

Decision for dispute CAC-UDRP-105361

Case number CAC-UDRP-105361

Time of filing 2023-04-17 09:41:15

Domain names myvivendi.net

Case administrator

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

Complainant

Organization VIVENDI

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Organization Mgssnf

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 is the owner of the following trademark registrations of the sign "VIVENDI" (the "VIVENDI trademark"):

- the International trademark VIVENDI (word) with registration No.687855, registered on 23 February 1998 for goods and services in International Classes 9, 35, 36, 37, 38, 39, 40, 41 and 42; and
- the International trademark VIVENDI (combined) with registration No.930935, registered on 22 September 2006 for goods and services in International Classes 9, 16, 28, 35, 36, 38, 41 and 42.

FACTUAL BACKGROUND

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 38 315 employees, the Complainant's total revenues amounted to EUR 9.6 billion worldwide in 2022.

The Complainant also owns the domain names <vivendi.com>, registered on 12 November 1997, and <vivendi.net>, registered on 28 May 1998, which it uses for its online presence.

The disputed domain name <myvivendi.net> was registered on 10 April 2023 and resolves to an error webpage. It has mail exchange (“MX”) settings enabled.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to its distinctive and worldwide known VIVENDI trademark, which it includes in its entirety. The Complainant asserts that the addition of the dictionary word “my” is not sufficient to exclude the confusing similarity between the disputed domain name and the VIVENDI trademark.

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name, as it is not commonly known under it and is not affiliated to the Complainant, who has not given any authorization to the Respondent to use the Complainant’s VIVENDI trademark. The Complainant contends that Respondent does not use the disputed domain name as it resolves to an error page.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. According to the Complainant, its VIVENDI trademark is distinctive and known worldwide, so it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant’s trademark. The Complainant contends that the Respondent has not demonstrated any activity in respect of the disputed domain name, and it is not possible to conceive of any plausible actual or contemplated active use of it by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant’s rights under trademark law.

Finally, the Complainant submits that mail exchange servers are configured for the disputed domain name, which suggests that it may be actively used for email purposes. According to the Complainant, it is inconceivable that the Respondent would be able to use the disputed domain name as part of an e-mail address in good faith.

RESPONDENT:

The Respondent did not submit a Response in this proceeding.

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

Pursuant to the Policy, paragraph 4(a), a complainant must prove each of the following to justify the transfer of a domain name:

(i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;

(ii) the respondent has no rights or legitimate interests in respect of the domain name; and

(iii) the domain name was registered and is being used in bad faith.

In this case, the Provider has employed the required measures to achieve actual notice of the Complaint to the Respondent, and the Respondent was given a fair opportunity to present its case.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: “[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name ...”

In this proceeding, the Respondent has not used the opportunity provided to it under the Rules and has not submitted a substantive Response addressing the contentions of the Complainant and the evidence submitted by it.

Identical or confusingly similar

The Complainant has provided evidence and has thus established its rights in the VIVENDI trademark.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the general Top-Level Domain (“gTLD”) section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). The Panel sees no reason not to follow the same approach here, so it will disregard the “.net” gTLD section of the disputed domain name.

The relevant part of each of the disputed domain names is therefore the sequence “myvivendi”, which reproduces the VIVENDI trademark entirely with the addition of the dictionary word “my”. The VIVENDI trademark is easily recognizable within the disputed domain name. As discussed in section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the “WIPO Overview 3.0”), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.

Taking all the above into account, the Panel finds that the disputed domain name is confusingly similar to the VIVENDI trademark in which the Complainant has rights.

Rights and legitimate interests

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, because the Respondent was not authorized to use the VIVENDI trademark and is not commonly known under the disputed domain name. According to the Complainant, the Respondent is not using the disputed domain name, but has enabled it to be used for email communication. Thus, the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not submitted a Response and has not provided an explanation of the reasons why it has registered the disputed domain name.

In the Panel’s view, the circumstances of this case do not support a finding that the Respondent has rights and legitimate interests in the disputed domain name. It is confusingly similar to the VIVENDI trademark, which may create an impression in Internet users that it is related to the Complainant, and the evidence submitted by the Complainant shows that MX servers have been set up for the disputed domain name so it may be used for email communication. This may confuse recipients of email messages from accounts at the disputed domain name that they are receiving communications from the Complainant. In the lack of any arguments or evidence to the contrary, the above leads the Panel to the conclusion that it is more likely than not that the Respondent, being aware of the goodwill of the Complainant’s VIVENDI trademark, has registered the disputed domain name targeting this trademark in an attempt to exploit its goodwill by confusing Internet users that eventual correspondence they receive from email accounts activated with the disputed domain name originates from or is connected to the Complainant. The Panel does not regard such activities as giving rise to rights or legitimate interests in the disputed domain name.

Therefore, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

Bad faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a

domain name in bad faith by a respondent, namely:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the 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 your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

The registration of the distinctive VIVENDI trademark predates by 25 years the registration of the disputed domain name. It reproduces the VIVENDI trademark entirely with the addition of the dictionary word “my”, which may lead Internet users to believe that it is related to the Complainant. The Panel is therefore of the view that the Respondent is more likely to have registered the disputed domain name with knowledge of the Complainant’s trademark rights and with the intention of taking advantage of its goodwill.

The evidence shows that it resolves to an error webpage and has MX servers activated, so it may be or is being used for e-mail communication. Since the composition of the disputed domain name makes it to appear as related to the Complainant, Internet users receiving messages from e-mail accounts at the disputed domain name may easily be misled that such messages originate from the Complainant.

The Respondent has not provided any plausible explanation of its choice of domain name, and given the circumstances of this case, the Panel is not aware of any good faith use to which the disputed domain name may be put without the consent of the Complainant.

This satisfies the Panel that the disputed domain name has been registered and used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. myvivendi.net: Transferred

PANELLISTS

Name	Assen Alexiev
------	---------------

DATE OF PANEL DECISION 2023-05-16

Publish the Decision
