Decision for dispute CAC-UDRP-103446

Case number	**CAC-UDRP-103446**
Time of filing	**2020-12-04 08:36:18**
Domain names	**vivendi.link**

Case administrator

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

Complainant

Organization	**VIVENDI**

Complainant representative

Organization	**Nameshield (Laurent Becker)**

Respondent

Name	**Vladimir Volf**

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 a number of trade marks for VIVENDI including, by way of example only, International Trade Mark, registration number 687855 for VIVENDI, in class 9 and classes 35-42 inclusive, applied for and registered on February 23, 1998.

FACTUAL BACKGROUND

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

The Complainant is a French multinational mass media conglomerate with its headquarters in Paris, France. Its activities include the production of music, television, film and video games. In 2017, its worldwide revenues amounted to €12,444 million worldwide.

The Complainant trades as VIVENDI and owns many trade marks to protect this trading style including the mark in respect of which full details are given above. It also owns a large number of domain names which comprise or include its trade marks, including <vivendi.com>, which resolves to its principal website.

The disputed domain name was registered on November 27, 2020. It resolves to a webpage which contains a notice stating: “The domain name is for sale”.

The disputed domain name is identical to the Complainant’s VIVENDI trade mark as it exactly reproduces it without any addition or alteration.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not known by the disputed domain name nor is it affiliated with, or authorised by, the Complainant in any way. Moreover, no licence or authorization has been granted to the Respondent to make any use of the Complainant’s trade marks or to register the disputed domain name. The disputed domain name is being offered for sale and the Respondent has not shown any demonstrable plan to use it.

The Respondent has registered and is using the disputed domain name in bad faith. Given the distinctiveness of the Complainant’s trade marks and reputation it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant’s trade marks. See for example Ferrari S.p.A. v. American Entertainment Group, Inc, WIPO Case No. D2004-0673. Since its registration the disputed domain name has been offered for sale and offering to sell the disputed domain name so soon after registration can demonstrate bad faith under the circumstances described at paragraphs 4(b)(i) and (iv) of the Policy.

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

Paragraph 4(a) of the Policy requires that the Complainant prove each of the following three elements in order to succeed in its Complaint:

(i) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and

(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

Rights

So far as the first element is concerned, the Complainant's trade mark registrations for VIVENDI including the trade mark in respect of which full details are provided above, establish its rights in this mark.

For the purpose of comparing the disputed domain name with the Complainant's mark, it is established practice to disregard the generic Top Level Domain, that is ".link" in the case of the disputed domain name, as this is a technical requirement of registration. The remaining element of the disputed domain name comprises the Complainant's trade mark, in full and without alteration. The Panel accordingly finds that the disputed domain name is identical to a trade mark in which the Complainant has rights.

Rights and legitimate interests

Paragraph 4(c) of the Policy sets out circumstances, without limitation, by which a respondent might demonstrate that it has rights or a legitimate interest in a domain name. These are, summarised briefly: (i) if the respondent has been using the domain name in connection with a bona fide offering of goods and services; (ii) if the respondent has been commonly known by the domain name; or (iii) if the respondent has been making a legitimate noncommercial or fair use of the domain name.

The only known use of the disputed domain name, namely to resolve to a webpage containing a notice that it is offered for sale, does not comprise a bona fide offering of goods and services for the purpose of the second element of the Policy. Section 2.2 of the WIPO Overview of WIPO Panel Viewson Selected UDRP Questions, Third Edition ("WIPO Overview 3.0") provides examples of non-exhaustive examples of prior use, or demonstrable preparations to use a domain name, in connection with a bona fide offering of goods or services and explains that: "While such indicia are assessed pragmatically in light of the case circumstances, clear contemporaneous evidence of bona fide pre-complaint preparations is required". Simply offering the disputed domain name for sale does not meet this requirement. See, by way of example, Ruby's Diner, Inc. v. Joseph W. Popow, WIPO Case No. D2001-0868, in which the panel found that registering a domain name and doing no more with it than to advertise that it is for sale does not support a respondent's legitimate interest under the Policy. The absence of any genuine content at the Respondent's webpage points against there being any bona fide or any non commercial or fair use of the disputed domain name; see, by way of example, CAC Case No. 101784, Christian Wiesner v Michael Benlevi.

There is no evidence that the Respondent has been commonly known by the disputed domain name, nor does the Respondent's passive holding of the domain name amount to making a legitimate non commercial or fair use of it. Furthermore, the registration of the disputed domain name, being identical to the Complainant's mark carries with it a high risk of implied affiliation.

The Complainant having made out a prima facie case in relation to the second element, the burden of proof shifts to the Respondent to rebut it; see, for example, CAC Case No. 102333, Amedei S.r.l. v sun xin. In the absence of any response by it to the Complaint, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Bad faith

The Panel accepts the Complainant's submission that, given the distinctive nature of the Complaint's VIVENDI trade mark, it is highly improbable that the Respondent registered the disputed domain name without an awareness of the Complainant and its trade mark rights. Although the disputed domain name is not entirely inactive, the use of a domain name to resolve either to a blank or "coming" soon webpage or, as here, to a web page which does nothing other than offer it of sale, is

essentially the same as passive holding, which panels in many earlier decisions under the Policy have found capable of amounting to bad faith registration and use. The material factors in this respect were first set out in Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003 and are fulfilled in the circumstances of these proceedings. In particular, the Panel takes into account that (1) the Complainant has established that its rights in its VIVENDI mark are both extensive and established , (2) the Respondent has not provided any evidence of actual or contemplated good faith use by it of the disputed domain name, (3) the Respondent has concealed its true identity, by use of a privacy service and (4) it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate or infringe the Complainant's trade mark rights.

Moreover, the circumstances of the Respondent's registration and use of the disputed domain name fall within, or closely approximate to, the example of bad faith registration and use set out at paragraph 4(b)(i) of the Policy, namely that the Respondent is likely to have acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring it to the Complainant or a competitor of the Complainant for valuable consideration in excess of its documented out-of-pocket costs directly related to the disputed domain name.

For these reasons the Panel finds that the disputed domain name was both registered and used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **VIVENDI.LINK**: Transferred

PANELLISTS

Name	**Antony Gold**

DATE OF PANEL DECISION 2021-01-11

Publish the Decision