Decision for dispute CAC-UDRP-103213

Case number	CAC-UDRP-103213
Time of filing	2020-08-05 09:32:54
Domain names	virbaccleaningbiz.com

Case administrator

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

Complainant

Organization	VIRBAC S.A.

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	George Hobson

OTHER LEGAL PROCEEDINGS

There are no other legal proceedings related to the disputed domain name.

IDENTIFICATION OF RIGHTS

International trademark VIRBAC n°420254 registered since December 15, 1975.

International trademark VIRBAC n°793769 registered since March 11, 2002.

FACTUAL BACKGROUND

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

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”. WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasiliy Terkin.

Past panels have found it is not a bona fide offering of goods or services or legitimate non-commercial or fair use. For instance:

- Forum Case No. FA 970871, Vance Int’l, Inc. v. Abend (concluding that the operation of a pay-per-click website at a

confusingly similar domain name does not represent a bona fide offering of goods or services or a legitimate non-commercial or fair use, regardless of whether or not the links resolve to competing or unrelated websites or if the respondent is itself commercially profiting from the click-through fees);

- WIPO Case No. D2007-1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe ("Respondent's use of a domain name confusingly similar to Complainant's trademark for the purpose of offering sponsored links does not of itself qualify as a bona fide use.").

Please see for instance:

- CAC Case No. 102987, VIRBAC S.A. v. MONDIAL CONSTRUCTION AS ("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.");

- CAC Case No. 100928, VIRBAC S.A. v. Lee Fei ("In any case, given the reputation of the Complainant's marks the Respondent should have been aware of the Complainant's rights.").

- WIPO Case No. D2018-0497, StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC ("In that circumstance, whether the commercial gain from misled Internet users is gained by the Respondent or by the Registrar (or by another third party), it remains that the Respondent controls and cannot (absent some special circumstance) disclaim responsibility for, the content appearing on the website to which the disputed domain name resolve […] so the Panel presumes that the Respondent has allowed the disputed domain name to be used with the intent to attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the Respondent's website to which the disputed domain name resolves. Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith.").

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

FIRST CONDITION

It is commonly accepted that the first condition functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name. It this comparison, the cc- or g- TLD is usually not taken into account.

The disputed domain name includes entirely the Complainant's trademark.

The adjunction of the words "cleaning" and "biz" is not sufficient to exclude confusing similarity.

First condition is satisfied.

SECOND CONDITION

Panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name.

Complainants claims, without being contradicted, that:

- The Complainant has not licensed or authorized the Respondent to register or use the disputed domain name.

- There is no evidence that the Respondent is known by the disputed domain name or owns any corresponding registered trademarks.

- When conducting a search on "Virbac" on popular Internet search engines such as Google and Bing, the vast majority of the results relate to the Complainant's official websites and products.

- The disputed domain name has not been resolving to any active web page (domain parking): there is no evidence that the Respondent engages in, or has engaged in any activity or work, i.e., legitimate or fair use of the disputed domain name, that demonstrates a legitimate interest in the disputed domain name.

The Respondent has chosen not to answer to the Complaint.

Based on the elements presented by Complainant, the Panels finds that the second condition is satisfied.

THIRD CONDITION

The disputed domain name incorporates in its entirety Complainant's trademark. In the absence of any credible explanation, such incorporation appears as a direct reference to the Complainant's trademark.

Furthermore, the disputed domain name resolves to a parking page with commercial links related to the Complainant and its activities and products.

It is highly probable that the Respondent registered and used the disputed domain name having the Complainant in mind and acted in, order to attract traffic.

The Respondent has chosen not to answer to the Complaint.

Based on the elements presented by Complainant, the Panel finds that the third condition is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **VIRBACCLEANINGBIZ.COM**: Transferred

PANELLISTS

Name	**Mr. Etienne Wéry**

DATE OF PANEL DECISION 2020-09-14

Publish the Decision