PANEL DECISION 2020-08-13

Publish the Decision