

## Decision for dispute CAC-UDRP-104189

Case number CAC-UDRP-104189

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Time of filing 2021-11-25 09:32:13

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Domain names vivendigroup.tv.com

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### Case administrator

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

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### Complainant

Organization VIVENDI

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### Complainant representative

Organization NAMESHIELD S.A.S.

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### Respondent

Organization Rádio e Televisão Record

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#### 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.

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#### IDENTIFICATION OF RIGHTS

The Complainant owns the following trademark registration for "VIVENDI":

- International trademark VIVENDI® n° 687855, registered and renewed since February 23, 1998;
- International trademark VIVENDI® n° 930935 registered and renewed since September 22, 2006.

The Complainant also owns the domain name <vivendi.com> (registered on November 12, 1997).

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#### FACTUAL BACKGROUND

The Complainant is a French multinational mass media conglomerate headquartered in Paris. According to the Complainant, the company has activities in music, television, film, video games, telecommunications, tickets and video hosting service and employs about 37 074 people with a total revenue of €8.7 billion worldwide in 2020.

The disputed domain name was registered on November 18, 2021 and redirect to the Complainant's official website <https://www.vivendi.com/>.

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#### PARTIES CONTENTIONS

##### PARTIES' CONTENTIONS:

##### COMPLAINANT:

As regards the First element of the Policy, the Complainant supports that the disputed domain name is confusingly similar to its VIVENDI trademarks. The addition of the words "GROUP" and "TV" do not exclude the similarity between <vivendigrouptv.com> and the trademark VIVENDI as they have a dictionary meaning which is close to the Complainant's business.

As regards the second element of the Policy, the Complainant denies that the Respondent has been authorized to use the trademarks "VIVENDI" in the disputed domain name. According to the Complainant's submissions, the Respondent is not known by the disputed domain name and has never been affiliated with Vivendi nor authorized by him in any way to use the VIVENDI trademark.

Furthermore the Complainant considers that the current use of <vivendigrouptv.com> does not amount to a bona fide offering of goods or services by means of the disputed domain name, nor to a legitimate non-commercial or fair use of it.

As regards the third element of the Policy, the Complainant supports that the disputed domain name was registered. According to its submissions, the registration of "group" and "tv" combined with Vivendi shows that the Respondent was aware of the Complainant operated a business under the trademark VIVENDI.

Moreover, the fact that <vivendigrouptv> redirects to the official VIVENDI website is considered a use in bad faith of the domain name.

##### RESPONDENT:

The Respondent filed a reply to the complaint supporting that it had no intention of harm the Complainant. With the registration of <vivendigrouptv.com> the Respondent allegedly wanted to create a partnership with VIVENDI in Brazil.

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#### 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).

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#### 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).

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#### 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).

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#### 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.

The Panel raises no objection to the Complainant's request for the change of the language of the case from Italian (language

of the registration agreement) to English. In addition to the reasons for such request explained in the Non standard communication of November 25, the Panel notes that the Respondent's reply is in English. This fact proves that the Respondent has a good knowledge of the English language and justifies that the fact that the language of this proceeding is English.

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#### PRINCIPAL REASONS FOR THE DECISION

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

The disputed domain name is confusingly similar to the Complainant's registered trademarks as it wholly incorporates the sign VIVENDI (see *Six Continent Hotels, Inc. v. The Omnicorp*, WIPO Case No. 2005-1249 and *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. D2001-0903).

The addition of the elements "GROUP" and "TV" increase rather than exclude the risk of confusion for the public. As a matter of fact, "group" could be perceived as the group of companies under the control of Vivendi while "tv" is a clear reference to one of the Complainant's fields of businesses. Thus, in the Panel's view, both elements could be easily associated to the Complainant and this increases the likelihood of confusion for the relevant public.

Furthermore, the addition of ".com" is generally disregarded in view of its 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 a 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, Rádio e Televisão Record is not commonly known by the disputed domain name nor it is authorized to use the Complainant's trademark in "vivendigrouptv.com".

The Respondent's reply confirms that Rádio e Televisão Record does not have any business relationship with the Complainant and did not receive any authorization to use the VIVENDI trademark as a domain name. On the contrary, the Respondent itself supports that <vivendigrouptv.com> was registered with the scope of creating a partnership with the Complainant in Brazil.

The disputed domain name redirects internet users to the Complainant's website. Such use is not a bona fide offering of goods and services nor a legitimate non commercial use as defined by the Policy. In the Panels view, only the Complainant should have control on its website and its related internet traffic. However, in this case, the Respondent is, in some way, handling part of the traffic of the official Vivendi website by redirecting its <vivendigrouptv.com> to <vivendi.com>. A possible effect of such conduct, is that the Respondent may at any time cause Internet traffic to re-direct to a website that is not controlled nor associated with, the Complainant. Such use does not comply with the UDRP standards.

For these reasons, the Panel takes the view that the Respondent lacks rights or legitimate interests in the disputed domain name 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 trademarks "VIVENDI";
- ii) the VIVENDI trademark enjoys a certain degree of reputation; this suggests that the disputed domain name was registered to exploit the VIVENDI trademark without any authorization by the right holder;
- iii) the Respondent in its reply, confirmed that it has aware of the Complainant's business conducted under the trademark VIVENDI before the registration of the disputed domain name. Such circumstance is further confirmed by the use of the words "GROUP" and "TV" that are strictly related to the Complainant's company structure and field of business.

The disputed domain name currently redirects to the Complainant's official website. The Panel cannot exclude that the Respondent earns some type of click-through fee or commission by using the disputed domain name. If this is the case, the Respondent is using a domain name which is confusingly similar to the Complainant's trademark for commercial gain.

By redirecting internet users to the complainant's website, the disputed domain name does not seem to harm the Complainant. However, in the Panel's view, the Respondent's appropriation of Complainant's mark in the disputed domain name deprives Complainant of effective control over its mark and this conduct could be considered in bad faith. Furthermore, the Panel cannot exclude that in the future the disputed domain name could redirect internet traffic to a domain name which is not controlled by the Complainant nor associated with the Complainant. Of course this possible future use of the disputed domain name could further harm the Complainant's interests on the VIVENDI trademark.

For these reasons, the Panel takes the view that the Respondent's registered and used the disputed domain name in bad faith for the purposes of the Policy.

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. VIVENDIGROUPTV.COM: Transferred

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## PANELLISTS

Name	Andrea Mascetti
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DATE OF PANEL DECISION 2021-12-22

Publish the Decision

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