Decision for dispute CAC-UDRP-106559

Case number	CAC-UDRP-106559
Time of filing	2024-05-24 09:37:32
Domain names	harley.vip, harleyy.vip, harley-davidson.vip

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Harley-Davidson Motor Company, Inc.

Complainant representative

Organization	Stobbs IP

Respondents

Organization	lina
Organization	xuxu

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 owner of the HARLEY-DAVIDSON trademark for which it owns a portfolio of registrations including:

- United Kingdom registered Trade Mark HARLEYDAVIDSON, registration number UK00901797018, registered on March 21 March 2002 for goods and services in classes 25, and 39;
- United Kingdom registered Trade Mark HARLEY, registration number UK00002121230, registered on September 11,1998 for goods in class 25; and
- United Kingdom registered Trade Mark MOTOR HARLEYDAVIDSON CYCLES registration number UK00901536309, registered on November 19, 2001 for goods and services in 3, 7, 9, 12, 14,16, 18, 25, 26, 28, 35, 36, 39 and 41.

FACTUAL BACKGROUND

The Complainant submits that the disputed domain names are under the control of a common operator, based on commonalities between the disputed domain names and the websites to which they resolve, namely:

1. the disputed domain names are registered with the same domain registrar and use the same hosting provider;
2. two of the three disputed domain names resolve (or have historically resolved) to websites offering crypto assets;
3. the Complainant was alerted to Facebook and YouTube videos, screen captures of which are exhibited in an annex to the Complaint, which divert internet users to the websites established at the disputed domain names;
4. there is a proximity of the registration dates of the disputed domain names;
5. each of the disputed domain names are on the same generic Top-Level Domain ("gTLD") <.vip>; and
6. the similarity of disputed domain names' anatomy to one another (each using the Complainant's well-known HARLEY-DAVIDSON or HARLEY trade mark).

Based on these factors, the Complainant submits it is fair and equitable to consolidate the proceedings related to the disputed domain names into a single complaint.

However, on examining the evidence adduced to support this application the Panel finds that there is not sufficient evidence of commonality between the registration and use of the disputed domain names <harley.vip> and <harleyy.vip> on the one hand and <harleydavidson.vip> on the other hand to find that they are owned by, or under the control of a single entity or entities acting in concert, sufficient to allow consolidation of the complaints relating to the three disputed domain names.

The disputed domain names <harley.vip> and <harleyy.vip> are each registered by the Respondent named lina, whereas the disputed domain name <harley-davidson.vip> is registered by xuxu. The Respondents lina and xuxu have different addresses.

The websites to which the disputed domain names <harleydavidson.vip> and <harley.vip> resolve (or have historically resolved) which are exhibited in an annex to the Complaint, are not similar in appearance or content, except that they each purport to offer crypto asset services.

The social media screen captures dated 20 May 2024 show use of the <harley-davidson.vip>, <harley.vip> and <harleyy.vip> disputed domain names on video posts on You Tube purporting to promote financial services. The You Tube videos at <harley.vip> and <harleyy.vip> display the HARLEY-DAVIDSON trademark but that does not establish a link with the disputed domain name <harley-davidson.vip>. A reference to, or an adoption of, the famous trademark by the owner of disputed domain names <harley.vip> and <harleyy.vip> is not sufficient to prove a connection. It is more than possible that the use of such a famous mark by two unconnected entities could be coincidental.

Similarly, the exhibited screen captures of You Tube videos associated with the disputed domain name <harley_davidson.vip> do not mention or show a link with the other two disputed domain names.

The Complainant has also exhibited screen captures from the Facebook platform with two separate links to a video entitled "Crypto View" which appear to be available at the website to which the <harley.vip> disputed domain name resolves, The Facebook screen capture displays the Complainant's logo, but there is no evidence of any association between the exhibited <harley.vip> video screen capture and the other disputed domain names.

There is a six month gap between the registration of the < harley-davidson.vip> disputed domain name on September 14, 2023 on the one hand and on the other hand the registrations of <harley.vip> on April18, 2024 and <harleyy.vip> on April 15, 2024.

The fact that the active disputed domain names are used to purportedly offer crypto asset services and the other commonalities to which the Complainant refers, do not together reach a threshold sufficient for the Panel to conclude that on the balance of probabilities the three disputed domain names are held or controlled by a single entity or entities acting in concert.

HARLEY-DAVIDSON is a very famous mark and is not implausible that two or more different registrants, with no connection with each other, would choose and adopt the mark and incorporate it into domain names.

As there is insufficient evidence to grant the application to consolidate these the proceedings the Complainant's application must be refused.

In the light of this refusal to consolidate, the Panel has considered whether it might proceed only in respect of one, some, or other of the disputed domain names, but has decided that in the circumstances of this case. Such a course would not be appropriate.

The Panel is of the view that in the specific circumstances of this case, separating instead of consolidating the complaints in respect of the disputed domain names could reasonably be construed as acting in an arbitrary and prejudicial manner.

Additionally, the Panel would have to proceed along the following, or similar, lines to apply fair procedures:

- decide and justify which domain name(s) should proceed to decision and which should not;
- construe the substantive submissions which have been argued on the basis of a consolidated complaint in a manner which the Complainant has not intended, and to which the Respondents have not been given an opportunity to respond;
- issue a procedural order setting out the Panel's views giving reasons,
- give Respondents the opportunity to make submissions on the Panel's decisions and reasoning;
- run the risk of the procedural consequences if the Respondents responded with conflicting submissions; and
- give the Complainant the opportunity to respond also.

To proceed in such manner would therefore be potentially prejudicial, procedurally very complex, and inappropriate, and involve

multiple rounds of submissions.

For the sake of clarity, this Panel has not made any finding or decision on any matter of substance such as would prejudice either Party in the event that any of the disputed domain names might be the subject of a future complaint.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain names should be transferred to it.

No administratively compliant Response has been filed.

RIGHTS

For reasons given above this Panel makes no finding in respect of the rights of either Party in this proceeding; nor has this Panel made any finding in respect of alleged confusing similarity between the disputed domain names and the marks relied upon by the Complainant, within the meaning of paragraph 4(a)(i) of the Policy or otherwise.

NO RIGHTS OR LEGITIMATE INTERESTS

For reasons given above this Panel makes no finding in respect of the rights or legitimate interests in the disputed domain names of either Party in this proceeding, within the meaning of paragraph 4(a)(ii) of the Policy or otherwise.

BAD FAITH

For reasons given above, this Panel makes no findings as to whether the disputed domain names have been registered and are being used in bad faith, within the meaning of paragraph 4(a)(iii) of the Policy or otherwise.

PROCEDURAL FACTORS

The Panel decided not to proceed to decision based on the reasons given above.

PRINCIPAL REASONS FOR THE DECISION

This Panel has set out above the reasons for its refusal to consolidate the proceedings in respect of the disputed domain names.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **harley.vip**: Remaining with the Respondent
2. **harleyy.vip**: Remaining with the Respondent
3. **harley-davidson.vip**: Remaining with the Respondent

PANELLISTS

Name	**James Bridgeman**

DATE OF PANEL DECISION 2024-07-01

Publish the Decision