

Decision for dispute CAC-UDRP-105241

Case number	CAC-UDRP-105241
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Time of filing	2023-02-28 11:06:24
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Domain names	virbacs.com
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Case administrator

Name	Olga Dvořáková (Case admin)
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Complainant

Organization	VIRBAC
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Name	andye Chenoo
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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 submitted evidence that it is the registered owner of the following registered rights:

- international trademark No. 793769 registered since 11 March, 2002 for the “Virbac” logo in classes 5,38,42 and 44, and designated for numerous countries;
- international trademark No. 420254 registered since 15 December, 1975 for the “Virbac” logo in class 5, and designated for numerous countries;
- US trademark No. 1262810 registered since 3 January 1984 for the “VIRBAC” mark.

FACTUAL BACKGROUND

Founded in 1968 in France by Pierre-Richard Dick, the Complainant is an old and well-established company dedicated exclusively to animal health. With a turnover of €869 million in 2018, the company ranks today as the 6th largest animal health company worldwide. Its wide range of vaccines and medicines are used in the prevention and treatment of the main pathologies for both companion and food-producing animals. Present through health products in more than 100 countries, the company has more than 4,900 employees.

The Complainant also owns a portfolio of domain names containing the term “VIRBAC”, such as its official domain name <virbac.com>, registered since 15 January 2000.

The disputed domain name was registered on 25 November 2022 and resolves to a branded VIRBAC online store.

The Registrar confirmed that the Respondent is the current registrant of the disputed domain name and that the language of the registration agreement is English.

The Respondent has not filed a Response.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The Complainant made the following contentions:

The Complainant states that the disputed domain name is confusingly similar to its trademark “VIRBAC” and that the trademark “VIRBAC” is included in its entirety in the disputed domain name. The Complainant further contends that addition of the letter “S” at the end of the trademark does not change the overall impression of the designation as being connected to the Complainant’s trademark. The Complainant argues that this is a case of “typosquatting”, i.e. the disputed domain name contains an obvious misspelling of the Complainant’s trademark, and that previous panels found that slight spelling variations do not prevent a disputed domain name from being confusingly similar to a complainant’s trademark.

Moreover, the Complainant contends that the addition of the generic top-level domain suffix “.com” does not change the overall impression of the designation as being connected to the trademark “VIRBAC”. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated.

The Complainant further argues that it has made a prima facie case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant asserts that the Respondent is not identified in the Whois database as the disputed domain name. In addition, the Respondent is not known by the Complainant. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name and he is not related in any way with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither license nor authorization has been granted to the Respondent to make any use of the Complainant’s trademark “VIRBAC”, or apply for registration of the disputed domain name.

The Complainant also claims that the disputed domain name is a typosquatted version of the trademark “VIRBAC”. *Typosquatting* is the practice of registering a domain name in an attempt to take advantage of Internet users’ typographical errors and can be evidence that a respondent lacks rights and legitimate interests in the domain name.

The domain name redirects to a website displaying the Complainant’s trademark and logo and images of the Complainant’s products. There is no disclaimer on the website to avoid the likelihood of confusion. Therefore, the respondent uses the disputed domain name to pass off as the Complainant in order to offer the Complainant’s drug products and information. This is not a bona fide offering of goods or services under Policy 4(c)(i) and (iii), and thus, the Complainant contends that the Respondent has no right or legitimate interest in respect of the disputed domain name.

Turning to the bad faith argument, the Complainant asserts that the disputed domain name is confusingly similar to its well-known trademark “VIRBAC”. Therefore, given the distinctiveness of the Complainant’s trademarks and reputation, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant’s trademark and with the Complainant in mind.

Moreover, the Complainant states that the disputed domain name is confusingly similar to its trademark and branded goods “VIRBAC”. Indeed, the addition of the letter “S” at the end of the trademark is not sufficient to escape the finding that the domain name is confusingly similar to the trademark “VIRBAC”. The Complainant states that this misspelling was intentionally designed to be confusingly similar with the Complainant’s trademark.

