

Decision for dispute CAC-UDRP-103515

Case number **CAC-UDRP-103515**

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Domain names **ccleanerfree.club, ccleanerfree.work, ccleanersoft.club, ccleaner-premium.live, ccleaner-premium.digital, ccleaner-premium.com**

Case administrator

Organization **Denisa Bilík (CAC) (Case admin)**

Complainant

Organization **Piriform Software Limited**

Complainant representative

Organization **Rudolf Leška, advokát**

Respondent

Name **Bill Jackson**

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 names.

IDENTIFICATION OF RIGHTS

The Complainant owns the following registrations:

- EUTM registration "CCLEANER" no. 007562002 in class 9 (software) with priority from January 30, 2009;
- EUTM registration "CCLEANER" no. 015100803 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...) with priority from February 11, 2016;
- UK trademark registration "CCLEANER" no. 2486623 in class 9 (computers software) with priority from May 2, 2008;
- U.S. trademark registration "CCLEANER" no. 5099044 in class 9 (computer software) with priority from February 25, 2016;
- U.S. trademark registration "CCLEANER" no. 3820254 in class 9 (computer software) with priority from March 6, 2009.

FACTUAL BACKGROUND

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

Language of the proceedings

In accordance with para. 11 of the Rules, the language of this proceeding shall be English. English is also the language of the Registration Agreement, which is available at the registrar's website. Furthermore, the websites under the disputed domain names are solely in English version, what indicates that the Respondent targets global audience, is familiar with English language and prefers communication in English.

The Complainant and his 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 reliable service for customers and business.

The Complainant distributes its optimization tool "CCleaner" i.a. via its website <piriform.com> and <ccleaner.com> where a customer can find product information and can directly and legally download CCleaner 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 provides 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, CCLEANERMALWARE.COM, ccleaner.cc>.

This dispute concerns the following domain names:

- <ccleanerfree.club> created on September 9, 2020
- <ccleanerfree.work> created on September 9, 2020
- <ccleanersoft.club> created on September 9, 2020
- <ccleaner-premium.live> created on August 29, 2020
- <ccleaner-premium.digital> created on August 29, 2020
- <ccleaner-premium.com> created on August 29, 2020

It should be emphasized that the first three domain names were created on the same date (i.e. on the September 9, 2020) whilst the remaining three domain names were also created on the same date (i.e. on the August 29, 2020). All six domain names were created only 10 days from one another.

It follows that the above mentioned domain names were registered with the knowledge of older and long standing trademarks of the Complainant. The websites under the disputed domain names are being used by the two following Respondents for illicit and unauthorized purposes:

Respondent 1: Bill Jackson, resided at 7508 Hermosillo Drive, El Paso, Texas, Unites States with email address:

metaha4ik@protonmail.com

Respondent 2: Mykola Frinz, resided at ul. Pavla Rihta 2, 21-500 Lublin, Poland, with email address: annafrinz@gmail.com (together as Respondents).

The disputed domain names can be divided into two groups with regard to their purpose.

The first group consists of the following five domain names: <ccleanerfree.club, ccleanerfree.work, ccleanersoft.club, ccleaner-premium.live and ccleaner-premium.com>. When internet users access the websites operated under these domain names they are warned of their dangerous content. These domain names are used by the Respondent for malware distribution, which

consists of installing dangerous programs whose aim is to steal or delete information (including documents, photos, passwords, messages etc.) on computers and laptops of consumers who access these websites with the original intention to access the Complainants websites and services.

The second group consists of one phishing website under the domain name <ccleaner-premium.digital>. This domain name warns the consumer of the phishing character of the website, which is the practice of inducing consumers to hand over sensitive information and data. Consumers are warned of the phishing character of the website before entering the website under the above disputed domain name.

In sum, all disputed domain names are used in identical manner and demonstrate same pattern of conduct: namely distribution of malware and redirection to phishing sites, whilst both have bear an identical aim of stealing or deleting sensitive information from computers of Internet users that access websites under those domain names under a wrong belief they are accessing the website of or affiliated with the Complainant.

All of the disputed domain names of first and second group are 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 disputed domain names which have been registered and are being used in bad faith to divert internet users, distribute malware on their computers and gain private and sensitive information from them.

A. The disputed domain names are 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, which directly connects to and reflects the "cleaning" nature of the product.

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 19,000 followers on Twitter. Furthermore, the Complainant's website ccleaner.com was in last 6 months visited by 25.51 million Internet users.

