

Decision for dispute CAC-UDRP-105304

Case number	CAC-UDRP-105304
Time of filing	2023-03-27 09:53:40
Domain names	myversuni.com, versunibrands.com, versunidesign.com, versuniglobal.com, versunii.com, versuniphilips.com, versuniprice.com, versunireview.com, versunisource.com

Case administrator

Name	Olga Dvořáková (Case admin)
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Complainant

Organization	Uccello Limited
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Complainant representative

Organization	Coöperatieve Vereniging SNB-REACT U.A.
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Respondent

Name	Alelie Pilar
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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 names.

IDENTIFICATION OF RIGHTS

The Complainant is the registrant of the Benelux trademark registration No. 1463339 "VERSUNI", registered on May 3, 2022, for goods and services in classes 3, 7, 8, 9, 11, 21, 30, 35, 37, 41 and 42.

The disputed domain names were registered by the Respondent on September 20, 2022.

FACTUAL BACKGROUND

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

The Complainant states that it is the owner of the "Versuni" trademarks, which refer to the new corporate name of the well-known producer of consumer goods, Philips Domestic Appliances. The Complainant clarifies that Versuni is headquartered in the Netherlands, is active in more than 100 countries and operates in kitchen appliances and other household products, climate care, garment and floor care.

The Complainant underlines that it is the owner of the "Versuni" trademark since May 3, 2022, and that the nine disputed domain names have been registered several months later, on September 20, 2022.

The Complainant observes that the disputed domain names incorporate the "Versuni" trademark in its entirety. The Complainant notes that previous panels have held domain names to be confusingly similar if the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name.

The Complainant notes that the Respondent has added to the "Versuni" trademark various generic terms, such as "my", "brands", "design", "global", "price", "review" and "source" and that the addition of such generic terms cannot prevent a finding of confusing similarity.

The Complainant furthermore emphasizes that the applicable TLD is a standard requirement of registration and as such should be disregarded under the first UDRP element.

As regards the disputed domain name <versunii.com>, the Complainant submits that it consists of a misspelling of the Complainant's trademark due to the addition of the letter 'i'.

As regards the disputed domain name <versuniphilips.com>, the Complainant points out that it is a combination of its own trademark and the well-known "Philips" trademark and that the addition of a second trademark, even if the latter is well-known, is on itself insufficient to avoid a finding of confusing similarity, since the Complainant's trademark is recognizable within the disputed domain name.

The Complainant notes that, according to the available Whois information, all disputed domain names have been registered several months after the registration and use of the Complainant's trademark.

The Complainant considers that the Respondent has no rights or legitimate interests to use the Complainant's trademark in a confusingly similar manner within the disputed domain names.

The Complainant states that it has no relationship whatsoever with the Respondent and has never licensed or otherwise authorized the Respondent to use the "Versuni" trademark in the disputed domain names.

The Complainant points out that it has exclusive trademark rights which predate the registration of the disputed domain names.

The Complainant submits that the Respondent cannot demonstrate any legitimate offering of goods or services under the "Versuni" trademark.

The Complainant considers that in the absence of a license or permission from the Complainant concerning the use of its trademark, no bona fide or legitimate use of the disputed domain names can reasonably be claimed.

The Complainant argues that no credible evidence that the Respondent is commonly known by the domain name is shown.

The Complainant considers that the Respondent does not hold any trademark or service mark right on the "Versuni" trademark.

The Complainant highlights that the use of the "Versuni" trademark on the Respondent's websites does not prove that the Respondent, or any business or organization represented by it, is commonly known by the word "Versuni".

The Complainant notes that a Respondent's use of a domain name will not be considered fair if it falsely suggests affiliation with the trademark owner.

The Complainant observes that the Respondent has registered seven domain names which consist of the "Versuni" trademark and an additional generic term, one domain name which is a clear example of "typosquatting" and one domain name which combines the "Versuni" trademark and the "Philips" trademark.

The Complainant underlines that all the disputed domain names resolve to a nearly identical kind of parked page where "pay per click" links are visible.

The Complainant argues that the Respondent's intention is that consumers who are looking for the Complainant's website will find one of the disputed domain names and the corresponding websites and subsequently generate revenue for the Respondent.

The Complainant considers that the fact of registering many variations containing the "Versuni" trademark in combination with other elements amounts to a 'pattern of conduct', supporting a finding of abusive registration.

The Complainant reminds that it is the owner of the "Versuni" trademark since May 3, 2022 and that the disputed domain names fully incorporate the Complainant's trademark and have been registered on the same day, namely on September 20, 2022.

The Complainant argues that it is implausible to believe that the Respondent did not have any actual knowledge of the Complainant's trademark when it registered the disputed domain names.

The Complainant highlights that the registration of <versuniphilips.com> underlines the likelihood that the Respondent had some knowledge regarding the change of the corporate name from "Philips Domestic Appliances" to "Versuni".

