

Decision for dispute CAC-UDRP-104235

Case number CAC-UDRP-104235

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Domain names vivendise.com

Case administrator

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

Complainant

Organization VIVENDI

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name Gba Bitico

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 <vivendise.com>.

IDENTIFICATION OF RIGHTS

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 42,526 people with total revenue of €16,090 worldwide in 2020.

The Complainant owns the following trademark registrations 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).

The disputed domain name <vivendise.com> was registered on November 5, 2021.

FACTUAL BACKGROUND

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

PARTIES' CONTENTIONS:

COMPLAINANT:

- The disputed domain name is identical or confusingly similar to the protected mark

As regards the first element of the Policy, the Complainant supports that the disputed domain name is confusingly similar to its VIVENDI trademark, as it incorporates the trademark in its entirety.

According to the Complainant, the addition of letters "SE" (for "European society" in French) to the trademark VIVENDI is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark and branded goods VIVENDI.

- Respondent does not have any rights or legitimate interest in the disputed domain name

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

Furthermore, the Complainant considers that the current use of disputed domain name <vivendise.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.

Finally, the Complainant claims, that the Respondent uses the disputed domain name to further a phishing scheme.

Therefore, the Complainant contends that the Respondent has no right nor legitimate interest in respect of the disputed domain name.

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

As regards the third element of the Policy, the Complainant contends that the Respondent has registered the disputed domain name and uses it in bad faith.

Given the distinctiveness of the Complainant's trademarks and reputation, the Complainant argues that it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark. According to the Complainant, impersonating a complainant by use of a complainant's mark in a fraudulent phishing attempt is disruptive and evinces bad faith registration and use.

On these bases, the Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

PARTIES CONTENTIONS

RESPONDENT:

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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

The UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY (UDRP) of the Internet Corporation for Assigned Names and Numbers (ICANN) (the "Policy") provides that complainant must prove each of the following to obtain transfer or cancellation of the domain name:

1. that respondent's domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights; and
2. that respondent has no rights or legitimate interests in respect of the domain name; and
3. the domain name has been registered and is being used in bad faith.

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

The Panel is satisfied that the Complainant is the owner of international trademark registrations for VIVENDI that predate the disputed domain name registration.

The disputed domain name comprises the Complainant's well-known trademark VIVENDI with the letters SE. The most distinctive part of the disputed domain name is the Complainant's mark, VIVENDI. In the Panel's view, the addition of the element "SE" increases rather than excludes the risk of confusion for the public. As a matter of fact, "SE" is a clear reference to the Complainant's abbreviation for enterprise, Societas Europaeae.

Furthermore, the addition of a purely generic top-level domain ("gTLD") ".com" does not, according to the Panel, add any distinctiveness or prevent the disputed domain name from being confusingly similar to the Complainant's trademark VIVENDI.

Previous UDRP panels have also held that the gTLD is not to be considered when assessing whether a domain name is identical or confusingly similar to a trademark. See, e.g., Wiluna Holdings, LLC v. Edna Sherman, FA 1652781 (Forum January 22, 2016) or Red Hat Inc. v. Haecke, FA 726010 (Forum July 24, 2006) (concluding that the <redhat.org> domain name is identical to the complainant's red hat mark because the mere addition of the gTLD was insufficient to differentiate the disputed domain name from the mark).

As a consequence, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark, for

the purposes of the first element of the Policy.

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

Under the Policy, a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP (see WIPO Overview 2.0, paragraph 2.1).

The Panel finds that the Respondent does not have a legal right to use the term "VIVENDI" as part of its disputed domain name. The Respondent is not in any way affiliated with the Complainant, nor is it authorized to register the disputed domain name. The Panel agrees with the Complainant that the Respondent is not commonly known by the disputed domain name or has legitimate interest over the disputed domain name. When entering the terms "VIVENDISE" in the Google search engine, the returned results point to the Complainant and its business activities.

The Panel finds that the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interest in the disputed domain name. The Respondent failed to file a Response in which it could have provided evidence in support of its rights or legitimate interests. The Respondent is not commonly known by the disputed domain name and has not been authorised by the Complainant to use the term "VIVENDI". Therefore, all these circumstances are sufficient to establish a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name.

Thus, the Panel believes that the Respondent lacks rights or legitimate interests in the disputed domain name for the purposes of the second element of the Policy.

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

The Panel agrees with the Complainant that its trademark VIVENDI is distinctive and well-known globally. The Complainant's well-known trademark VIVENDI predates the registration of the disputed domain name. The Panel finds that there appears no reason why the Respondent would register the Complainant's trademark as part of the disputed domain name, other than to create the impression that it is connected to the Complainant's business. Given the distinctiveness of the Complainant's trademark worldwide, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark.

The fact that the Respondent has registered the disputed domain name that is confusingly similar to them indicates and in the absence of any evidence contrary (or any administratively compliant response at all) being put forward by the Respondent, that the Respondent, according to this Panel, had knowledge of the Complainant's trademark and that it had such knowledge before the registration and use of the disputed domain name. Moreover, the Respondent has tried to impersonate the Complainant by using the Complainant's mark to send fraudulent e-mails, which in the Panel's view, constitutes bad faith registration and use pursuant to the Policy.

Accordingly, the Panel concludes that the Complainant has satisfied the third element of the Policy, that is that the Respondent's registration and use of the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. VIVENDISE.COM: Transferred

PANELLISTS

Name **Mgr. Barbora Donathová, LL.M.**

DATE OF PANEL DECISION **2022-01-19**

Publish the Decision
