Decision for dispute CAC-UDRP-100684

Case number	**CAC-UDRP-100684**
Time of filing	**2013-10-22 12:39:06**
Domain names	**myvanillacard.com**

Case administrator

Name	**Lada Válková (Case admin)**

Complainant

Organization	**e2Interactive, Inc.**

Complainant representative

Organization	**The Pawlak Law Firm**

Respondent

Organization	**Pavol Icik**

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

Complainant states and provides evidence in support thereof, that it is the owner of word and image trademark registrations in the United States that contain the word "Vanilla" for "(non) magnetically encoded prepaid debit and stored value cards" and related services in class 9 resp. 16.

FACTUAL BACKGROUND

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

A. The domain name is identical or confusingly similar to trademarks and service marks in which the Complainant has rights;

• The Complainant has ownership in the following U.S. trademark registrations:
• VANILLA, for “Magnetically encoded prepaid debit and stored value cards”, Reg. No. 3,228,698, Registration date April 10, 2007.
• VANILLA, for “Non-magnetically encoded pre-paid debit and stored value cards” Reg. No. 3,644,949, Registration date June 23, 2009.

• VANILLA, for “Pre-paid debit and stored value card services, namely, activation, deactivation, processing electronic payments through prepaid debit and stored value cards using a computer-based network”, Reg. No. 3,336,174, Registration date November 13, 2007.
• VANILLA (& Design), for “Magnetically encoded prepaid debit and stored value cards”, Reg. No. 3,349,536, Registration date December 4, 2007.
• VANILLA (& Design), for “Non-magnetically encoded pre-paid debit and stored value cards” Reg. No. 3,750,726, Registration date February 16, 2010.
• VANILLA (& Design), for “Pre-paid debit and stored value card services, namely, activation, deactivation, processing electronic payments through prepaid debit and stored value cards using a computer-based network”, Reg. No. 3,336,190, Registration date November 13, 2007.
• Copies of certificates for the above registrations were provided.

• The domain name in dispute, www.myvanillacard.com, uses VANILLA in attempting to sell pre-paid debit and stored value cards.

• Therefore the domain name is identical to the trademarks and service marks and is used for the identical services for such trademarks in which the Complainant has rights.

B. The Respondent has no rights or legitimate interests in respect of the domain name;

• The Respondent has no rights or legitimate interests in respect of the domain name that is the subject of the Complaint.
- there is no evidence of the Respondent’s use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;

- the Respondent (as an individual, business, or other organization) has not been commonly known by the domain name;

- the Respondent is not making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain misleadingly to divert consumers or to tarnish the trademark or service mark at issue.

C. The domain name was registered and is being used in bad faith.

• The domain name was registered and used in bad faith by the Respondent. The Respondent intentionally attempts to attract Internet users to the Respondent’s web site or other on-line location, for commercial gain, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s web site or location or of a product or service on the Respondent’s web site or location.

THE COMPLAINANT REQUESTS THE LANGUAGE OF THE PROCEEDINGS BE ENGLISH

The Complainant requests that the language of the proceedings be English, and virtually all facts associated with these proceedings support the use of English.

Initially, the registrar's website is provided in English. The Registrar provides services in English. The registrar provides customer service in English. English is the language of the Complaint.

Because the registrar has a Chinese address and the Respondent is claimed to be Slovakian, it is likely that communications between them is in fact in English. Moreover, because of the nature of the Internet, it is more likely that the two parties communicate in English than in Chinese or Slovak. Additionally, the email address for contacting both the registrar and the Respondent are in English that further indicates that both such parties use English.

Most importantly, the domain name is composed of English words, and English is the language used on the relevant domain name's website. No other languages are associated with either the domain name or the relevant website. Therefore it is virtually certain that the Respondent speaks English, and as such these proceedings should be in English.

