

Decision for dispute CAC-UDRP-104926

Case number CAC-UDRP-104926

Time of filing 2022-10-14 09:05:57

Domain names vivendiuniversal.fun

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization VIVENDI

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name Hong Jie

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

The Complainant asserts to be owner of several trademark registrations for the name "VIVENDI" including the following ones:

- international trademark registration No. 687855 VIVENDI, registered on 23 February, 1998; and
- international trademark registration No. 930935 VIVENDI, registered on 22 September, 2006.

Besides the registered trademarks, the Complainant owns an important domain names portfolio containing the name "Vivendi" such as <vivendi.com>, registered on 12 November, 1997.

FACTUAL BACKGROUND

According to the facts included in the complaint, the Complainant is a French multinational mass media conglomerate headquartered in Paris with activities in music, television, film, video games, telecommunications, tickets and video hosting service.

The disputed domain name <vivendiuniversal.fun> was registered on the 1 August, 2022 and is not currently used in connection with any goods or services as it results in an inactive webpage.

No information is known about the Respondent Hong Jie, who registered the disputed domain name <vivendiuniversal.fun> under a privacy protection service.

PARTIES CONTENTIONS

COMPLAINANT' CONTENTIONS:

Identical or confusingly similar

The Complainant asserts that the disputed domain name <vivendiuniversal.fun> and the registered trademarks of the Complainant are confusingly similar.

Particularly, the Complainant contends that the disputed domain name <vivendiuniversal.fun> contains the main element of its prior trademarks, i.e. the word "Vivendi" and considers the disputed domain name and the registered trademarks confusingly similar.

No rights or legitimate interests

The Complainant asserts that the Respondent is not commonly known by the disputed domain name or a name corresponding to the disputed domain name, nor that the Respondent is making any businesses with the Complainant or the trademark owner. Indeed, the Complainant asserts that the Respondent is not identified in the Whois as the disputed domain name.

Moreover, the Complainant states that the Respondent has no rights or legitimate interests in respect of the domain name <vivendiuniversal.fun> and 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.

According to the Complainant, the Respondent has not made any use of disputed domain name since its registration.

Registered and used in bad faith

As far as bad faith registration is concerned, the Complainant asserts that the name "Vivendi" is worldwide-known, so that the Respondent certainly had full knowledge of the rights over the name "Vivendi" at the time of the disputed domain name's registration.

Moreover, the Complainant contends that, despite that the disputed domain name has not been used until now, the MX servers are configured so it may be actively used for email purposes.

Thus, according to the Complainant, the incorporation of a well-established trademark VIVENDI into the domain name, coupled with an inactive website/parking page, may be evidence of bad faith registration and use.

RESPONDENT'S CONTENTIONS:

The Respondent has not submitted any Response and consequently has not contested any of the contentions made by the Complainant.

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

Paragraph 15 of the Rules states that the Panel decides a Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law deemed applicable.

In the case of default by a Party, Rule 14 states that if a Party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under the Rules, the Panel draws such inferences therefrom as appropriate.

In the present case, the Respondent has not submitted any Response and consequently has not contested any of the contentions made by the Complainant.

The Panel proceeds therefore to decide only on the basis of the Complainant's factual statements and the documentary evidences provided in support of them.

1. The Panel finds that the disputed domain name <vivendiuniversal.fun> is visually, conceptually and phonetically very similar with the registered trademarks in which the Complainant proved having rights, given that the disputed domain name includes entirely the main distinctive element of the trademarks "Vivendi" and furthermore placed it at the beginning of the disputed domain name.

Moreover, the addition of a generic word element "universal" and the TLD ".fun", which would usually be disregarded as it is a technical requirement of registration, do not alter the overall very similar impression the disputed domain name and the registered trademarks produce.

Accordingly, the Panel considers that the disputed domain name and the registered trademarks in which the Complainant has the rights are confusingly similar and infers that paragraph 4(a)(i) of the Policy is satisfied.

2. According to the Complainant's contentions and evidences submitted within this proceeding, which were not disputed, the Respondent does not appear to be in any way related to the Complainant's business, does not act as the agent of the Complainant, and has not been authorized to use any of the trademarks "Vivendi", or any combination of such trademarks.

Furthermore, the disputed domain name <vivendiuniversal.fun> resolves currently in an inactive webpage. Therefore, it is reasonable to infer that the Respondent does not have any legitimate interest in the disputed domain name and rather reserves the disputed domain name for his possible own commercial gain.

Consequently, and in the absence of a Response, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name, so that the requirements of paragraph 4(a)(ii) of the Policy are met.

3. As to the bad faith at the time of the registration, the Panel finds that, in light of the high grade of similarity between the disputed domain name and the registered trademarks containing the name "Vivendi", the Respondent was more likely to be aware of the Complainant's rights over the name trademarks "Vivendi" at the time of the registration of the disputed domain name.

Indeed, by choosing and registering the disputed domain name which represents a confusingly similar version of trademarks that are already registered by third person, the Respondent is likely to act in bad faith by deliberately introducing deviations into registered and known trademarks for its future potential commercial gain.

Furthermore, the Complainant notes that the disputed domain name does not resolve to any web site or other on-line presence, nor appears to have been used so far. In this regard, prior panels have discussed the passive holding of a domain name (e.g. in *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003) and found that the passive holding itself can constitute bad faith use.

The Panel recalls that „the relevant issue is not whether the Respondent is undertaking a positive action in bad faith in relation to the domain name, but instead whether, in all the circumstances of the case, it can be said that the Respondent is acting in bad faith" (see *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003).

The particular circumstances of this case allow the Panel to infer that this is the case when the inactivity of the domain name holder could be considered as a bad faith use, given that:

- the trademarks "Vivendi" are registered in several countries;

- the disputed domain name includes entirely the distinctive element "Vivendi" which is common and most distinctive element of all registered trademarks in which the Complainant has acquired rights;
- the Respondent has taken active steps to hide its identity; and
- the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the disputed domain name.

Taking into account all of the above, it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate.

In light of these particular circumstances, the Panel concludes that the Respondent's passive holding of the domain name in this particular case satisfies the requirement of paragraph 4(a)(iii) that the domain name "is being used in bad faith" by Respondent.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **vivendiuniversal.fun**: Transferred

PANELLISTS

Name	Hana Císlerová
------	-----------------------

DATE OF PANEL DECISION **2022-11-13**

Publish the Decision
