

Decision for dispute CAC-UDRP-105006

Case number	CAC-UDRP-105006
Time of filing	2022-11-24 09:42:50
Domain names	vivendimanagement.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	VIVENDI
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Organization	Proficient Impressions LLC
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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 relies on its registered international marks. In particular, it relies on the following:

1. The registered word mark, VIVENDI, No. 687855, registered from 23 February 1998 in classes 9, 35, 36, 37, 38, 39, 40, 41, 42 in Denmark, Finland, UK, Iceland, Lithuania, Norway, Sweden, Uzbekistan, Albania, Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Benelux Office for Intellectual Property, Belarus, Switzerland, China, Cuba, Czech Republic, Germany, Algeria, Egypt, Spain, Croatia, Hungary, Italy, Kyrgyzstan, Korea (Democratic People's Republic of), Kazakhstan, Liechtenstein, Liberia, Latvia, Morocco, Monaco, Moldova (Republic of), Montenegro, Macedonia (the former Yugoslav Republic of), Mongolia, Poland, Portugal, Romania, Serbia, Russian Federation, Sudan, Slovenia, Slovakia, Sierra Leone, San Marino, Tajikistan, Ukraine, Viet Nam.

2. It also relies on the Logo Mark, a stylised version of the word mark, No. 930935, registered from 22 September 2006 in classes 9, 16, 28, 35, 36, 38, 41, 42 and in Antigua and Barbuda, Australia, Bahrain, Bonaire, Sint Eustatius and Saba, Curaçao, Denmark, Estonia, Finland, UK, Georgia, Greece, Ireland, Iceland, Japan, Korea (Republic of), Lithuania, Norway, Sweden, Singapore, Sint Maarten (Dutch part), Syrian Arab Republic, Turkmenistan, Turkey, Uzbekistan, Zambia, Albania, Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Bhutan, Benelux Office for Intellectual Property, Belarus, Switzerland, China, Cuba, Cyprus, Czech Republic, Germany, Algeria, Egypt, Spain, Croatia, Hungary, Iran (Islamic Republic of), Italy, Kenya, Kyrgyzstan, Korea (Democratic People's Republic of), Kazakhstan, Liechtenstein, Liberia, Lesotho, Latvia, Morocco, Monaco, Moldova (Republic of), Montenegro, Macedonia (the former Yugoslav Republic of), Mongolia, Poland, Portugal, Romania, Serbia, Russian Federation, Sudan, Slovenia, Slovakia, Sierra Leone, San Marino, Eswatini, Tajikistan, Ukraine, Viet Nam.

It says it is a well-known mark and cites the findings of other UDRP panels to that effect.

Its main domain is <vivendi.com>.

FACTUAL BACKGROUND

The Complainant is a French multinational conglomerate based in Paris. It is a mass media provider. It has almost 38,000 employees and in 2020, it enjoyed global revenues of €8.7 billion.

The disputed domain name was registered on 16 November 2021 and redirects to a 403 error page. The Respondent is an individual resident in India but little else is known about him.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant contends as follows.

1.The disputed domain name is confusingly similar to its name and marks and includes the whole of its mark. That the addition of the generic word “management” adds nothing to the similarity analysis, nor does the gTLD. The findings of three other UDRP panels to the effect that it is a well-known mark should be followed.

2.The Respondent is not known by the disputed domain name based on the information in the WHOIS. That is the relevant test. It is not authorised by and has no consent from the Complainant to make use of its name and marks. It has no use of its own to give rise to any legitimate rights or interests and there are no such interests.

3.As to Bad Faith, the mark is well known, the Respondent has not come forward, there is no use and no rights or interests on the face of the matter, and it is reasonable to infer Bad Faith.

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

There is no question that the Complainant has Rights and the Panel finds it is a well-known mark. The whole mark is used in the disputed domain name. Many panels find this is evidence of impersonation. The addition of the generic term “Management” adds nothing to the similarity analysis. The choice of the .com does not change the similarity analysis but often reinforces the impression of impersonation. The disputed domain name is confusingly similar to the marks of the Complainant. The Complainant has made out the first limb.

The main issue in this case then is whether the Respondent has rights or a legitimate interest in the disputed domain name. The Complainant makes a prima facie case that there is no such interest and says that the Respondent must rebut this. But the Respondent has not come forward. On the face of the matter, there is no obvious legitimate use as the Respondent makes no use. However, passive holding, and non-use are no longer considered objectionable per se. Rather these cases are highly fact sensitive. There can be valid reasons to register such a domain –for example if the Respondent wanted to use it for a site discussing the performance of, or criticising the management of, the Complainant. That would be a legitimate and fair use. In that sense the bare disputed domain name, without use can be neutral. The use or other factors in question can push the dial one way or another. The second limb will be influenced by the other two limbs.

As to the third limb and Bad Faith, there is no question that the Respondent was aware of the well-known Complainant and has not come forward to justify selection and non-use. Use of a privacy service is now so ubiquitous that the Panel does not consider it can have any bearing on Bad Faith. The fact there is no website or even parking can suggest that the use intended may be for email purposes which carries with it, the obvious risk of misuse. While finely balanced, this limb is made out and carries the second limb with it.

In light of all of the factors, the Panel finds the Complainant discharged its burden.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **vivendimanagement.com**: Transferred

PANELLISTS

Name	Victoria McEvedy
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DATE OF PANEL DECISION 2022-12-20

Publish the Decision