

Decision for dispute CAC-UDRP-104156

Case number **CAC-UDRP-104156**

Time of filing **2021-11-11 08:59:09**

Domain names **vivendimeta.com**

Case administrator

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

Complainant

Organization **VIVENDI**

Complainant representative

Organization **NAMESHIELD S.A.S.**

Respondent

Name **Chen Jun**

OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade mark, amongst others:

- International trade mark registration no. 687855, dated 23 February 1998, for the word mark VIVENDI, in classes 9, 35, 36, 37, 38, 39, 40, 41 and 42 of the Nice Classification; and
- International trade mark registration no. 930935, dated 22 September 2006, for the figurative mark VIVENDI, in classes 9, 16, 28, 35, 36, 38, 41 and 42 of the Nice Classification.

(hereinafter, the Complainant's trade mark or the Complainant's trade mark VIVENDI).

FACTUAL BACKGROUND

The Complainant's contentions can be summarised as follows:

I. The disputed domain name is confusingly similar to a trade mark in which the Complainant has rights

The Complainant is a French multinational mass media conglomerate headquartered in Paris, whose activities comprise music,

television, film, video games, telecommunications, tickets and video hosting services. The Complainant has operations worldwide, with 42,536 employees in 82 countries, obtaining EUR 16 billion in revenue in 2020.

In addition to the trade marks mentioned above and numerous other trade marks, the Complainant informs that it is also the owner of various domain names which contain the mark VIVENDI, most notably <vivendi.com>, which was registered on 12 November 1997.

The disputed domain name <vivendimeta.com> was registered on 5 November 2021, and it resolves to a website on which the disputed domain name is offered for sale (the Respondent's website).

The Complainant refers to prior UDRP decisions which have confirmed the Complainant's rights in "VIVENDI", as follows: WIPO Case No. D2021-0026, Vivendi v. (Gong Xiao Li) (in respect of the domain name <universal-vivendi.com>); CAC Case No. 102885, VIVENDI v Super Privacy Service LTD c/o Dynadot (in respect of the domain name <vivendiwater.com>); and CAC Case No. 102736, VIVENDI v VARUNZ.COM (in respect of the domain name <vivendimediaworks.com>).

The Complainant claims that the disputed domain name wholly incorporates its trade mark VIVENDI, and that the additional term "meta" is insufficient to escape a finding that the disputed domain name is confusingly similar to the Complainant's trade mark VIVENDI.

II. The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant states that the Respondent is not affiliated with, nor authorised by, the Complainant in any way, nor is Respondent known by the disputed domain name.

In addition, the Respondent is not making a bona fide offering of goods or services by means of the disputed domain name, nor is the Respondent using the disputed domain name for legitimate non-commercial or fair use. The Complainant argues, instead, that the disputed domain name redirects Internet users to the Respondent's website on which the disputed domain name is offered for sale for the sum of USD 55,000.

In view of the above, the Complainant concludes that the Respondent has no rights or legitimate interests in the dispute domain name.

III. The Respondent registered and is using the disputed domain name in bad faith

Registration

The Complainant states that the trade mark VIVENDI is well-known and distinctive, and that its fame has been acknowledged in prior UDRP decisions, most notably CAC Case No. 101875, VIVENDI v Phoenix Global Organization Incorporated.

The Complainant further states that, given the distinctiveness and reputation of the trade mark VIVENDI, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trade mark VIVENDI.

Use

The Complainant avers that the Respondent uses the disputed domain name in bad faith in so far as the Respondent offers the disputed domain name for sale in excess of the initial registration costs. The Complainant further avers that an offer to sell a domain name in excess of out-of-pocket costs may evidence bad faith under the UDRP Policy.

The Complainant therefore concludes that the Respondent has registered and is using the disputed domain name in bad faith.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to a trade 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

Preliminary matter – Language of Proceedings

On the matter of the language of the proceedings, the Panel notes as follows:

- The Complainant submitted its Complaint in English;
- The registrar's verification response provided that the language of the registration agreement for the disputed domain name is Chinese; and
- Following the registrar's confirmation as to the language of the registration agreement, and at the request of CAC, the Complainant submitted that English should be the language of the proceedings for two reasons: (i) the disputed domain name is formed by words in Roman characters (ASCII) and not in Chinese script; and (ii) the disputed domain name is formed of trade mark VIVENDI and English term "meta".

The Panel is given discretion under Rule 11 of the UDRP Rules to determine the appropriate language of the proceedings. The Panel notes Rule 10 of the UDRP Rules, which vests the Panel with authority to conduct the proceedings in a manner it deems appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case.

