# Decision for dispute CAC-UDRP-103519

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| Case number | **CAC-UDRP-103519** |
| Time of filing | **2021-01-29 09:59:53** |
| Domain names | **ccleaner.download** |

## Case administrator

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

## Complainant

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| Organization | **Piriform Software Limited** |

## Complainant representative

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| Organization | **Rudolf Leška, advokát** |

## Respondent

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| Name | **Dmytro Kholodenko** |

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 proved to be the owner of the following trademarks:

- "CCLEANER" registered EU trademark no. 007562002 for goods and services in the class 9 (software) with priority from January 30, 2009;

- "CCLEANER" registered EU trademark 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;

- "CCLEANER" registered UK trademark no. 2486623 for goods and services in the class 9 (computers software) with priority from May 2, 2008;

- "CCLEANER" registered U.S. trademark no. 5099044 for goods and services in the class 9 (computer software) with priority

from February 25, 2016;

- "CCLEANER" registered U.S. trademark no. 3820254 for goods and services in the class 9 (computer software) with priority from March 6, 2009.

FACTUAL BACKGROUND

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

The Complainant is Piriform Software Limited, a UK based company active in the development of software tools and related technology. Piriform has developed the PC optimization software named “CCleaner”. The Complainant supports that the CCleaner is very popular and that it was downloaded more than two and a half billion times. The CCleaner software is available for download on the Complainant's websites.

CCleaner is also a registered trademark, protected in numerous countries, including EU, UK and US.

Previous UDRP cases established the well-known character and reputation of the CCleaner trademark (CAC case no. 101759; CAC case no. 101760; WIPO case no. DCC2019-0002).

This dispute concerns the domain name <ccleaner.download> created on September 25, 2019 and registered in the name of Dmytro Kholodenko. The domain name hosts a website in which the CCleaner software is apparently downloadable.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

As regards the first requirement of the Policy, the Complainant supports that the disputed domain name is identical to the CCleaner registered trademarks. The addition of “.download” is merely a technical requirement for a registration and can thus be disregarded for the purposes of establishing identity. (American Franchise Marketing Limited v. Host Master, Qualcomm Inc., WIPO case No. D2016-1327).

As regards the second requirement of the Policy, the Complainant excludes that Mr. Dmytro Kholodenko is commonly known within the consumers by the disputed domain names (by “CCLEANER”) before the beginning of this dispute. The Complainant has never authorized the Respondent to use the "CCleaner" trademark as a domain name. Furthermore, the disputed domain name redirects to a website that reproduces the Complainant's device trademark and the same look and feel of the Complainant's website. According to the Complainant, such use cannot be qualified as a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

As regards the third and last requirement of the Policy, the Complainant supports that the current use of the disputed domain name suggests that the Respondent knew about the CCleaner trademark at the time of the registration of <CCleaner.download>. Furthermore, the website to which the disputed domain name redirects is very similar to the Complainant's official website and this circumstance could create a likelihood of confusion for the public. These circumstances are material for the Complainant to prove bad faith in the registration and use of the disputed domain name.

RESPONDENT:

No administrative complaint response has been filed by the Respondent.

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

1. The disputed domain name is confusingly similar to a trademark in which the Complainant has rights

The Complainant has successfully proved to be the owner of the trademark CCleaner.

The disputed domain name is exclusively composed by the "CCleaner" element; therefore, the Panel notes an identity between the Complainant's trademark and the Respondent's disputed domain name.

The Panel agrees that the "ccTLD" have no impact in the assessment of the first element of the Policy in view of their technical function.

As a consequence, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademarks, for the purposes of the First Element of the Policy.

2. The Respondent lacks rights or legitimate interests in the disputed domain name

Pursuant to paragraph 4(a)(ii) of the Policy, a complainant is required to make out a prima facie case that a respondent lacks rights or legitimate interests in the domain name. Once such a prima facie case is made, the respondent carries the burden of demonstrating its rights or legitimate interests in the domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

In this case, the Panel finds that the Complainant’s submitted evidence and allegations are sufficient to establish a prima facie case of Respondent’s lack of rights and legitimate interests in the disputed domain name.

According to the information provided by the Complainant and not contested by the Respondent, Mr. Dmytro Kholodenko is not commonly known by the disputed domain name nor he is authorized to use the Complainant’s trademarks.

The Panel finds that the use of the disputed domain name suggests an affiliation with the Complainant. In particular, the disputed domain name is identical to the CCleaner trademarks. Previous panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation. In this case, the risk of affiliation is even higher due to the TLD ".download" given that the Complainant's CCleaner is used in relation to a downloadable software. Furthermore, the disputed domain name links to a website which reproduces the Complainant's figurative trademark and the same look and feel of the Complainant's official website. Such fact further increases the risk of association between the parties.

For the foregoing reasons, it shall be concluded that the Respondent has no right nor legitimate interest in respect of the

disputed domain name, and that it has not been using the disputed domain name for any bona fide offering of goods or services for the purposes of the Policy.

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

The Panel finds the following circumstances as material in order to establish the Respondent's bad faith in the registration of the disputed domain name:

(i) the disputed domain name was registered well after the Complainant acquired rights on the trademark CCleaner;

(ii) the Complainant's trademark is widely known as confirmed by previous Panels. The reputation of the CCleaner trademark makes it very improbable that the Respondent was not aware of the Complainant's exclusive rights on the trademark at the time of the registration of the disputed domain name;

(iii) the website to which the disputed domain name redirects contains the Complainant's figurative trademark and promotes the download of the CCleaner software. Thus, it is clear that the Respondent was aware of the Complainant's business conducted under the trademark CCleaner.

As regards use in bad faith, the Complainant takes the view that the Respondent is using the disputed domain name in a way that could create confusion with the Complainant's trademark. As previously stated, the website to which the disputed domain name redirects contains the Complainant's trademark and reproduces the same look and feel of the Complainant's trademark. To the Panel's view, the TLD ".download" increases the mentioned risk of confusion as the Complainant's software is available for online download on Piriform Software Limited's official platforms. The Panel agrees with the Complainant's observations about the Respondent's disclaimer. Such disclaimer is hardly visible in the homepage if compared to the visibility given to the Complainant's figurative and verbal trademark. If the Respondent was willing to use the Complainant's trademark in a descriptive or fair manner, there was no need to reproduce the Complainant's figurative trademark as well as creating the same look and feel of the Complainant's website. Finally, use in bad faith could also be inferred by the fact that the Respondent is promoting the download of the CCleaner software in violation of the Complainant’s copyright and not respecting the License agreement.

All above considered the Panel finds the evidence submitted as sufficient to prove bad faith in the use and registration of the disputed domain name for the purposes of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **CCLEANER.DOWNLOAD**: Transferred

## PANELLISTS

| Name | **Andrea Mascetti** |
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DATE OF PANEL DECISION 2021-03-01

Publish the Decision