The Complainant considers that the Respondent has attempted to cause confusion in internet users by registering several domain names which bear the Complainant's trademark in its entirety together with a generic term.

The Complainant recalls that the Respondent has no rights or legitimate interests in the disputed domain names, and that they were registered for the commercial benefit of the Respondent, who generates revenues by using "pay per click" links on the corresponding websites.

The Complainant adds that the Respondent uses a privacy protection service on all the disputed domain names to hide its identity and considers that this may constitute evidence of bad faith.

PARTIES CONTENTIONS

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

In accordance with paragraph 4(a) of the Policy, in order to obtain the transfer of a domain name, the complainant has to demonstrate that:

- (i) The 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 in respect of the domain name; and
- (iii) The domain name has been registered and is being used in bad faith.

IDENTICAL OR CONFUSINGLY SIMILAR

The first requirement that the Complainant must establish is that the disputed domain names are identical with, or confusingly similar to, the Complainant's trademark.

There are two elements of this test: for each domain name, the Complainant must demonstrate that it has rights in a trademark or service mark and, if so, the disputed domain names must be shown to be identical or confusingly similar to the trademark or service mark.

The Complainant has proven ownership of the registered trademark "VERSUNI", identified in section "Identification of rights" above.

The Panel observes that the registration of the Complainant's trademark predates the registration of the disputed domain names.

On the question of identity or confusing similarity, what is required is simply a comparison and assessment of the disputed domain

names to the Complainant's trademark.

The disputed domain names differ from the Complainant's trademark "VERSUNI":

- as regards <myversuni.com> by the addition of the word "my" and by the top-level domain ".COM";
- as regards <versunibrands.com> by the addition of the word "brands" and by the top-level domain ".COM";
- as regards <versunidesign.com> by the addition of the word "design" and by the top-level domain ".COM";
- as regards <versuniglobal.com> by the addition of the word "global" and by the top-level domain ".COM";
- as regards <versunii.com> by the addition of the letter "i" and by the top-level domain ".COM";
- as regards <versuniphilips.com> by the addition of the word "philips" and by the top-level domain ".COM";
- as regards <versuniprice.com> by the addition of the word "price" and by the top-level domain ".COM";
- as regards <versunireview.com> by the addition of the word "review" and by the top-level domain ".COM";
- as regards <versunisource.com> by the addition of the word "source" and by the top-level domain ".COM".

In the present case the addition of the words "my", "brands", "design", "global", "price", "review" and "source" have no impact on the distinctive part "VERSUNI". It is well established that, where the relevant trademark is recognizable within the domain name, the addition of other terms would not be sufficient to prevent a finding of confusing similarity (see, for example, CAC case No. 104755).

As regards the domain name <versunii.com>, the addition of the letter "i" have no impact on the distinctive part "VERSUNI". It is well established that, where the relevant trademark is recognizable within the domain name, the addition of a letter would not be sufficient to prevent a finding of confusing similarity (see, for example, CAC case No.104575).

Other panels have considered that the inclusion of a third-party trademark in a domain name does not eliminate the visual impression that the disputed domain name is associated with a complainant's trademark (see, for example, WIPO case No. D2016-2194). The Panel agrees with this view and finds that the addition of the trademark "PHILIPS" to the Complainant's trademark is not sufficient to prevent a finding of confusing similarity.

The Panel observes that it is well established that the top-level domain may generally be disregarded in the confusing similarity test (see, for example, WIPO case No. D2016-2547).

Therefore, the Panel considers that the disputed domain names are confusingly similar to the Complainant's trademarks.

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

RIGHTS OR LEGITIMATE INTERESTS

The second requirement that the Complainant must prove is that the Respondent has no rights or legitimate interests in each of the disputed domain names.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the respondent has rights or legitimate interests in a domain name:

- (i) before any notice to [the Respondent] of the dispute, [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; or
- (ii) [the Respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the Respondent] [has] acquired no trademark or service mark rights; or
- (iii) [the Respondent] [is] making a legitimate non-commercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

This is a non-exhaustive list of circumstances in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement falls on the Complainant. UDRP panels have recognized that proving that a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative".

Accordingly, it is usually sufficient for a complainant to raise a prima facie case against the respondent and the burden of proof on this requirement shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in a domain name.

The Panel finds that the Complainant has made out a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain names.

In particular, the Complainant states that:

- it has no relationship whatsoever with the Respondent and has never licensed or otherwise authorized the Respondent to use the "Versuni" trademark in the disputed domain names;
- it has exclusive trademark rights which predate the registration of the disputed domain names;
- the Respondent cannot demonstrate any legitimate offering of goods or services under the "Versuni" trademark;

- in the absence of a license or permission from the Complainant concerning the use of its trademark, no bona fide or legitimate use of the disputed domain names can reasonably be claimed;
- no credible evidence that the Respondent is commonly known by the domain name is shown;
- the Respondent does not hold any trademark or service mark right on the "Versuni" trademark;
- all the disputed domain names resolve to a nearly identical kind of parked page where "pay per click" links are visible.

