

Decision for dispute CAC-UDRP-104092

Case number	CAC-UDRP-104092
-------------	------------------------

Time of filing	2022-08-23 08:55:59
----------------	----------------------------

Domain names	recuvaformac.com
--------------	-------------------------

Case administrator

Name	Iveta Špiclová (Case admin)
------	------------------------------------

Complainant

Organization	Piriform Software Limited
--------------	----------------------------------

Complainant representative

Name	Rudolf Leška
------	---------------------

Respondent

Organization	magimore
--------------	-----------------

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 an English company, based in London, founded on September 15, 2005, who develops software tools for cleaning and optimization of Microsoft Windows and macOS operating systems. Among its software tools, there is RECUVA, created for data recovery to restore files that have been accidentally deleted from a customer's computer.

The Complainant owns the following Trademark:

- US Trademark Registration No. 4297431 RECUVA, filed on March 1, 2012, registered on March 5, 2013, in force until March 6, 2023, with First Use in Commerce: 2007.

The disputed domain name <recuvaformac.com> was registered on April 3, 2013, and currently resolves to an inactive website with no content.

FACTUAL BACKGROUND

The Complainant is an English company, based in London, founded on September 15, 2005, who develops software tools for

cleaning and optimization of Microsoft Windows and macOS operating systems, plus Android devices. Complainant products include CCleaner, Defraggler, Recuva and Speccy. RECUVA was created for data recovery to restore files as documents, videos, images, music/audio files, that have been accidentally deleted from a customer's computer.

RECUVA tool has received awards from Softpedia and Download.com, and has been mentioned on different articles, which recognized the high quality and relevance of such advanced software tool.

The Complainant offers its services through its official website www.ccleaner.com/recuva, under which RECUVA software is offered to its customers. RECUVA was initially released in August 7, 2007 and it is available in more than 30 languages, with different presentations as: RECUVA as a free tool, RECUVA Professional a paid version, or in one package with CCleaner, which is an optimization software protecting the privacy and making computers faster and more secure.

The Complainant states that the disputed domain name <recuvaformarc.com> is confusingly similar to Complainant's trademark RECUVA, that the Respondent has no rights or legitimate interest over it, and that it has been registered and that it is been used in bad faith.

According to the evidence presented before the Panel, the disputed domain name <recuvaformac.com> was registered on April 3, 2013, and until August 2, 2022 the website resolved to an active website where Complainant's Trademark RECUVA was in use. By the time of this Decision the disputed domain name resolves to an inactive website with no content on it.

PARTIES CONTENTIONS

Response:

The Respondent did not submit its Response replying to Complainant's contentions.

Language of Proceedings

The Complainant requested English as the language of the proceedings, in accordance with Paragraph 11 of the UDRP Rules.

Complainant Contentions:

- 1) The Complainant provides to its customers one of the world's most popular data recovery software named RECUVA to restore files that have been accidentally deleted from a customer's computer. RECUVA was released on August 2007, is an award-winning data recovery tool and is available in more than 30 languages. Through the Complainant's official website www.ccleaner.com/recuva, the RECUVA software is offered to its customers, being: RECUVA free, RECUVA Professional, or in one package with CCleaner, which is an optimization software protecting the privacy and making computers faster and more secure.
- 2) The Complainant is well known on the market globally as a reliable company with a long history that develops software tools and provides excellent technology and amazing service for customers and businesses. The Complainant has received awards for the RECUVA tool, such as the award granted by Softpedia and Download.com.
- 3) The Complainant (presenting CCleaner together with Recuva) has more than half a million followers on Facebook and about 26,800 followers on Twitter. Furthermore, the Complainant's website ccleaner.com (the official website under which the Recuva tool is sold) is visited by more than 6 million Internet users every month.
- 4) The high quality and well-known character of the RECUVA tool has been mentioned in different articles, where the Recuva tool is described as: "Recuva is one gem of recover software. It will help you recover just about any deleted files of files in drives that simply won't mount."; "Recuva is one of the most popular and trusted data recovery tools for Windows out there."; "Piriform Recuva is a popular data recovery program that comes with a selection of advanced tools, including a secure overwriter, a formatted drive scanner, and virtual hard drive support."; "Recuva data recovery software is a tried-and-true tool that's been trusted by users for over a decade when undeletion is the task at hand."

5) The Respondent is clearly aware of the Complainant and its RECUVA tool which follows from the explicit reference to Piriform and RECUVA under the disputed domain name. The Respondent explicitly states under the disputed domain name: "Recuva, a software product created by Piriform Ltd. (the same company as CCleaner), is a free file recovery software for the Windows platform. With it you can effortlessly recover lost files from your PC, Camera, or iPod. Recuva is a must-have if you often delete files by mistake. No adware, no spyware, Recuva is totally free to use."

