

Decision for dispute CAC-UDRP-105983

Case number CAC-UDRP-105983

Time of filing 2023-11-16 09:21:54

Domain names holviaporc.com

Case administrator

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

Complainant

Organization HOLVIA PORC

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Organization GuardPrivacy.org

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 French trademark HOLVIA PORC (device) No. 3792659 registered on May 13, 2011.

FACTUAL BACKGROUND

The Complainant is a French company specializing in the slaughter and butchering of culled sows and pigs for pork butchers, and in France is a leader in this sector.

The disputed domain name <holviaporc.com> was registered on June 15, 2023.

Before being suspended (and at least on October 31, 2023), the disputed domain name resolved to an online shop which marketed pig parts produced in Laval under the name "HOLVIA PORC".

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant contends that:

1. The disputed domain name is confusingly similar to the Complainant's trademark.

The Complainant contends that the disputed domain name is identical to its distinctive trademark "HOLVIA PORC".

2. The Respondent does not have any rights or legitimate interest in the disputed domain name.

The Complainant contends that the Respondent is not commonly known by the disputed domain name and that the Respondent is not affiliated with or authorized by the Complainant in any way. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and is not related to the Complainant's business in any way. The Complainant does not carry out any activity for, nor has any business dealings with, the Respondent.

3. The disputed domain name has been registered and is being used in bad faith

The Complainant contends that owing to the distinctiveness of the Complainant's trademark, it is inconceivable that the Respondent could have registered the disputed domain name without actual knowledge of Complainant's rights in the HOLVIA PORC trademark. In addition, the Complainant contends that the Respondent has attempted to attract Internet users for commercial gain to his own website where services in direct competition with those of the Complainant were offered.

Finally, the Complainant affirms that MX servers are configured for the disputed domain name and this suggests that the disputed domain name can be actively used for e-mail purposes, and, quoting previous UDRP decisions, concludes that it is inconceivable that the Respondent will be able to make any good faith use of the disputed domain name as part of an e-mail address.

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

A) Confusing similarity

The sole difference between the disputed domain name and the Complainant's trademark is in the gTLD ".com". This is a mere technical requirement that does not prevent a disputed domain name from being confusingly similar to the Complainant's trademark.

B) Lack of legitimate rights or interests

The disputed domain name is a distinctive, non-descriptive name. It is unlikely that the Respondent registered the disputed domain name without having the Complainant firmly in mind. The Respondent does not appear to engage in any legitimate noncommercial or fair use of the disputed domain name, nor any use in connection with a bona fide offering of goods or services. In fact, it appears that the Respondent has used the disputed domain name for an unauthorised website displaying the Complainant's trademark and offering services in direct competition with those offered by the Complainant. The Panel thus notes that the composition and use of the disputed domain name creates a likelihood of confusion as to the Respondent's relationship with the Complainant (where there is none). The Complainant's assertions that the Respondent is not commonly known by the disputed domain name and is not affiliated with nor authorized by the Complainant are sufficient to constitute a prima facie demonstration of absence of rights or

legitimate interest in the disputed domain name on the part of the Respondent. The burden of evidence therefore shifts to the Respondent to show, using tangible evidence, that it does have rights or legitimate interests in the disputed domain name. The Respondent has made no attempt to do so.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

C) Registered and Used in Bad Faith

The Complainant gives sound bases for its contention that the disputed domain name was registered and has been used in bad faith.

Firstly, owing to the distinctiveness of the Complainant's trademark, and the use of the disputed domain name to resolve to an online shop which marketed pig parts under the name "HOLVIA PORC", it is reasonable to infer that the Respondent registered the disputed domain name with full knowledge of the Complainant's trademark, and so the Panel finds on the balance of probabilities that the Respondent was aware of the Complainant's trademarks when registering the disputed domain name.

Secondly, the Panel accepts the Complainant's unchallenged assertion that the Respondent registered the disputed domain name with the aim of creating a likelihood of confusion with the Complainant's trademark. In fact, the disputed domain name appears to have been used to attract internet users and offer possibly fraudulent services while impersonating the Complainant or, at a minimum, to offer services in direct competition with those offered by the Complainant.

Thirdly, noting that MX servers are configured for the disputed domain name, the Panel agrees that it is inconceivable that the Respondent will be able to make any good faith use of the disputed domain name as part of an e-mail address.

Finally, the Respondent has not responded to nor denied any of the assertions made by the Complainant in this proceeding.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **holviaporc.com**: Transferred

PANELLISTS

Name	Fabrizio Bedarida
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DATE OF PANEL DECISION **2023-12-19**

Publish the Decision
