Decision for dispute CAC-UDRP-103180

Case number	**CAC-UDRP-103180**
Time of filing	**2020-07-21 09:16:41**
Domain names	**descargarccleaner.online**

Case administrator

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

Complainant

Organization	**Piriform Software Limited**

Complainant representative

Organization	**Rudolf Leška, advokát**

Respondent

Name	**ekaitz privado**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of 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 trademarks bearing the word “CCLEANER” in several countries, such as:

- a registered EU word mark “CCLEANER” no. 007562002 for goods and services in class 9 (software) with the application date January 30, 2009;

- a registered EU word mark “CCLEANER” no. 015100803 for goods and services in classes 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, etc.) with the application date February 11, 2016;

- registered UK word mark “CCLEANER” no. 2486623 for goods and services in class 9 (computers software) with the application date May 2, 2008;

- registered U.S. word mark “CCLEANER” no. 5099044 for goods and services in classes 9 and 42 (mainly computer

software) with priority as of February 11, 2016;

- registered U.S. word mark “CCLEANER” no. 3820254 for goods and services in class 9 (mainly computer software) with priority as of January 30, 2009.

The Complainant owns a domain names portfolio including the word element “CCLEANER”, such as: <CCLEANERCLOUD.COM>, <CCLEANER.CLOUD>, <CCLEANERFORMAC.COM> and <CCLEANER-MAC.COM>.

FACTUAL BACKGROUND

The Complainant offers its customers a popular PC optimization software named “CCleaner”, which protects privacy and makes computers faster and more secure. This optimization tool was released in 2004 and has been downloaded more than two and a half billion times, already. The Complainant distributes its optimization tool “CCleaner” i.a. via its websites, where a customer can find product information and can directly download the software.

The Complainant is well known on the market globally as company, which develops software tools. In fact, the Complainant has more than half a million of followers on Facebook and about 19,000 followers on Twitter. Furthermore, in the last 6 months, the Complainant´s website www.ccleaner.com has been visited by approximately 22 million Internet users.

The authorization to use the software downloaded from Complainant’s website is governed by the Complainant's End User License Agreement and is strictly limited to personal use.

The Complainant uses, inter alia, its international trademarks “CCLEANER” as well as the domain names: <CCLEANERCLOUD.COM>, <CCLEANER.CLOUD>, <CCLEANERFORMAC.COM> and <CCLEAN-ERMAC.COM> for its services and as product name.

The disputed domain name <DESCARGARCCLEANER.ONLINE> was registered on February 16, 2018 and is used for offering a download of the Complainant's CCleaner software as well as for explanations on how to use it in Spanish language.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Respondent has no rights or legitimate interest in the disputed domain name nor the trademark of the Complainant "CCleaner". Further, he has registered and is using the disputed domain name in bad faith. Particularly, the Respondent offers the paid download of the Complainant's software on his website.

RESPONDENT:

The Respondent states that it is using the disputed domain name to explain in Spanish language how the software CCleaner is used and that no ads are serving on its website. Further, it argues that in the moment when it built the website no other manual or tutorial for the usage of the CCleaner software existed in Spanish language.

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 failed in showing that 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.

Unless otherwise agreed by the parties the language of the proceedings is the language of the registration agreement (Paragraph 11 of the Rules). Since English is the language of the Registration Agreement, and there is no other agreement of the parties, the language of this proceeding shall be English.

PRINCIPAL REASONS FOR THE DECISION

A. The disputed domain name is confusingly similar to the trademark “CCleaner” of the Complain-ant.

The Complainant has, to the satisfaction of the Panel, shown that it has valid rights for the trade-mark “CCLEANER”.

The disputed domain name is confusingly similar to the Complainant’s “CCLEANER” trade marks. The word “CCLEANER” consists of the capital letter “C” and a part “-CLEANER”, which indicates a product that serves for cleaning. The capital “C” is a distinctive element in the trademark of the Complainant.

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 dominant part to which the attention of the public is drawn. The additional part “descargar”, a Spanish word that translates to “download”, is descriptive in nature, particularly for Spanish speaking customers to whom this domain is predominantly directed.

Therefore, this additional part is not able to change overall impression and does not eliminate the confusing similarity with the trademarks. The disputed domain name is therefore confusing and diverting Internet users, particularly giving an impression to Spanish-speaking users that this website is just a Spanish version of the official website of the Complainant.

Lastly, it is well established that the addition of the gTLD suffix “.online” is not sufficient to escape the finding that the disputed domain name is identical to the Complaint’s trademark and does not change the overall impression of the designation as being connected to the trademark of the Complainant.

B. The Respondent has no rights or legitimate interests in respect of the disputed domain name within the meaning of the Policy.

The Complainant has established a prima facie proof that the Respondent has no rights or legitimate interests in the disputed domain name, since the Respondent is not a licensee of the Complainant nor has the Complainant granted any permission or consent to use its trademark in a domain name.

The use of Complainant’s trademark and logo along with the offer to download the Complainant’s software in the absence of Complainant’s authorization does not serve as a potential justification for the Respondent.

C. The Panel is not convinced that the disputed domain name has been registered and is being used in bad faith within the meaning of the Policy.

The Complainant contends that the Respondent registered and has been using the disputed domain name in bad faith. In

particular, the complainant invokes paragraph 4(b)(iv) of the Policy, under which a panel may find both registration and use in bad faith if there is evidence that by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation or endorsement of the respondent's website or of a product or service on it.