6) The Complainant is the owner of U.S. word Trademark RECUVA Reg. No. 4297431, for goods in class 9 (computer software for protection and recovery of personal data) with priority from March 1, 2012.

7) The Complainant states that the disputed domain name <recuvaformac.com> it is confusingly similar to Complainant's Trademark RECUVA.

8) That there does not exist any evidence that the Respondent has been commonly known by the consumers by the disputed domain name (by "RECUVA") before the beginning of this dispute nor owes any identical or similar trademark nor has ever used any identical or similar brand before the registration.

9) The Complainant did not grant any license or authorization to register or use the disputed domain name by the Respondent.

10) The Complainant indicates that at the very bottom of the pages in small grey (hardly readable) letters it is stated: "© 2022 Recuva for Mac File Recovery. All rights reserved. Recuva is a trademark of Piriform Ltd a.s, all rights reserved. This website isn't affiliated with or associated with Piriform Ltd a.s in any way." Such disclaimer will barely get into attention of average Internet users. The average Internet user will not notice the disclaimer as it is situated at the very bottom of the page. Average Internet user usually not read and analyse all content of every page before downloading the software. In such a case the existence of the disclaimer cannot by itself cure the lack of bona fide (Thirty & Co. v. Jake Marcum, Marcum Creative, LLC, WIPO Case No. D2016-1212). The disclaimer is not effective as it comes after a full page of marketing where the Trademark RECUVA appears many times around the download button (and is not perceptible immediately by the public (Dr. Ing. h.c. F. Porsche AG v. Sabatino Andreoni, WIPO Case No. D2003-0224; Pliva, Inc. v. Eric Kaiser, WIPO Case No. D2003-0316). In such a case the existence of the disclaimer cannot by itself cure the lack of bona fide (Thirty & Co. v. Jake Marcum, Marcum Creative, LLC, WIPO Case No. D2016-1212). Therefore, it is only by unauthorized use of the Trademark that the potential customer is brought to the website (containing the disclaimer) in the first place. Furthermore, the disclaimer proves that the Respondent is clearly aware of the Complainant's RECUVA Trademark.

11) The Respondent is clearly aware of the registration of the RECUVA trademark by the Complainant which follows from its declaration under the disputed domain name: "Recuva is a trademark of Piriform Ltd a.s, all rights reserved."

12) The disputed domain name <recuvaformac.com> was registered with the knowledge of the Complainant's trademark. The website under the disputed domain name is being used by the Respondent to offer for sale data recovery tools named Recoverit or Stellar which is under the disputed domain name intentionally advertised as RECUVA for Mac. The Respondent abuses the RECUVA trademark to attract Internet users to different products and to mislead them that it is somehow connected with the Complainant and the RECUVA tool.

13) Under the disputed domain name <recuvaformac.com> the Respondent offered for sale different products as "Recoverit", "Stellar" where the Respondent explicitly states: "As a Recuva for Mac alternative, Wondershare Recoverit is a professional data recovery software for Mac. It can quickly and completely scan your Mac, and let you recover files from the Trash emptied recently, accidental deletion, formatting, system corruption."; "As a Recuva for Mac alternative, Stellar Data Recovery for Mac is outstanding." Under the disputed domain name, the Respondent does not actually advertise the Recuva tool, but completely different products that are not connected with the Complainant. Therefore, there is not any reason (other than the Respondent's intention to mislead the Internet users and abuse the RECUVA trademark for its own commercial gain) for the Respondent to use the RECUVA trademark and the disputed domain name. In summary, the Respondent is offering the products Recoverit and Stellar abusing the Complainant's trademark RECUVA.

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is 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

Language of Proceedings:

The Complainant requested English as the language of the proceedings, in accordance with Paragraph 11 of the UDRP Rules, where unless otherwise agreed by the parties, the language of the proceeding is the language of the registration agreement, subject to the authority of the panel to determine otherwise.

On August 23, 2022, the Registrar Verification confirmed English as the Language of the Registration Agreement of the disputed domain name.

In addition, according with the language of the disputed domain name and the content of the website, done in English, this Panel concludes that nothing is preventing the Registrant to understand the English Language, despite it seems to be in China. Therefore, English is the Language of the present Case, and also of its Decision.

Principal Reasons for the Decision:

In relation to First UDRP Element, this Panel has found that:

The Complainant has sufficiently proved before the Panel, that owns Trademark Rights over the term RECUVA, being:

- US Trademark Registration No. 4297431 RECUVA, filed on March 1, 2012, registered on March 5, 2013, in force until March 6, 2023, with First Use in Commerce: 2007.

The disputed domain name <recuvaformac.com> registered on April 3, 2013, it is composed by Complainant's Trademark "RECUVA" and the terms "FORMAC", of descriptive in nature, meaning something suitable for Macintosh computer.

