

ADMINISTRATIVE PANEL DECISION

Eurovia v. Above-privacy / Host Master, Transure Enterprise Ltd
Case No. D2022-1417

1. The Parties

The Complainant is Eurovia, France, represented by ORDIPAT, France.

The Respondent is Above-privacy, United States of America (“United States”) / Host Master, Transure Enterprise Ltd, United States.

2. The Domain Name and Registrar

The disputed domain name <euroviagroup.com> is registered with Above.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 20, 2022. On April 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 22, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on April 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 amended Complaint on April 27, 2022.

The Center verified that the Complaint together with the amended 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 of the Complaint, and the proceedings commenced on May 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 24, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 25, 2022.

The Center appointed Reyes Campello Estebaranz as the sole panelist in this matter on June 1, 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 is a French simplified joint-stock company created in 1988, which is subsidiary of VINCI, a global company group leader in the concessions and construction trades. The Complainant is a leading international player in the transport infrastructure and urban development sectors. It employs 19,500 people worldwide in 450 business units in 16 countries, and its turnover for 2018 amounted to EUR 8.9 billion.

The Complainant operates under the company name and trademark EUROVIA, and it holds a large portfolio of registered trademark rights in this mark, including:

- International Registration No. 521073, EUROVIA, word, registered on February 16, 1988, in classes 2, 4, 19, 37, 40, and 42;

- International Registration No. 675408, EUROVIA, word, registered on April 21, 1997, in classes 2, 4, 19, 35, 36, 37, 40, and 42; and

-United States Trademark Registration No. 78205062, EUROVIA, word, registered on November 22, 2005, in classes 2, 4, 19, 37, 40, and 42; (collectively the “EUROVIA mark”).

The Complainant further owns a large number of domain names (approximately 200) comprising its trademark, under various generic Top-Level Domains (“gTLDs”) and country-code Top-Level Domains (“ccTLDs”), including <eurovia.com> (registered on February 25, 1998), and <eurovia.fr> (registered on October 6, 2005), which resolve to its corporate website.

The disputed domain name was registered on February 5, 2022, and it currently resolves to a parked page that offers a free download of software named “FlowSurf” to avoid being tracked.

The Complainant sent a cease and desist email communication to the Respondent on April 5, 2022, and to the Registrar on April 17, 2022.

5. Parties’ Contentions

A. Complainant

Key contentions of the Complaint may be summarized as follows:

The disputed domain name is confusingly similar to the EUROVIA mark. Since the disputed domain name incorporates the EUROVIA mark followed by the term “group”, which is a term often used in company names, and the Complainant operates worldwide being part of the Vinci Group, there is a high risk of confusion, and the gTLD “.com” does not alter or diminish the confusing similarity.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has not been authorized to use the EUROVIA mark, it has not registered this mark anywhere in the world, and it is not known by the disputed domain name. The disputed domain name is used in a “Monetization autopilot service”, and pointing to a webpage that displays a link to download a malware program (“FlowSurf”), which seems to be an Internet browser, but it is a browser hijacker. The use of the disputed domain name for an illegal activity (such as distributing malware) can never confer rights or legitimate interests on the Respondent. The Respondent never answered to the cease and desist letter sent by the Complainant, and never attempted to explain any plans to show a *bona fide* use of the disputed domain name.

The disputed domain name was registered and is being used in bad faith. The EUROVIA mark is internationally well-known, including in the United States, where the Respondent is located, and this term is not a dictionary word in any language, therefore, the Respondent should have known about this mark. The Respondent registered the disputed domain name in bad faith to intentionally attract, for commercial gain, Internet users to its site, by creating a likelihood of confusion with this reputed trademark. A simple trademark register search or a Google search, prior to the registration of the disputed domain name, would have informed the Respondent of the existence of the Complainant's trademarks. The Registrar confirmed that the Respondent used a monetization service called "Monetization AutoPilot". Furthermore, the disputed domain name points to a FlowSurf webpage, which is a malware known to be an unwanted software, which is automatically downloaded on the user's computer, and each time it is downloaded, its provider earns money. The Respondent has chosen to conceal its identity, and it has been involved as a losing respondent in a large number of UDRP prior proceedings.¹

The Complainant has cited previous decisions under the Policy as well as various sections of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)") that it considers supportive of its position, and requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

The Complainant has made the relevant assertions as required by the Policy and the dispute is properly within the scope of the Policy. The Panel has authority to decide the dispute examining the three elements in paragraph 4(a) of the Policy, taking into consideration all of the relevant evidence, annexed material and allegations, and performing some limited independent research under the general powers of the Panel articulated, *inter alia*, in paragraph 10 of the Rules.

A. Identical or Confusingly Similar

The Complainant indisputably has rights in the registered trademark EUROVIA, both by virtue of its trademark registrations and as a result of continuous use of this mark over more than 30 years.

The disputed domain name incorporates the EUROVIA mark in its entirety, adding the term "group", which does not prevent the finding of confusing similarity. The EUROVIA mark is recognizable in the disputed domain name, and the gTLD ".com" is a technical requirement, generally disregarded for the purpose of the analysis of the confusing similarity. See sections 1.7, 1.8, 1.9 and 1.11 of the [WIPO Overview 3.0](#).

Accordingly, this Panel finds that the disputed domain name is confusingly similar to the EUROVIA mark, and the first element of the Policy under paragraph 4(a)(i) has been satisfied.