The Panel has considered the reasons which support the Complainant's language request, and has further centred its decision on the following key factors: (i) the language of the disputed domain name string; (ii) the Respondent's default in these UDRP proceedings (the ramifications of which are further discussed below), in addition to the Respondent's lack of reaction after having been given a fair chance to comment on the Complainant's language request; (iii) the Panel's overall concern with due process; and (iv) the balance of convenience, i.e. who would suffer the greatest inconvenience: the Respondent, by having received a decision written in English, a widely spoken language, in circumstances in which the Respondent has not appeared in the proceedings; or the Complainant, by being asked and incur costs and delay to translate the Complaint into Chinese, as well as having to translate a subsequent decision rendered in Chinese.

In view of the above factors, the Panel has decided to accept the Complainant's language request, such that the decision in the present matter will be rendered in English.

Assessment of Merits

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy provides the following threshold for the Complainant to meet in order to divest the Respondent of the disputed domain name:

- i. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- 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.

It is therefore incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP proceedings is the balance of probabilities and, on that basis, the Panel will now proceed to determine each of the three Policy elements in turn.

I. Identical or Confusingly Similar

The Panel is satisfied that the Complainant owns trade mark rights in “VIVENDI” since 1998.

The disputed domain name is <vivendimeta.com>, and the Complainant’s trade mark is VIVENDI.

The Panel notes that the Complainant’s trade mark VIVENDI is wholly incorporated into the disputed domain name. The additional term “meta” is, in the Panel’s assessment, incapable of eliminating the confusing similarity between the disputed domain name and the Complainant’s trade mark VIVENDI, particularly as it is placed after the VIVENDI element.

The Panel therefore finds that the Complainant has met the requirement under paragraph 4(a)(i) of the UDRP Policy.

II. Rights or Legitimate Interests

The Respondent has defaulted in these UDRP proceedings. Nevertheless, the Panel is empowered to draw adverse inferences from the Respondent’s silence (UDRP Rule 14 (b)).

The Panel notes that the Complainant firmly denies any affiliation and/or association with, or authorisation for, the Respondent of any nature. Moreover, the Complainant argues that the Respondent is not known by the disputed domain name; and that the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name.

The Complainant contends that the Respondent redirects Internet users to a website on which the disputed domain name is offered for sale for the sum of USD 55,000. To this end, the Complainant has provided a screenshot of the Respondent’s website, according to which the disputed domain name is offered for sale for the sum of USD 55,000.

At the time of writing, the Respondent’s website offers the sale of the disputed domain name for the sum of USD 8,000.

In any event, the Respondent has submitted no evidence to refute any of the Complainant’s assertions. On balance, the Panel considers the available evidence to lend credence to the Complainant’s contentions.

The Panel therefore finds that the Complainant has succeeded under paragraph 4(a)(ii) of the UDRP Policy.

III. Registered and Used in Bad Faith

Registration

The following facts are compelling evidence to this Panel that the disputed domain name was registered in bad faith:

- The Complainant has been in operation since at least 1998, including in China, where the Respondent appears to be based;
- The Complainant operates its activities through the domain name <vivendi.com>, which was registered in 1997;
- The disputed domain name <vivendimeta.com> was registered on 5 November 2021; and
- UDRP panels have consistently found that a typo of a widely-known trade mark can by itself create a presumption of bad faith (WIPO Panel Views on Selected UDRP Questions, Third Edition, paragraph 3.1.4 (“WIPO Jurisprudential Overview 3.0”)), and the Panel accepts that the Complainant’s trade mark is widely known.

Use

The Complainant alleges that the Respondent has engaged in the conduct described in paragraph 4(b)(i) of the UDRP Policy, which provides as follows:

“(i) circumstances indicating that the respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name”.

At the time of writing, the disputed domain name resolves to a website on which the disputed domain name is offered for sale for the sum of USD 8,000.

The Panel refers to paragraph 3.1.1 of the WIPO Jurisprudential Overview 3.0 to determine whether or not there has been bad faith use of the disputed domain name. UDRP panels have found that whilst the assessment of this kind is fact-specific, some guiding factors would include, in no particular order: (i) the Respondent’s likely knowledge of the Complainant’s rights, (ii) the distinctiveness of the Complainant’s trade mark; and (iii) the Respondent’s failure to present a credible evidence-backed rationale for registering the disputed domain name. Furthermore, where a domain name is identical or confusingly similar to a highly distinctive or famous trade mark, UDRP panels have viewed with a degree of skepticism a defence that the domain name was registered for legitimate speculation purposes (rather than to targeting the complainant’s trade mark).

The Panel considers that all of the above factors are present in these UDRP proceedings.

The Panel therefore finds that the Complainant has succeeded under paragraph 4(a)(iii) of the UDRP Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **VIVENDIMETA.COM**: Transferred

PANELLISTS

| | |
|------|------------------|
| Name | Yana Zhou |
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DATE OF PANEL DECISION 2021-12-06

Publish the Decision
