Decision for dispute CAC-UDRP-102798

Case number	CAC-UDRP-102798
Time of filing	2019-12-04 10:38:42
Domain names	vivendicapital.com

Case administrator

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

Complainant

Organization	VIVENDI

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	Elite Domains LLC

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings pending or decided which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is a French multinational mass media conglomerate headquartered in Paris. The company has activities in music, television, film, video games, telecommunications, tickets and video hosting service.

With 44,142 employees in 78 countries, the Complainant's total revenues amounted to €13,932 million worldwide in 2018.

The Complainant is the owner of several international trademark registrations for the wording "VIVENDI", such as:

- the international trademark n° 687855, registered and renewed since February 23, 1998;

- the international trademark n° 930935 registered and renewed since September 22, 2006.

The Complainant also owns and communicates on Internet through various domain names, such as the domain name <vivendi.com> registered on November 12, 1997.

The disputed domain name <vivendicapital.com> was registered on November 24, 2019 and points to a page where it is offered for sale for $9,800 USD.

FACTUAL BACKGROUND

The Complainant contends that the disputed domain name <vivendicapital.com> is confusingly similar to its distinctive and worldwide known trademarks VIVENDI®.

Please see for instance CAC Case No. 101875, VIVENDI v. Phoenix Global Organization Incorporated ("The Panel is convinced that the Trademarks [VIVENDI] are highly distinctive and well-established.").

Besides, the vast majority of the results for a Google search of the term "VIVENDI" refers to the Complainant.

Finally, the addition of the term "CAPITAL" to the Complainant's trademark cannot be coincidental, as it refers to the Complainant's shareholders.

Therefore, given the distinctiveness of the Complainant's trademarks and reputation, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademarks. Please see for instance WIPO Case No. D2004-0673, Ferrari S.p.A v. American Entertainment Group Inc.

Moreover, the Respondent does not make any use of the disputed domain name. The disputed domain name resolves to a page displaying a general offer to sell the domain for $9,800 USD.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

Only after the time limit for the Response has elapsed and after the panel was appointed, the Respondent has filed the following statement: „We are happy to push the domain name to the Complainant´s GoDaddy account. Please provide an account email and id and we´ll do so."

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).

Thus, the Respondent has registered the disputed domain name only in order to create a likelihood of confusion with the Complainant's trademark.

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).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name and he is not related in any way with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent.

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).

Given the distinctiveness of the trademark and the content of the website, it is clear that the Respondent has registered the disputed domain name with knowledge of the Complainant and its trademark.

In addition, the disputed domain name is not used for any bona fide offerings. More particularly, there are present circumstances indicating that the Respondent has registered or acquired the disputed domain name probably for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of Complainant.

It is well-established that “a domain name that wholly incorporates a Complainant’s registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP”. Please see for instance WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasiliy Terkin.

All these elements lead to the conclusion that the Respondent has intentionally attempted to attract Internet users to the Respondent's website for commercial gain by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of such websites.

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

1. The three essential issues under the paragraph 4(a) of the Policy are whether:

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

ii. the Respondent has no rights or legitimate interests with respect to the disputed domain name; and

iii. the disputed domain name has been registered and is being used in bad faith.

2. The Panel reviewed carefully all documents provided by the Complainant. The Respondent did not provide the Panel with any documents or defensive statements. The Panel also visited all available websites and public information concerning the disputed domain name, namely the WHOIS databases.

3. The UDRP Rules clearly say in its Article 3 that any person or entity may initiate an administrative proceeding by submitting a complaint in accordance with the Policy and these Rules.

4. The Panel therefore came to the following conclusions:

a) The Complainant has clearly proved that it is a long standing and successful leading mass media conglomerate. It is clear that its trademarks and domain names containing the term “VIVENDI” are well-known.

The Complainant states and proves that the disputed domain name is confusingly similar to its trademarks and its domain names. Indeed, the trademark is partially incorporated in the disputed domain name.

The disputed domain name is therefore deemed identical or confusingly similar.

b) It has to be stressed that it was proven that there are no fair rights of the Respondent to the disputed domain name. The Respondent is not generally known by the disputed domain name and has not acquired any trademark or service mark rights in the name or mark.

Neither license nor authorization has been granted to the Respondent to make any use of the Complainant’s trademarks or apply for registration of the disputed domain name by the Complainant.

The Panel therefore finds that the Respondent does not have rights or legitimate interest with respect to the disputed domain name.

c) The disputed domain name was registered with an intention to attract customers of another well-known domain name/registered trademark holder. Therefore there cannot be found any legitimate interest of the Respondent.

It is clear that the Complainant's trademarks and website(s) were used by the Complainant long time before the disputed domain name was registered and used. It is therefore concluded that the disputed domain name was registered with an intention to attract customers of another well-known domain name/registered trademark holder.

The Panel therefore finds that the disputed domain name has been registered and is being used in bad faith.

For the reasons stated above, it is the decision of this Panel that the Complainant has satisfied all three elements of paragraph 4(a) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **VIVENDICAPITAL.COM**: Transferred

PANELLISTS

Name	**Dr. Vít Horáček**

DATE OF PANEL DECISION 2020-01-11

Publish the Decision