

ADMINISTRATIVE PANEL DECISION

Nordic Entertainment Group AB v. 石磊 (Shi Lei)
Case No. D2022-0633

1. The Parties

The Complainant is Nordic Entertainment Group AB, Sweden, represented by Zacco Sweden AB, Sweden.

The Respondent is 石磊 (Shi Lei), China.

2. The Domain Names and Registrar

The disputed domain names <viaplayy.com> and <wiaplay.com> are registered with Cloud Yuqu LLC (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on February 23, 2022. On February 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On February 24, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on February 25, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint in English on February 25, 2022.

On February 25, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On February 25, 2022, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements 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 WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent in English and Chinese of the Complaint, and the proceedings commenced on March 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 23, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 25, 2022.

The Center appointed Francine Tan as the sole panelist in this matter on March 30, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant, Nordic Entertainment Group AB ("NENT", formerly a part of Modern Times Group MTG AB ("MTG")), is a Swedish company group founded in 2018, following a separation of MTG into two companies, MTG and NENT. The original company, MTG, was founded in 1987. The Complainant is an international entertainment and media provider, operating numerous entities across multiple jurisdictions, including its wholly-owned subsidiary, Nordic Entertainment Group Sweden AB, which is a holder of the majority of the Complainant's trade marks and domain names. The Complainant operates numerous commercial brands, including the following:

- Viaplay: a video on demand streaming service offering film, series, and sports content on subscription basis;
- Viafree: a cost-free streaming service for recently aired TV episodes and exclusive online content; and
- V Sports, Series & Film: a family of channels offering premium TV content across the entire Nordic region.

The Complainant is the sole proprietor of Viaplay Studios AB, the Complainant's in-house production arm which comprises production companies in the Nordic region and Central and Eastern Europe. The Viaplay Studios AB develops scripted entertainment specifically tailored to the Viaplay streaming service. The Complainant is listed on the Stockholm Stock Exchange ("Nasdaq") and part of OMX Stockholm Large Cap, which is a section of the Stockholm Stock Exchange comprising companies with a stock market value of minimum EUR 1 billion. Today, the Complainant has more than 3.6 million paying Viaplay subscribers and more than 1,700 employees worldwide.

The Complainant has rights in numerous registrations for VIAPLAY word and VIAPLAY formative trade marks worldwide, including the following:

- Swedish Trade Mark Registration No. 396460, registered on June 27, 2008;
- European Union Trade Mark Registration No. 018219653, registered on July 30, 2020; and
- International Trade Mark Registration No. 1539481, registered on April 1, 2020, protected in China.

The Complainant also states that it owns many domain name registrations that incorporate the VIAPLAY trade mark, including <viaplay.com>.

The disputed domain names <viaplay.com> and <wiaplay.com> were both registered on December 13, 2021, and resolved to websites featuring pay-per-click ("PPC") links at the time of filing of the Complaint.

5. Parties' Contentions

A. Complainant

The disputed domain names are confusingly similar to the Complainant's VIAPLAY mark.

The disputed domain names include the trade mark VIAPLAY in its entirety. The addition of the letter "y" at the end of the disputed domain name <viaplayy.com> and of the letter "v" at the beginning of the disputed domain name <viaplay.com> do not prevent a finding of confusing similarity. The addition of the generic Top-Level Domain ("gTLD") ".com" does not have any impact on the overall impression of the dominant portion of the disputed domain names and is irrelevant when determining the confusing similarity between the disputed domain names and the trade mark. There is a considerable risk that the public may perceive the disputed domain names as domain names owned by the Complainant or that there is some commercial relationship with the Complainant. By using the Complainant's VIAPLAY trade mark in the disputed domain names, the Respondent is exploiting the Complainant's goodwill and image associated with the VIAPLAY mark.

The Respondent has no rights or legitimate interests in the disputed domain names. The Respondent has no business relationship with the Complainant and never been authorized by the Complainant to use the VIAPLAY trade mark. The Respondent is not using the disputed domain names in connection with a *bona fide* offering of goods and services. The Respondent has intentionally chosen the disputed domain names based on the Complainant's VIAPLAY trade mark and fame. The Respondent's use of the disputed domain names to divert Internet users to websites displaying PPC links does not confer on the Respondent rights or legitimate interests in the disputed domain names.

