

ADMINISTRATIVE PANEL DECISION

Lagardere SCA v. Mark Down

Case No. D2022-3968

1. The Parties

The Complainant is Lagardere SCA, France, represented by GPI MARQUES, France.

The Respondent is Mark Down, United States of America.

2. The Domain Names and Registrar

The disputed domain names <lagardere-vivendi.com>, <lagardere-vivendi.info>, <lagardere-vivendi.one>, <vivendi-lagardere.com>, <vivendi-lagardere.info> (“the Domain Names”) are registered with Porkbun LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 22, 2022. On October 24, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On October 25, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Names which differed from the named Respondent (Private by Design, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 31, 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 November 3, 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 November 10, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 30, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 1, 2022.

The Center appointed Dawn Osborne as the sole panelist in this matter on December 28, 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 company in the media sector with annual revenue exceeding EUR 5,130 million in 2021. The Complainant and its group of companies are related to Vivendi and the latter's group of companies. Vivendi is on track to own more than a 57% stake in Lagardere. Vivendi previously owned 45.1% of the Lagardere capital through its acquisition of a 17.5% stake from Amber Capital during the fourth quarter of 2021. The deal placed Vivendi above the 30% share capital and voting right threshold in Lagardere, allowing the company to make a takeover bid.

The Complainant owns the LAGARDERE registered trade mark registered, *inter alia*, as an international trade mark No. 954316, since August 31, 2007, for a wide variety of goods and services.

The Respondent registered the Domain Names on October 20, 2022.

The Domain Names resolve to a parking page of the Registrar.

5. Parties' Contentions

A. Complainant

The Complainant's contentions can be summarised as follows:

Each of the Domain Names are confusingly similar to the Complainant's trade mark combining it in its entirety with "Vivendi" the mark of a related company of the Complainant and adding a hyphen and a generic Top-Level Domain ("gTLD"). The addition of a gTLD in each of the Domain Names is irrelevant to the confusingly similar analysis.

The Respondent has no rights or legitimate interests in the Domain Names. The Respondent is not commonly known by the Domain Names. The Complainant has not authorised the Respondent to use its mark.

The Domain Names are not being used so there is no *bona fide* offering of goods or services or a legitimate noncommercial or fair use. There is no conceivable legitimate use of the Domain Names, all of them containing the Complainant's widely known mark.

The Respondent must have known of the Complainant when the Respondent registered the Domain Names which have been registered in bad faith. The Domain Names are inactive since they resolve to a parking page of the Registrar. However, such passive holding of the Domain Names does not preclude a finding of bad faith.

The Respondent registered the Domain Names through a privacy shield service to hide the Respondent's identity and contact details, thus, preventing the Complainant from contacting the Respondent.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Domain Names each combine the Complainant's LAGARDERE mark with the term "vivendi", adding a hyphen and the gTLDs ".com", ".info", or ".one".

The addition of the term "vivendi" does not prevent a finding of confusing similarity. The addition of a hyphen and a gTLD also does not prevent a finding of confusing similarity between the Domain Names and the Complainant's mark as punctuation and gTLDs are typically disregarded for the purposes of the confusing similarity comparison under the Policy. See sections 1.8 and 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). The Panel finds that the Domain Names are each confusingly similar to a mark in which the Complainant has rights for the purpose of the Policy.

B. Rights or Legitimate Interests

The Complainant has not authorised the use of its mark. There is no evidence or reason to suggest the Respondent is, in fact, commonly known by the Domain Names.

There has been no use of the Domain Names. There has, therefore, been no *bona fide* use or legitimate noncommercial or fair use of any of the Domain Names.

The Respondent has not answered this Complaint or rebutted the *prima facie* case evidenced by the Complainant and set out herein.

Furthermore, the Domain Names are inherently misleading. See section 2.5.1 of the [WIPO Overview 3.0](#).

As such the Panel finds that the Respondent does not have rights or a legitimate interest in the Domain Names and that the Complainant has satisfied the second limb of the Policy.

C. Registered and Used in Bad Faith

The combination of the Complainant's mark with the name and mark of one of its related companies in the Domain Names shows targeting of, *inter alia*, the Complainant, opportunistic bad faith and actual detailed knowledge of the Complainant, its rights and its business.

The Domain Names are being passively held. The overriding objective of the Policy is to curb the abusive registration of domain names in circumstances where the registrant seeks to profit from or exploit the trade marks of other. From the inception of the UDRP, panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. See *Telstra Corporation Limited v Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); see also section 3.3 of the [WIPO Overview 3.0](#). Noting (i) the degree of distinctiveness and reputation of the Complainant's mark, (ii) the failure of the Respondent to submit a response, (iii) the Respondent's concealing its identity through a privacy service, and (iv) the implausibility of any good faith use to which the inherently misleading Domain Names may be put, the Panel finds that the non-use of the Domain Names does not prevent a finding of bad faith.

As such, the Panel holds that the Complainant has made out its case that the Domain Names were registered and used in bad faith and has satisfied the third limb 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 Domain Names <lagardere-vivendi.com>, <lagardere-vivendi.info>, <lagardere-vivendi.one>, <vivendi-lagardere.com>, and <vivendi-lagardere.info> be transferred to the Complainant.

/Dawn Osborne/

Dawn Osborne

Sole Panelist

Date: January 10, 2023