

Decision for dispute CAC-UDRP-105773

Case number CAC-UDRP-105773

Time of filing 2023-09-13 09:23:48

Domain names fr-vivendi.com

Case administrator

Name Olga Dvořáková (Case admin)

Complainant

Organization VIVENDI

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name Catherine Sambuchi

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 several international trademark registrations for the wording "VIVENDI", including:

- International trademark VIVENDI® n° 687855, registered and renewed since February 23, 1998;
- International trademark VIVENDI® n° 930935 registered and renewed since September 22, 2006.

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 42,526 employees in 82 countries, the Complainant's total revenues amounted to €16,090 million worldwide in 2020. The Complainant also owns and communicates on Internet through various domain names, such as the domain name <vivendi.com> registered in 1997.

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.

The Respondent contacted the Center via email. The Center provided the Respondent with information about the process and about the online case file. The Respondent never accessed the online case file and did not contact the Center further.

PRINCIPAL REASONS FOR THE DECISION

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). The disputed domain name <fr-vivendi.com> is confusingly similar to its trademark VIVENDI®, as it incorporates the trademark in its entirety.

Indeed, the addition of letters “FR” (clear reference to FRANCE country code) before the trademark VIVENDI® is not sufficient at all to escape the finding that the domain name is confusingly similar to the trademark VIVENDI®. 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”. See WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasilij Terkin.

See similar cases: CAC Case No. 104235, VIVENDI v. Gba Bitico <vivendise.com>, but also CAC Case No. 104328, VIVENDI v. michael scott <vivendi-se.com>.

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).

According to the WIPO case No. D2003-0455, Croatia Airlines d. d. v. Modern Empire Internet Ltd., the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the Policy.

In the case at hand, the Respondent is not affiliated with the Complainant nor authorized by it in any way to use the trademark VIVENDI®. The Complainant does not carry out any activity for, nor has any business with the Respondent. The

disputed domain name is inactive. Therefore, the Respondent did not make any use of disputed domain name since its registration, and it confirms that Respondent has no demonstrable plan to use the disputed domain name. It demonstrates a lack of legitimate interests in respect of the disputed domain name.

Accordingly, the Respondent has no rights or legitimate interests to the disputed domain name <fr-vivendi.com>.

The Panel finds that the Complainant successfully submitted prima facie evidence that the Respondent has made no use of, or demonstrable preparations to use, neither of the disputed domain name in connection with a bona fide offering of goods or services, nor is making a legitimate non-commercial or fair use of the disputed domain name. Indeed, given the distinctiveness of the Complainant's trademark and reputation, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademark VIVENDI®. Please see for instance WIPO Case No. D2004-0673, Ferrari S.p.A v. American Entertainment Group Inc.

Furthermore, since the disputed domain name resolves to a registrar parking page with commercial links, it is very likely the Respondent has attempted to attract Internet users for commercial gain to his own website thanks to the Complainant's trademarks for its own commercial gain (see WIPO Case No. D2018-0497, StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC).

As indicated in many CAC and WIPO decisions, the Complainant's VIVENDI® trademark is deemed well-known and highly distinctive. In this regard, it is hard to believe that the Respondent was not aware of the registration and the use of the Complainant's trademarks before the registration of the disputed domain name.

Respondent did not provide any statement regarding the use of the disputed domain name and simply stated that buying a domain name is not deemed illegal. In the absence of a response in the merits of the case from the Respondent and given the reputation of the Complainant and its trademarks, the Panel infers that the Respondent had the Complainant's trademarks VIVENDI® in mind when registering the disputed domain name. Consequently, the Panel believes that the same was registered and is being 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. **fr-vivendi.com**: Transferred

PANELLISTS

Name	Tommaso La Scala
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DATE OF PANEL DECISION 2023-10-17

Publish the Decision