Well known character of the Complainant's company name and 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 the WIPO case no. DCC2019-0002.

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.

It is well established that the specific top-level of a domain such as ".com", ".club", ".work", ".live" or ".digital" does not affect the domain name for the purpose of determining the 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).

"CCLEANER" is the distinctive part in all of the disputed domain names. CCLEANER is the first dominant part to which an attention of the public is concentrated. Additional parts "-free", "-soft", "-premium", that make up the disputed domain names, are only descriptive in nature. The English word "free" refers to the Complainants software being available for download without payment on the disputed domain name. The English word "premium" highlights the superior quality of the Complainants

software, whilst the English word “soft” is referring to the pleasing quality of the Complainants software. Therefore, these additional parts are not able to change overall impression and do not eliminate the confusing similarity with the older trademarks of the Complainant. Quite on the contrary, it makes the confusion more likely as it makes an impression that the websites under the disputed domain names are operated by or somehow affiliated with the Complainant with the intention to provide service to its own customers.

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 complainant’s registered mark is sufficient to establish confusing similarity for purposes of the Policy despite the addition of other words or letters 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).

On balance, there is high presumption that ordinary consumers will believe that the domain names registered by the Respondents are owned by the Complainant (or are affiliated with the Complainant) and will access the websites only due to their misleading character assuming that the credible CCleaner tool could be provided directly by the Complainant or with its authorisation.

On the basis of the above mentioned there can be no question but that all disputed domain names covered by this Complaint are 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 disputed domain names

There does not exist any evidence that the Respondents have been commonly known within the consumers by the disputed domain names (by “CCLEANER”) before the beginning of this dispute nor that the Respondents own 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 names by the Respondents. The use of the Complainant’s trademark in the absence of Complainant’s authorization represents illegal unauthorized conduct of the Respondents (i.e. copyright and trademark infringement) and negates any potential justification of the Respondents. The Panel previously noted, 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). Trademark and copyright infringement shall be considered illegal in this manner.

The disputed domain names <ccleanerfree.club, ccleanerfree.work, ccleanersoft.club, ccleaner-premium.live, and ccleaner-premium.com> are being used for distribution of malware. The disputed domain name <ccleaner-premium.digital> is being used for phishing purposes. Neither of the above fraudulent activities could give the Respondents a legitimate interest in the disputed domain name. According to section 2.13.1 of the WIPO Overview 3.0, UDRP panels have consistently held that the use of a domain name for illegal activity (phishing, distributing malware etc.) can never confer rights or legitimate interests on a respondent (Carrefour v Name Redacted, Case no. D2015-1174).

The Panel also noted, that even if it turns out that no malware can actually be downloaded on the websites operated under the first group of disputed domain names, the use of the disputed domain name solely to point to a third party website containing a warning notice, self-evidently does not comprise an offering of goods and services bona fide (The Commissioners for HM Revenue and Customs v. Adil Khasanov Case No. D2020-1074). Considering the arguments above, the use of the disputed domain names by the Respondents cannot be considered bona fide.

A presumed and direct affiliation with the Complainant is falsely and misleadingly indicated by the use of the whole of Complainants trademarks in the domain names. The Respondents are seeking to create a false impression of association with the Complainant, which does not constitute a bona fide 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 disputed domain names have been registered and are being used in bad faith

There is no indication, that the disputed domain names were registered and are used in bona fide. The popularity and distinctiveness of Complainants trademarks, as well as the fact that all disputed domain names were registered within the same dates, indicate the awareness of the Respondents of the registration and the use of the Complainant's trademarks before the registration of the domain names.

Panels have consistently found that the mere registration of a domain name that is confusingly similar (particularly domain names incorporating the mark plus a descriptive term) 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).

Moreover, the use by the Respondents of a privacy service to mask the identity of the underlying registrant is a further indication of bad faith (Royal Caribbean Cruises Ltd. v. Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico, Case No. D2019-2049: Carrefour v Whois Agent, Whois Privacy Protection Service Inc. / Andres Saavedra, WIPO Case no. D2016-0608).

Even though it remains unclear whether the Respondents distribution of malware via the first group of disputed domain names is with a view of commercial gain, the motive for the disputed domain names registration is clearly malicious and such deceptive and malicious conduct of the Respondents has been held to be sufficient to conclude that the disputed domain names are registered and used in bad faith (Spoke Media Holdings, Inc. v. Andrey Volkov, WIPO Case No. D2010-1303). The Panel also emphasized, that it is an inherent act of bad faith to redirect Internet users (many, or all, of whom will have been seeking the Complainant's website) to a third party website containing malware, in accordance with section 3.4 of the WIPO Overview 3.0 (Royal Caribbean Cruises Ltd. v. Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico, Case No. D2019-2049).

