Decision for dispute CAC-UDRP-106787

Case number	CAC-UDRP-106787
Time of filing	2024-08-09 08:58:26
Domain names	holvia-porc.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	HOLVIA PORC

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	Dane Solivan

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 bases its Complaint on the French national trademark “HOLVIA PORC”, no. 3792659, registered on 13 May 2011, for goods and services in classes 29, 30, 31, 43.

FACTUAL BACKGROUND

The Complainant is specialized in the slaughter and cutting of culled sows and pigs for pork butchers. The Complainant’s Laval site in Mayenne is France's leading sow abattoir.

The Complainant owns the French national trademark “HOLVIA PORC”, no. 3792659, registered on 13 May 2011, for goods and services in classes 29, 30, 31, 43.

The Complainant also owns the domain name <holviaporc.com> registered since 15 June, 2023.

The disputed domain name <holvia-porc.com> was registered on 5 February, 2024 and resolved at the time when the Complaint was filed to an online shop which marketed pig parts produced in Laval under the name “HOLVIA PORC”, and displaying the Complainant’s contact information ([…]@holviaporc.com). Moreover, based on the evidence available in the file, at the time when the

Complaint was filed, MX servers were configured in relation to the disputed domain name.

PARTIES CONTENTIONS

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

The Complainant's contentions are the following:

The disputed domain name <holvia-porc.com> is identical to the Complainant's earlier trademark HOLVIA PORC, that the Respondent lacks rights or legitimate interests in the disputed domain name for a number of reasons and that the disputed domain name was registered and is being used in bad faith.

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

1. Identity / Confusing Similarity

The Panel finds that the disputed domain name < holvia-porc.com > is confusingly similar to the Complainant's earlier HOLVIA PORC trademark. The disputed domain name incorporates entirely the Complainant’s earlier HOLVIA PORC trademark with the addition only of a hyphen in-between the word parts of the trademark HOLVIA, respectively PORC, which is not sufficient to escape the finding that the domain name is confusingly similar to the Complainant’s trademark and it does not change the overall impression of the designation as being connected to the trademark HOLVIA PORC.

Moreover, the extension “.com” is not to be taken into consideration when examining the similarity between the Complainant’s trademark and the disputed domain name (WIPO Case No. D2005-0016, Accor v. Noldc Inc.). The mere adjunction of a generic Top Level Domain (“gTLD”) such as “.com” is irrelevant as it is well established that the gTLD is insufficient to avoid a finding of confusing similarity (WIPO Case No. 2013-0820, L’Oréal v Tina Smith, WIPO Case No. D2008-0820 Titoni AG v Runxin Wang and WIPO Case No. D2009-0877, Alstom v. Itete Peru S.A.).

Therefore, the Panel is satisfied that the first condition under the Policy is met.

2. Lack of Respondent's rights or legitimate interests

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 burden of proof shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy.

Based on the available evidence, the Respondent does not appear to be known by the disputed domain name. The Respondent is not a licensee of, nor has any kind of relationship with, the Complainant. The Complainant has never authorised the Respondent to make use of its trademark, nor of a confusingly similar trademark in the disputed domain name.

Based on the available evidence, at the time when the Complaint was filed, the disputed domain name resolved to an online shop which marketed pig parts produced in Laval under the name “HOLVIA PORC”, and displaying the Complainant’s contact information ([…]@holviaporc.com). Moreover, based on the evidence available in the file, at the time when the Complaint was filed, MX servers were configured in relation to the disputed domain name. Such use does not amount to a bona fide offering of goods or services, or to a legitimate noncommercial or fair use of the disputed domain name.

The Panel notes that the Respondent had an opportunity to comment on the Complaint’s allegations by filing a Response, which the Respondent failed to do.

Thus, the Panel is satisfied that the Complainant has at least established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. Accordingly, the Panel takes the view that also the second requirement under the Policy is met.

3. Bad Faith

The Complainant's HOLVIA PORC trademark predate the registration of the disputed domain name and Respondent has never been authorized by Complainant to register the disputed domain name. The Respondent has chosen to register the domain name containing entirely the Complainant's earlier HOLVIA PORC trademark only with the addition of a hyphen in-between the word parts of the trademark HOLVIA, respectively PORC. Therefore, the Panel concludes that at the time of registration of the disputed domain name, the Respondent was well aware of the Complainant’s HOLVIA PORC trademark.

In the present case, the following factors should be considered:

(i) at the time when the Complaint was filed, the disputed domain name resolved to an online shop which marketed pig parts produced in Laval under the name “HOLVIA PORC”, and displaying the Complainant’s contact information ([…]@holviaporc.com);

(ii) moreover, at the time when the Complaint was filed, MX servers were configured in relation to the disputed domain name, which suggests that the disputed domain name might be actively used for email purposes. Any email emanating from the disputed domain name could lead into confusion a consumer;

(ii) the Respondent failed to submit any response and has not provided any evidence of actual or contemplated good faith use of the disputed domain name;

(iii) the Respondent registered the disputed domain name containing entirely the Complainant's earlier HOLVIA PORC trademark only with the addition of a hyphen in-between the word parts of the trademark HOLVIA, respectively PORC;

(iv) the Respondent was never authorised to use a domain name similar to the Complainant's trademark;

(v) there is no evidence in the file that there is any relationship or association, or connection between the Complainant with the Respondent.

In light of the foregoing, the Panel concludes that the Respondent has registered and has been using the disputed domain name in bad faith. Thus, also the third and last condition under the Policy is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **holvia-porc.com**: Transferred

PANELLISTS

Name	Delia-Mihaela Belciu

DATE OF PANEL DECISION 2024-09-16

Publish the Decision