

Decision for dispute CAC-UDRP-103780

Case number	CAC-UDRP-103780
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Time of filing	2021-05-05 09:59:43
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Domain names	vivendimedia.net
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Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	VIVENDI
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Complainant representative

Organization	Nameshield (Enora Millocheau)
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Respondent

Organization	1337 Services LLC
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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 word "VIVENDI", including

- IR No. 687855 VIVENDI, registered and renewed since February 23rd, 1998;
- IR No. 930935 VIVENDI, registered and renewed since September 22nd, 2006.

The Complainant also owns and communicates on Internet through various domain names, such as the domain name <vivendi.com>, registered on November 12th, 1997.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant asserts that the Respondent is not identified in the Whois as the disputed domain name. The Complainant also contends that the Respondent has no rights or legitimate interests in respect of the domain name <vivendimedia.net> and that he is not related in any way to the Complainant's business.

The Complainant further contends that the Respondent is not affiliated with him nor authorized by him 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 Complainant also puts forward that the website related to the disputed domain name is not used and contends that Respondent did not make any use of the disputed domain name since its registration. This confirms that Respondent has no demonstrable plans to use the disputed domain name. It demonstrates a lack of legitimate interests in respect of the disputed domain name.

The Complainant contends that the disputed domain name <vivendimedia.net> is confusingly similar to its distinctive and worldwide known trademarks VIVENDI and cites the decision in CAC Case No. 101875, VIVENDI v. Phoenix Global Organization Incorporated in which the Panel held that [it] is convinced that the Trademarks [VIVENDI] are highly distinctive and well-established.

Besides, the Complainant is a diversified content, media and communications group present worldwide, with 42,526 employees in 82 countries and € 16,090 million in revenue.

Given the distinctiveness of the Complainant's trademarks and reputation, the Complainant argues that it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademarks.

As the disputed domain name is inactive, the Complainant contends that the Respondent has not demonstrated any activity in respect of the disputed domain name, and that it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate under the laws of passing off, consumer protection legislation, or under trademark law.

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.

PRINCIPAL REASONS FOR THE DECISION

According to Paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to obtain an order that the disputed domain name should be transferred or cancelled:

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

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

(iii) the disputed domain name has been registered and is being used in bad faith.

The Panel has examined the evidence available to it and has come to the following conclusion concerning the satisfaction of the three elements of paragraph 4(a) of the Policy in these proceedings:

CONFUSING SIMILARITY WITH EARLIER RIGHTS

The Complainant has stated that the disputed domain name <vivendimedia.net > is confusingly similar to its registered trademark VIVENDI. The disputed domain name contains the Complainant's trademark and a generic term describing the Complainant's field of activity.

The disputed domain name is confusingly similar to the Complainant's Trademark, company name and domain. This finding is based on the settled practice in evaluating the existence of a likelihood of confusion of

a) disregarding the top-level suffix in the domain name (i.e. ".net"), and

b) holding that the addition of generic terms such as "media" which describe the very field of business of the proprietor of the earlier trademarks is not sufficient to distinguish a domain name from a trademark. As previous panels have stated, "a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP". (See e.g. WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasiliy Terkin).

Therefore, the Panel comes to the conclusion that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the UDRP.

NO RIGHTS OR LEGITIMATE INTERESTS

The onus to make out a prima facie case that the respondent lacks rights or legitimate interests is placed on the complainant. However, once such prima facie case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP (see e.g. WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

In this case, the Complainant has stated that the Respondent is not affiliated with him nor authorized by him in any way. Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark or apply for registration of the disputed domain name by the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent.

The Respondent failed to provide any information and evidence whatsoever that could have shown that it has relevant rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a) (ii) of the Policy).

Therefore, the Panel concludes that the Respondent did not establish any right or legitimate interest to the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy) and comes to the conclusion that the Complainant has satisfied the requirement under paragraph 4(a)(ii) of the UDRP Policy.

BAD FAITH

The disputed domain name is inactive. This is neither legitimate non-commercial nor fair use of the disputed domain name. The Respondent cannot be considered to either be making bona fide offering of goods and services or a non-commercial and fair

use of the disputed domain name as there is no website associated with the disputed domain name.

The disputed domain name has been registered and is being used in bad faith as it is a registration of a well-known/famous trademark. The website is inactive, and no use is being made of the domain name. Any use would attract internet users for commercial gain by creating a likelihood of confusion with the Complainant.

On these grounds it is concluded that bad faith registration within the meaning of paragraph 4(b) of the Policy is established in the present case for the following reasons:

- the Respondent's choice of the term "vivendimedia" for the disputed domain name, a term very close to the Complainant's well-known VIVENDI trademark, was not merely coincidental but was deliberate and in full knowledge of the Complainant's trademark and its field of activity; The Respondent is not commonly known by the disputed domain name. Neither is the Respondent in any way related to the Complainant. Nor has the Respondent been granted an authorization or license to use the disputed domain name by the Complainant. This has not been contested by the Respondent.

Therefore, the Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy). The Complainant has therefore also satisfied the requirement under paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **VIVENDIMEDIA.NET**: Transferred

PANELLISTS

Name	Udo Pfléggar, B.A.
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DATE OF PANEL DECISION	2021-06-09
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Publish the Decision