The disputed domain name under the second group is being used by the Respondent to solely engage in phishing activities with the intention to defraud consumers. Thus, the disputed domain name is not being used in any type of legitimate business or services. As was previously held by Panel, the use of a disputed domain name in a phishing scheme is in itself evidence that the disputed domain name was registered and is being used in bad faith (Zahoo Holdings, Inc. v Registration Private, Domains by Proxy, LLC / Technonics Solutions WIPO Case no. D2017-1336). Furthermore, phishing is bad faith use according to para 4(b) (iv) of the Policy (Intesa Sanpaolo S.p.A v Name Redacted, WIPO Case no. D2016-1286).

There is no plausible explanation why the Respondents selected the disputed domain names other than to divert and reach the Complainant's customers for illicit distribution of malware, and phishing purposes with the intention to defraud: all foregoing conducted with the sole aim to disrupt the Complainants business, harm the well-known reputation of the Complainant that he has been building up for several years, and intentionally cause the Complainant severe economic damage and tarnishment of his trademarks. The Respondents' use of the disputed domain names causes confusion amongst consumers who are led to believe that the disputed domain names are registered to, operated or authorised by, or otherwise connected with the Complainant. The intention of the Respondents is to misuse well known character and good reputation of the Complainant and its trademarks for the Respondents' advantage in a malicious manner at the expense of the Complainant. It thus follows that the Respondents are engaged in a pattern of bad faith conduct (see par. 3.1.2 of WIPO Overview 3.0).

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names (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 have been registered and are 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

I. RIGHTS

The disputed domain names are confusingly similar to the Complainant's registered trademarks since they reproduce the Complainant's mark 'CCLEANER', merely adding generic expressions as FREE, SOFT or PREMIUM. The CCLEANER trademark is clearly recognizable.

II. NO RIGHTS OR LEGITIMATE INTERESTS

The Respondent has not submitted any response. Therefore, it has submitted no information on possible rights or legitimate interests it might hold. On its part, the Complainant has submitted information and arguments which allow it to be reasonably assumed that the Respondent has no rights or legitimate interest in the domain names in dispute.

As the WIPO Arbitration and Mediation Center pointed out in UDRP case No. D20020856:

"As mentioned [in the decision], the Respondent has not filed a Response and is therefore in default. In those circumstances when the Respondent has no obvious connection with the disputed Domain Name, the prima facie showing by the Complainant that the Respondent has no right or legitimate interest is sufficient to shift the burden of proof to the Respondent to demonstrate that such a right or legitimate interest exists." WIPO Case No. D20020273 <sachsenanhalt>; WIPO Case No. D20020521 <volvovehicles.com>.

Furthermore, as proven by the Complainant, the disputed domain names host sites with malware. According to WIPO Jurisprudential Overview 3.0, paragraph 2.13.1, "Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent".

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names.

III. BAD FAITH

The Respondent has, as a result of his default, not invoked any circumstances which could invalidate the Complainant's allegations and evidence with regard to the Respondent's registration and use of the disputed domain names in bad faith.

The Complainant has supplied evidence of fraudulent use of the disputed domain names by the Respondent, resolving to malware sites. It is therefore clear that the Respondent registered the domain names including the well-known CCLEANER

trademark for this fraudulent purpose.

According to WIPO Jurisprudential Overview 3.0, paragraph 3.4, “Panels have held that the use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending email, phishing, identity theft, or malware distribution”. The same reasoning can be found in Case No. 102320, Intesa Sanpaolo S.p.A. v. cao Bing.

This is particularly evident in a case such as this one, where the disputed domain names precisely take advantage of a well-known brand of software that is intended to prevent computer infections and malware.

It has, therefore, been satisfactorily demonstrated to the Panel that the disputed domain names have been 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. **CCLEANERFREE.CLUB**: Transferred
2. **CCLEANERFREE.WORK**: Transferred
3. **CCLEANERSOFT.CLUB**: Transferred
4. **CCLEANER-PREMIUM.LIVE**: Transferred
5. **CCLEANER-PREMIUM.DIGITAL**: Transferred
6. **CCLEANER-PREMIUM.COM**: Transferred

PANELLISTS

Name	José Ignacio San Martín
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DATE OF PANEL DECISION	2021-02-26
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Publish the Decision