B. Rights or Legitimate Interests

Although the Complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, UDRP panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is primarily if not exclusively within the Respondent's knowledge. Thus, the consensus view is that paragraph 4(c) of the Policy shifts to the respondent the burden of production to

¹ The Complainant cites the following cases: *Berlitz Investment Corporation v. Host Master, Transure Enterprise Ltd*, WIPO Case No. [D2020-1565](#); *Halliburton Energy Services, Inc. v. Host Master, Transure Enterprise Ltd*, WIPO Case No. [D2020-1269](#); *Accenture Global Services Limited v. above_privacy / Host Master, Transure Enterprise Ltd*, WIPO Case No. [D2021-2566](#); *CCA and B, LLC v. above_privacy / Host Master, Transure Enterprise Ltd*, WIPO Case No. [D2021-1530](#); and *Toyota Motor Sales, U.S.A., Inc. v. Above.com Domain Privacy / Transure Enterprise Ltd.*, WIPO Case No. [D2017-2392](#).

come forward with relevant evidence of rights or legitimate interests in the disputed domain name, once the complainant has made a *prima facie* case that the respondent lacks rights or legitimate interests.

The applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”, being the Panel prepared to draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, [WIPO Overview 3.0](#).

The Complainant’s assertions and evidence effectively shift the burden to the Respondent of producing evidence of rights or legitimate interests in the disputed domain name, providing the circumstances of paragraph 4(c) of the Policy, without limitation, in order to rebut the Complainant’s *prima facie* case. However, the Respondent has not replied to the Complainant’s contentions, not providing any explanation and evidence of rights or legitimate interests in the disputed domain name.

The Panel considers that the Complainant has made a strong *prima facie* case that the Respondent does not have rights or legitimate interests in the disputed domain name, as it is not commonly known and does not have any registered trademark rights over the term “eurovia group”, and it has not been authorized to use the Complainant’s trademark. In this respect, the Panel, under its general powers articulated *inter alia*, has corroborated that, according to the Complainant’s allegations, the WIPO Global Brand Database does not show any trademark registration owned by the Respondent containing or consisting of the terms “eurovia group.”

Furthermore, the Panel considers that the disputed domain name generates a false risk of implied affiliation when none in fact exists. The Panel notes that the term “eurovia” is not only the Complainant’s trademark, but also its company name, and the disputed domain name incorporates the EUROVIA mark adding a term commonly used in company names (“group”). Additionally, the Complainant is part of an international group of companies. These circumstances, in the Panel’s view, generate a risk of implied affiliation.

Additionally, the Panel finds that the use of the disputed domain name to point to a parked page that offers a free download of software (either malware or not) cannot be considered a *bona fide* offering of goods and services. These uses of the disputed domain name may capitalize or compete with the Complainant, and may generate confusion.

It is further noted that the Respondent has not replied to the Complainant’s cease and desist communication, nor to the Complaint, not providing any explanation connected to any of the circumstances included in paragraph 4(c) of the Policy or any other circumstance that may be considered as rights or legitimate interests in the disputed domain name.

All the above-mentioned circumstances lead the Panel to conclude that the Respondent has not produced evidence to rebut the Complainant’s *prima facie* case, and all these facts and circumstances point to consider that the Respondent lacks of any rights or legitimate interests in the disputed domain name.

Therefore, the second element of the Policy under paragraph 4(a)(ii) has been established.

C. Registered and Used in Bad Faith

The Policy, paragraph 4(a)(iii), requires that the Complainant establish that the disputed domain name has been registered and is being used in bad faith.

The applicable standard of proof is, likewise, the “balance of probabilities” or “preponderance of the evidence”.

The Panel considers that all cumulative circumstances of this case point to bad faith registration and use of the disputed domain name:

(i) the EUROVIA mark is extensively used over the Internet, so that any search of the term “eurovia” over the Internet would reveal the Complainant’s Prior Rights;

(ii) the EUROVIA mark is internationally used, including in United States, where the Respondent is located according to the Registrar verification;

(iii) the disputed domain name incorporates the EUROVIA mark adding the term “group”, which may contribute to generate a risk of confusion or implied association, creating the impression that the disputed domain name refers to official site of the Complainant or its group of companies;

(iv) according to the evidence provided by the Complainant, the disputed domain name has also been associated to a parked page that offers a free download of software that may be malware;

(v) the Respondent has not offered any explanation of any rights or legitimate interests in the disputed domain name, and has not come forward to deny the Complainant’s assertions of bad faith, choosing not to reply to the Complaint;

(vi) the Respondent used a privacy services for the registration of the disputed domain name; and

(vii) the Respondent has been involved, as a losing respondent, in prior UDRP proceedings.²

Therefore, on the balance of probabilities, taking into consideration all cumulative circumstances of this case, the Panel considers that the disputed domain name was registered targeting the Complainant’s trademarks in bad faith, seeking to mislead Internet users to believe that there is a connection between the disputed domain name and the Complainant, its trademarks and/or its group, to increase the traffic of the Respondent’s website for a commercial gain, which constitutes bad faith.

All of the above-mentioned circumstances lead the Panel to conclude that the disputed domain name was registered and is being used in bad faith.

Accordingly, the Panel concludes that the Complainant has met its burden of establishing that the Respondent registered and is using the disputed domain name in bad faith under the third element of the Policy.

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 name, <euroviagroup.com> be transferred to the Complainant.

/Reyes Campello Estebaranz/

Reyes Campello Estebaranz

Sole Panelist

Date: June 9, 2022

² See footnote No. 1, *supra*.