In the absence of a Response, there is no indication in the present case that the Respondent is commonly known by the disputed domain names.

Furthermore, the Respondent has failed to demonstrate any of the other non-exclusive circumstances evidencing rights or legitimate interests under paragraph 4(c) of the Policy or other evidence of rights or legitimate interests in the disputed domain names.

The Respondent does not appear to make any legitimate non-commercial or fair use of the disputed domain names, nor any use in connection with a bona fide offering of goods or services. Indeed, the disputed domain names redirect to webpages where "pay per click" links are visible.

The Panel considers that, on the balance of probability, the Respondent knew the Complainant's trademark and registered the disputed domain names with knowledge of the Complainant's rights. Indeed, it is not conceivable that the Respondent did not have the Complainant's trademark in mind, when registering and using the disputed domain names. Under these circumstances, it cannot be concluded that the Respondent is making a "fair" use of the disputed domain names.

Taking into account that the Respondent is not commonly known as the disputed domain names, that the Respondent has no connection or business relationship with the Complainant, that the Complainant has not authorized the Respondent to use its trademark in the disputed domain names, that the disputed domain names are used by webpages where "pay per click" links are visible and not for any other legitimate purpose, the Panel cannot imagine any possible legitimate justification for this use, and the Respondent has not come forward with any explanation that demonstrates any rights or legitimate interests in the disputed domain names.

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

REGISTERED AND USED IN BAD FAITH

Under the third requirement of the Policy, the Complainant must establish that the disputed domain names have been both registered and used in bad faith by the Respondent.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, including:

- (i) circumstances indicating that [the Respondent] [has] registered or [has] acquired the [disputed] domain name primarily 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 that complainant, for valuable consideration in excess of [the Respondent's] documented out-of-pocket costs directly related to the [disputed] domain name; or
- (ii) [the Respondent] [has] registered the [disputed] domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that [the Respondent] [has] engaged in a pattern of such conduct; or
- (iii) [the Respondent] [has] registered the [disputed] domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the [disputed] domain name, [the Respondent] [has] intentionally attempted to attract, for commercial gain, Internet users to [the Respondent's] web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the Respondent's] web site or location or of a product or service on [the Respondent's] web site or location.

The Panel, on the basis of the evidence presented, agrees with the Complainant's contentions that the disputed domain names were registered in bad faith and that they have been used in bad faith.

Taking into account the fact that the trademark "VERSUNI" has been also used by the Respondent together with the "PHILIPS" trademark, showing therefore, on a balance of probabilities, the Respondent's knowledge of the new name which replaced the "PHILIPS" trademark (used under the name "Philips Domestic Appliances"), the Panel agrees that it is inconceivable that the Respondent was not aware of the Complainant's rights in the Complainant's trademark when registering the disputed domain names.

Other panels considered that knowledge of a corresponding mark at the time of the domain name's registration can suggest bad faith (see WIPO Case No. D2017-0100). The Panel shares this view.

The Panel agrees also that the registration, in the same period of time, of several domain names which contain the same trademark is evidence of bad faith (see CAC Case No. 105266).

The Panel finds that the use of the disputed domain names in "pay per click" pages, in the circumstances of this case, are evidence of bad faith (see CAC Case No. 105138).

As regards the Respondent's use of a privacy service when registering the disputed domain name, in line with other Panels' view, the Panel considers that, although the use of such service is not in and of itself an indication of bad faith, the circumstances and the manner in which such service is used may have an impact in the assessment of bad faith (see CAC Case No. 105097).

The Panel observes that if the Respondent had legitimate purposes in registering and using the disputed domain names it would have filed a Response in this proceeding.

The Panel, having taken into account the Respondent's knowledge of the Complainant's trademarks at the time of the disputed domain names' registration, the use of the disputed domain names in "pay per click" pages, the registration of the disputed domain names in the same date, the lack of reply to the complaint, and the use of a privacy service, considers that the disputed domain names were registered and are being used in bad faith.

Accordingly, the Panel finds that the disputed domain names were registered and are being used in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

The transfer of the domain name <versuniphilips.com> is without prejudice to the rights of third parties in the trademark "PHILIPS".

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **myversuni.com**: Transferred
2. **versunibrands.com**: Transferred
3. **versunidesign.com**: Transferred
4. **versuniglobal.com**: Transferred
5. **versunii.com**: Transferred
6. **versuniphilips.com**: Transferred
7. **versuniprice.com**: Transferred
8. **versunireview.com**: Transferred
9. **versunisource.com**: Transferred

PANELLISTS

Name	Michele Antonini
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DATE OF PANEL DECISION 2023-05-02

Publish the Decision