Finally, the Respondent uses the disputed domain name to pass off as the Complainant and attempt to sell Complainant’s products without authorization. Using a disputed domain name to pass off as a complainant in order to sell a complainant’s products without authorization is evidence of bad faith under Policy 4(b)(iii) and (iv). Thus, the Complainant contends that the Respondent has registered the disputed domain name and is using it in bad faith.

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

This is a proceeding pursuant to Paragraph 4 of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") and the CAC Supplemental Rules.

Paragraph 15 of the Rules provides that the Panel shall decide the complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

According to Paragraph 4(a) of the Policy, a complainant must prove each of the following: (A) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; (B) the respondent has no rights or legitimate interests in respect of the domain name; (C) the domain name has been registered and is being used in bad faith.

1. Identical or confusingly similar domain name

The Complainant demonstrated that it owns the asserted trademark registrations for the "VIRBAC" mark, which were all registered long before the registration of the disputed domain name by the Respondent. It is well established that a nationally or regionally registered trademark confers on its owner sufficient rights to satisfy the requirement of having trademark rights for the purposes of standing to file a UDRP case. Therefore, the Panel finds that the Complainant has established such rights.

It is also well established that the generic top-level suffix may be disregarded when considering whether a disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights, as it is a necessary technical requirement of a domain name.

The disputed domain name incorporates the Complainant's trademark "VIRBAC" in its entirety. The additional letter "S" is not sufficient to escape the finding that the disputed domain name is confusingly similar to the Complainant's trademark.

The Panel therefore finds that the disputed domain name is confusingly similar to the trademark in which the Complainant has rights.

2. Lack of rights or legitimate interests

The Respondent has not filed a Response and has neither provided any other information that would oppose the Complainant's allegations. Therefore, the Panel holds that the Complainant successfully presented its prima facie case that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

In particular, the Respondent is not in any way connected with the Complainant nor is it authorized to use the Complainant's trademark for its commercial activities. In addition, the Respondent is not commonly known by the disputed domain name pursuant to Paragraph 4(c)(ii) of the Policy.

Furthermore, it was demonstrated by the Complainant that the disputed domain name redirects to a website displaying the Complainant's trademark and logo and images of the Complainant's products without the Complainant's authorization and without any disclaimer to avoid the likelihood of confusion. Such use cannot be considered as bona fide offering of goods or services under Paragraph 4(c)(i) of the Policy, and neither it is fair use of the disputed domain name under Paragraph 4(c)(iii) of the Policy given that the intent of the Respondent for commercial gain to misleadingly divert consumers is rather clear.

The Panel therefore finds that the Respondent has no rights or legitimate interest in the disputed domain name.

3. Registration and use of the disputed domain name in bad faith

With respect to the bad faith argument, the Complainant states, in summary: (a) that the disputed domain is confusingly similar to the Complainant's well-known trademark; (b) that the Respondent must have had actual knowledge of the Complainant's rights in its trademarks; and (c) that the Respondent uses the disputed domain name to pass off as the Complainant and attempt to sell Complainant's products without authorization.

The Panel has already found that the disputed domain name is confusingly similar to the Complainant's trademark "VIRBAC". It is well established that the mere registration of a domain name that is confusingly similar to a trademark by an unaffiliated entity can lead to the presumption of bad faith.

Given the facts of this matter and the use of the disputed domain name, the Panel believes that the Complainant has sufficiently demonstrated the Respondent must have been aware of the existence of the Complainant and its trademark.

Having considered evidence submitted by the Complainant (a screenshot of the website on the disputed domain name), the Panel is satisfied that the Respondent's website contains information about the Complainant's products and appears to be operated by the Complainant (or with its authorization). In absence of the Respondent's response, there seems no reasonable explanation as to why the Respondent would register and use the disputed domain name other than to intentionally attempt to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's mark and the products and services offered on the Complainant's website, and to make the Respondent's website appear as affiliated with the Complainant.

Consequently, the Panel finds that the disputed domain name has been registered and has been used by the Respondent in bad faith.

In conclusion, the Panel finds that all three elements required by Paragraph 4(a) of the Policy were met and makes the following decision.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **virbacs.com**: Transferred

PANELLISTS

Name	Vojtěch Chloupek
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DATE OF PANEL DECISION 2023-05-01

Publish the Decision