The disputed domain names were registered and are being used in bad faith. The Respondent has intentionally attempted to attract, for commercial gain, Internet users to his websites, by creating a likelihood of confusion with the Complainant's trade mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's websites. The disputed domain names were registered long after the Complainant's VIAPLAY trade mark was first registered. The Respondent has engaged in typosquatting, in targeting Internet users who accidentally mistype website addresses. The almost identical spellings of the disputed domain names to the Complainant's primary domain name <viaplay.com> shows that the Respondent was fully aware of the Complainant and its VIAPLAY trade mark at the time of registration. Further, prior to the start of the proceeding, the Complainant issued two letters to the Respondent in relation to both disputed domain names, to which the Respondent never responded.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

The language of the Registration Agreement for the disputed domain names is Chinese.

The Complainant requested that the language of the proceeding be English. The reasons are that:

- (i) English is the working language of the Complainant and language of the Complainant's website, "www.viaplay.com";
- (ii) the Respondent actively targeted the Complainant's trade marks and its domain name <viaplay.com>; and

(iii) the Complainant would have to incur substantial expenses for Chinese translations to be prepared, and this would cause a delay in the proceeding.

The Respondent did not comment on the language of the proceeding.

Paragraph 11(a) of the Rules provides that:

“Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.”

The intention of paragraph 11 is to allow UDRP panels some flexibility and discretion to consider the full circumstances of each case, to ensure fairness between the parties, while at the same time not undermining the mandate for the proceeding to be administered in an expeditious manner. The relevant circumstances for consideration can include the parties' comfort level with the respective languages, the expenses to be incurred and the possibility of delay in the proceeding if translations are required, the language of the domain name in dispute and of the resolving website. Having considered the relevant factors and interests of the respective Parties in this case, the Panel determines that it would be appropriate for English be the language of the proceeding. The Panel is persuaded that the Respondent appears to be familiar and comfortable with the English language, taking into account his selection of the disputed domain names which comprise letters of the English alphabet and what appears to be a deliberate misspelling of the term “viaplay”. In the absence of an objection and justification therefor by the Respondent, the Panel does not find it procedurally efficient to have the Complainant translate the Complaint into Chinese.

6.2 Substantive Issues

A. Identical or Confusingly Similar

The Complainant has established it has rights in the VIAPLAY mark. The Panel agrees that the addition of the letter “y” at the end of the disputed domain name <viaplayy.com> and the letter “v” at the beginning of the disputed domain name <viaplay.com> does not prevent a finding of confusing similarity with the Complainant's trade mark. The disputed domain names “contain sufficiently recognizable aspects of the relevant mark [...] [and] panels will normally find that employing a misspelling in this way signals an intention on the part of the respondent [...] to confuse users seeking or expecting the complainant” (see section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”)).

The Panel therefore finds that the Respondent has typosquatted on the Complainant's well-established VIAPLAY trade mark. The gTLD “.com” is a technical requirement for domain name registrations and does not have any impact on the issue of the identity or confusing similarity between the disputed domain names and the Complainant's trade mark in this case.

The Panel accordingly finds that the first element of paragraph 4(a) of the Policy has been satisfied.

B. Rights or Legitimate Interests

The Panel finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain names. The Complainant's registrations of the VIAPLAY trade mark long predate the registration date of the disputed domain names. The Complainant did not license nor authorize the Respondent to use VIAPLAY as a trade mark or in a domain name. Neither is there evidence that the Respondent is commonly known by the disputed domain names. The use of the disputed domain names which incorporate a misspelling of the Complainant's VIAPLAY mark for websites containing PPC links does not constitute a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain names within the meaning of paragraphs 4(c)(i) and 4(c)(iii) of the Policy.

Having established a *prima facie* case, the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain names. The Respondent failed to respond to or rebut the Complainant's assertions in this proceeding, from which the Panel has drawn an adverse inference.

In the circumstances, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain names.

The Panel therefore finds that the second element of paragraph 4(a) of the Policy has been satisfied.

C. Registered and Used in Bad Faith

Following from the Panel's finding that the Respondent has sought to typosquat on the Complainant's trade mark and the fact that the circumstances of this case suggest that the Respondent targeted the Complainant and its VIAPLAY trade mark, the Panel also concludes that the registration and use of the disputed domain names have been in bad faith. The "mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trade mark by an unaffiliated entity can by itself create a presumption of bad faith" (see section 3.1.4 of the [WIPO Overview 3.0](#)).

In the absence of any evidence to the contrary, the Panel concludes that the Respondent has registered and is using the disputed domain names in bad faith.

The Panel therefore finds that the third element of paragraph 4(a) of the Policy has been satisfied.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain names <viaplayy.com> and <viaplay.com> be transferred to the Complainant.

/Francine Tan/

Francine Tan

Sole Panelist

Date: April 6, 2022