The Complainant contends that the Respondent registered the disputed domain name with knowledge of the Complainant's well-known trademark and with a view to incentivise users to first download the free version of the CCleaner software from his website for free, and afterwards, caused by more functionalities, to download the paid version. This offer of a paid version would indicate a commercial use of the disputed domain name.

First, the Panel agrees that the Respondent likely knew the Complainant and its "CCleaner" products and trademarks at the time he registered the disputed domain name as follows from the Respondent´s explicit references on his website to the logo, trademarks and CCleaner software of the Complainant.

Further, the Panel acknowledges that the disputed domain name is used at least partly for the – potentially – unauthorized distribution of the Complainant's CCleaner software for free. In fact, the Complainant did not provide an authorization for such distribution of its software protected by copyright. With regard to the End User License Agreement, the user of the CCleaner software cannot resale or further distribute the CCleaner software since it is limited to personal use. Therefore, the circumstance that the Respondent claims it provides "the official version always up to date", suggests incorrectly that the Respondent has Complainant´s authorization to offer the software. This is supported by placement of Complainant´s trademark, logo and detailed information about the Complainant and CCleaner software under disputed domain name.

Also, the Panel acknowledges that the disputed domain name is used by the Respondent to reach the Complainant´s customers, particularly Spanish-speaking customers, given the fact that the disputed domain is in Spanish language, and offers them the software of the Complainant for download, as is offered by the Complainant on its website.

With regard to the required commercial gain in the sense of 4(b)(iv) of the Policy the Complainant states that "the Respondent incentivises users to first download the CCleaner software from his website for free, and then download the paid version of the software, when the free version is not enough as it does not provide all functionalities. By doing this, the Respondent clearly aims to achieve commercial gain." It further argues that the disputed domain name would have 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." This suggests, that the applicant offers a paid version of the software in a misleading way which would ultimately result in the generation of profits. But with a view on the screenshots of the website of the disputed domain name contained in the annex, this argumentation does not appear to be conclusive.

First, the Panel accepts that the Respondent promotes the advantages of the free version in contrast to the paid version of the software and also offers a corresponding download link to the free version. However, it cannot be inferred from the screenshots of the website that it also provides a download link to a paid version in the event that the respective user is not satisfied with the functionalities of the free version. Also, for example, no reference can be found for a so-called affiliate link to a paid version, through which the opponent could enrich himself.

Moreover, there are just two references to the paid version under the headlines „Existen diferentes versiones de ccleaner" and "¿Donde puedo descargar CCleaner PRO full?" which can be translated –as: "There are different versions of ccleaner, but we recommend that you use the free one first, and if it is useful to you, that you switch to another of the two paid versions that it has, as long as we don't have enough with this version. The free version of CCleaner has the following functionalities" and "Where can I download CCleaner PRO full? Download CCleaner for free from this website, we have the official program 100% virus free, we have the official version always updated, do not wait any longer and look for our download link to download this great program." These explanations have only informative character and do not suggest commercial interest in any thinkable way. Also, no download option for a paid version of the software is given. Summarised, the Respondent is neither selling the paid version of the software of the Complainant nor benefiting from any

advertisements or sign of any commercial endeavour. At least, the Panel has not found any proof in this respect.

As a result, the Respondent's submissions must be accepted to the perspective that it simply offers a website in Spanish language, which explains how to use the CCleaner software including an (potentially unauthorized) download option of the free version.

Although, it is admittedly conceded that the Respondent’s site provides information that could have an impact on the commercial activity of the Complainant. This applies specifically with regard to the circumstance that the Complainant may be deprived of traffic and that corresponding users are not able to directly opt for the paid version on the Complainant’s website, which could possibly result in a loss of revenue. Such activity could have an impact on good/bad faith. But, however, the Panel emphasizes that the burden of proof for a link between this practice and bad faith in the sense of paragraph 4 (a)(iii) of the Policy rests with the Complainant. In this matter it is not purpose of the administrative proceedings to determine whether any actions of the Respondent are to be considered as action which can be considered as bad faith. It is not the task of the Panel to undertake such research. As a matter of fact, pursuant to paragraph 10(a) of the Rules and paragraph 4(a) of the Policy a panel may undertake only limited factual research into matters of public record if it deems this necessary to reach the right decision (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition (“WIPO Overview 2.0”), paragraph 4.5; Sensis Pty Ltd., Telstra Corporation Limited v. Yellow Page Marketing B.V., WIPO Case No. D2011-0057.).

The potential violation of the end user license agreement or the Complainant’s license policy cannot affect this. This is the case since no evidence has been provided that this potentially unlawful act could give rise to a commercial interest or even bad faith of the Respondent. With regard to two similar cases in which a corresponding commercial interest in a “non-commercial blog” was also rejected (see CAC Case No. 101516, MY-GTI.COM, VWGOLF.TECH and CAC Case. No. 101302, MY-GTI.COM), the Complainant failed in this case to submit sufficient evidence that the Respondent actions are of commercial nature.

Therefore, the Panel finds on the balance of probabilities that the Respondent has not registered or used disputed domain name in bad faith. The Panel is, so far, unable to conclude that the disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) or otherwise of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **DESCARGARCCLEANER.ONLINE**: Remaining with the Respondent

PANELLISTS

Name	**Dominik Eickemeier**

DATE OF PANEL DECISION 2020-08-24

Publish the Decision