In relation to disputed domain names composed by a Trademark plus Additional Terms, the Domain Name Jurisprudence has established that:

"Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements." (see point 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0")).

It is well established by the Domain Name Jurisprudence that for the purposes of the analysis of the First UDRP Element, in this case, the gTLD “.com”, “is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test” (see point 1.11.1 of the WIPO Jurisprudential Overview 3.0”).

Therefore, the disputed domain name <recuvaformac.com> is confusingly similar to Complainant’s RECUVA Trademark (see Dr. Ing. h.c. F. Porsche AG v. Sabatino Andreoni, WIPO Case No. D2003-0224; Intesa Sanpaolo S.p.A. v. Gabriella Campora, CAC-UDRP Case No. 104386).

In relation to the Second UDRP Element, this Panel analyses the following:

(1) The Respondent registered the disputed domain name on April 3, 2013, meaning 1 month after the Complainant’s acquired its trademark rights over RECUVA, USPTO Reg. No. 4297431 on March 5, 2013; and/or 1 year after the Complainant has acquired its US Trademark Priority Rights on March 1, 2012 (Filing Date); and/or 6 years after the Complainant has established its common law trademark rights on 2007 (First Use in Commerce) (see point 1.3 of WIPO Jurisprudential Overview 3.0). In any event, the Complainant’s Trademark Rights predate to Respondent’s.

(2) That the Complainant has never granted the Respondent any right or license to use RECUVA trademark including within the disputed domain name, nor is the Respondent affiliated to the Complainant in any form or has endorsed or sponsored the Respondent or the Respondent’s website.

(3) That there is no evidence that the Respondent corresponds or has become commonly known by the disputed domain name or owns any corresponding registered trademark including the terms “recuvaformac.com”.

(4) The Respondent along the entire website makes explicit references and descriptions of the Complainant business as “Piriform Ltd. (the same company as CCleaner)” and of its software tool and Trademark RECUVA, to sell -apparently- its own products named as “Recoverit” and “Stellar”, deceiving the Internet User and clearly failing paragraph 4(c)(iii) of the Policy.

(5) In relation to the Disclaimer, it fails to comply with the cumulative requirements of the Oki Data Test (see point 2.8 of the WIPO Jurisprudential Overview 3.0), instead immerse the Respondent on its abuse and accurate knowledge of Complainant’s business and Trademark RECUVA’s reputation.

Therefore, this Panel finds that the Complainant has successfully made a prima facie case, which was not rebutted in any manner by the Respondent and concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

In relation to the Third Element of the UDRP, the Bad Faith, this Panel analyses the following:

Registration in Bad Faith:

According to the evidence submitted before this Panel, it seems to indicate that the Complainant enjoys active online presence, including in social media (e.g.: Twitter Account @CCleaner, February 2009), and acquired its common law trademark rights over the term RECUVA most probably since 2007 (August 7, 2007 date of its initial released), and its registered rights on March 5, 2013. Furthermore, Respondent’s Disclaimer: “© 2022 Recuva for Mac File Recovery. All rights reserved. Recuva is a trademark of Piriform Ltd a.s, all rights reserved. This website isn’t affiliated with or associated with Piriform Ltd a.s in any way.”, lead this Panel into the conclusion that the Respondent on April 3, 2013, registered the disputed domain name <recuvaformac.com>, with consistent knowledge of the Complainant’s line of business and its Trademark RECUVA on mind.

Also, the entire language and strategy used by the Respondent to described RECUVA’s Tool, inevitable indicates to this Panel, that the Respondent registered the disputed domain name <recuvaformac.com> in bad faith.

Therefore, this Panel concludes that the Respondent was fully aware about the existence and Complainant’s Trademark value at the time of the disputed domain name’s registration, meaning that the disputed domain name has been registered in bad faith.

Bad Faith Use

The entire website was built over the Complainant's same line of business in relation its RECUVA Trademark and software product. The Respondent through a deceitful language and description takes advantage over the Complainant's Trademark RECUVA to sell its potential competitive software tools, as it was described by the Complainant and indicated on the Second UDRP Element Section of this Decision.

In consequence, to this Panel, the Respondent has incurred into paragraph 4(b)(iv) of the Policy, which states:

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

In addition, the Disclaimer included by the Respondent, leaves no trace of doubts to this Panel, of the malicious and dangerous conduct performed on this Case.

Therefore, this Panel concludes that, the disputed domain name has been registered and is being used in faith as well.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **RECUVAFORMAC.COM**: Transferred

PANELLISTS

Name	Ms. MARÍA ALEJANDRA LÓPEZ GARCÍA
------	---

DATE OF PANEL DECISION	2022-09-23
------------------------	------------

Publish the Decision