Decision for dispute CAC-UDRP-100686

Case number	**CAC-UDRP-100686**
Time of filing	**2013-10-18 19:12:12**
Domain names	**myvanilladebit.com**

Case administrator

Name	**Lada Válková (Case admin)**

Complainant

Organization	**e2Interactive, Inc.**

Complainant representative

Organization	**The Pawlak Law Firm**

Respondent

Name	**Kim Bum**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of the existence of other proceedings concerning the Disputed Domain Name.

IDENTIFICATION OF RIGHTS

The Complainant owns various trade mark registrations for the trade mark “VANILLA” in the United States of America including word mark registration 3,228,698 filed in 2005 for “magnetically encoded prepaid debit and stored value cards”.

FACTUAL BACKGROUND

The Complainant is a United States based company involved in the business of powering, producing and distributing pre-paid debit and stored cards. The Complainant owns trade mark rights in the name “VANILLA” including a United States word mark registration as set out above.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant submits that the Disputed Domain Name is identical to the trade marks and service marks of the Complainant and is used for identical services for such trade marks in which the Complainant has rights.

The Complainant claims that the Respondent registered the disputed domain <myvanilladebit .com> without any rights or legitimate interests in the name. It claims that there is no evidence of the Respondent's use of, or demonstrable preparations to use, the Disputed Domain Name, or a name corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services. The Complainant further contends that the Respondent has not been commonly 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, without intent for commercial gain misleadingly to divert consumers or to tarnish the trade mark or service mark at issue.
The Complainant further asserts that the Disputed Domain Name has been used in bad faith by the Respondent who intentionally attempts to attract internet users to the Respondent's website or other online location, for commercial gain, by creating a likelihood of confusion with the Complainant's mark as regards the source, sponsorship, affiliation or endorsement of the Respondent's web site or location of a product or service on the Respondent's web site or location.

RESPONDENT: NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant submits that the Disputed Domain Name (www.myvanilladebit.com) is identical to the trade marks and service marks in which it has rights. The Panel finds that the Disputed Domain Name is not identical. The Panel is however satisfied that the Disputed Domain Name is confusingly similar to the word mark "VANILLA" (as set out above) in which the Complainant has rights. The Disputed Domain Name only differs from the Complainant's "VANILLA" trade mark by the addition of the word "debit", which is a commonly used word in the English language and as such is non-descriptive.

As such, the Complainant has, to the satisfaction of the Panel, shown the Domain Name is 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 says that it has never authorised the Respondent's use of the Disputed Domain Name or had any prior relationship or contact with the Respondent. There is no evidence to suggest that the Respondent is or was commonly known by the Disputed Domain Name and neither is there anything to suggest that the Respondent is making a fair use of the Disputed Domain Name. In addition and for the reasons set out under "Bad faith" below the Panel considers that the Respondent's use is not bona fide.

As the Respondent has not rebutted the case put forward by the Complainant, the Panel finds that the Complainant has 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).

BAD FAITH

Registered in bad faith

The Complainant has provided evidence that its "VANILLA" mark has been in use since and was filed on August 15, 2005, which is over 7 years prior to the creation of the Disputed Domain Name. In the absence of any explanation to the contrary, the Panel finds that on the balance of probabilities and in view of the Respondent's subsequent use of the Disputed Domain Name, as discussed below, that it is unlikely that the Respondent selected the Disputed Domain Name by coincidence or without knowledge of the Complainant's mark and brand and therefore that it was registered in bad faith.

Use in bad faith

The Respondent's website is a pay per click landing page which includes links to the Complainant's competitors. It appears to the Panel that on the balance of probabilities the Respondent is intentionally attempting to attract internet users to the Respondent's website for commercial gain in terms of paragraph 4(b)(iv) of the Policy and is therefore using the Disputed Domain Name in bad faith.

Accordingly 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).

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

The Disputed Domain Name is confusingly similar to the "VANILLA" word mark registration 3,228,698 filed in 2005 for "magnetically encoded prepaid debit and stored value cards" in which the Complainant has rights. The Disputed Domain Name only differs from the Complainant's "VANILLA" trade mark by the addition of the word "debit" which is a commonly used word in the English language and as such is non-descriptive. The Respondent has no rights or legitimate interests in the Disputed Domain Name. There is no evidence to suggest that the Respondent is or was commonly known by that name and neither is there anything to suggest that the Respondent is making fair use of the Disputed Domain Name. The Disputed Domain Name was registered and is being used in bad faith. The "VANILLA" word mark (as detailed above) has been in use since 2005 some 7 years prior to the creation of the Disputed Domain Name. The Respondent’s website is a pay per click landing page which includes links to the Complainant’s competitors. The Panel finds it is unlikely that the Respondent selected the Disputed Domain Name by coincidence or without knowledge of the Complainant's brand or mark. It appears to the Panel that the Respondent is intentionally attempting to attract internet users to the Respondent's website for commercial gain.

For the foregoing reasons the Panel accepts the Complaint of the Complainant and orders that the Domain Name <www.myvanilladebit.com> be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **MYVANILLADEBIT.COM**: Transferred

PANELLISTS

Name	**Alistair Payne**

DATE OF PANEL DECISION 2013-12-02

Publish the Decision