Finally, the current owner of this domain name has gone to great lengths to make contacting and interacting with them as difficult as possible. The 'whois' information supplied by the registrar lists a Chinese address as the address for the Respondent, and does not provide a working email address. A copy of such ‘whois’ information was provided. Upon contacting the registrar for this UDRP action, the address is now claimed to be in Slovakian. The foregoing types of actions are ones typically taken by a cyber-squatter in order to avoid actions by legitimate owners of trademarks to protect their trademarks. The use of privacy services further illustrates the actions by the Respondent to avoid action against them. Allowing the Respondent to avoid conducting these proceedings in English would further allow the Respondent to cyber-squat on a website that is clearly in English, and only English, and force those that would most likely have an interest in protecting such domain (namely those that speak and conduct business in English) to proceed in a language that would have no relationship to the language used on the website, and a language that is not common in the business world. (So uncommon that popular UDRP providers do not offer services in Slovak.)

For all these reasons, it is also likely and reasonable that the Respondent has adequate knowledge of English such that the proceedings can be in English.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the 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).

“my” and "card" in “MYVANILLACARD.COM” are descriptive terms with evident meaning and, therefore, the only distinctive term in the disputed domain name is “vanilla”.

Thus, comparing the disputed domain name and the trademark “Vanilla”, this Panel finds that the first requirement of paragraph 4(a) of the Policy is satisfied, particularly, as Complainant’s trademark “Vanilla” is registered and used for services, the disputed domain name is used for.

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 Domain Name (within the meaning of paragraph 4(a)(ii)of the Policy).

Complainant must show that Respondent has no rights or legitimate interests in respect of the disputed domain name. Respondent in UDRP proceedings does not assume the burden of proof, but may establish a right or legitimate interest in a disputed domain name by demonstrating respective proof in accordance with paragraph 4(c) of the Policy.

As Respondent failed to file a Response and as Complainant states that Respondent does no have any such rights or interests, but merely uses the disputed domain name for the same products as the Complainant's trademarks are registered for, the Panel is not aware of any rights and interests of the Respondent within the meaning of paragraph 4(a) of the Policy.

Therefore, the Panel finds that Complainant has satisfied the burden of proof with respect to paragraph 4(a)(ii) of the Policy.

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the Domain Name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

The Respondent intentionally attempts to attract Internet users to the Respondent’s web site or other on-line location, for commercial gain, by creating a likelihood of confusion with the Complainant’s trade mark as to the source, sponsorship,

affiliation, or endorsement of the Respondent's web site or of a product or service on the Respondent's web site. The Respondent is using the doman name for products in the same classes the Complainant's trademarks are registered for. Thus, it can be assumed that Respondent knew about the trademarks of Complainant.

Taking this into account, the Panel concludes that the Respondent registered and is using the Domain Name in bad faith and that the requirements of paragraph 4(a)(iii) of the Policy are satisfied.

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.

According to § 5 e) of the Rules and as common in case law (ADR UDRP 100095 "LEROS-BOATYARD.COM", WIPO Case No. D2001-1488, WIPO Case No. D2000-0508) the Panel decides the dispute based upon the Complaint, as the Respondent did not file a complete and valid Response.

The language of the proceedings is English, as the Complainant has proven that the Respondent is capable of understanding and writing English.

PRINCIPAL REASONS FOR THE DECISION

Complainant has established that it has prior rights in the trademark Vanilla. The Respondent registered the disputed domain name "MYVANILLACARD.COM".

Respondent did not file a Response to the Complaint.

Comparing the disputed domain name and the trademark "Vanilla", the Panel decided that the trademark and the disputed domain name are confusingly similar, as "my" and "card" can be disregarded in the comparison, because these elements are descriptive, only.

Respondent has not shown that it has any rights or interests in the disputed domain name.

The Respondent intentionally attempts to attract Internet users to the Respondent's web site or other on-line location, for commercial gain, by creating a likelihood of confusion with the Complainant's trade mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or of a product or service on the Respondent's web site. The Respondent is using the domain name for products in the same classes the Complainant's trademarks are registered for. Thus, it can be assumed that the Respondent knew about the trademarks of the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **MYVANILLACARD.COM**: Transferred

PANELLISTS

Name	**Dominik Eickemeier**

DATE OF PANEL DECISION 2013-12-02

Publish the Decision