

ADMINISTRATIVE PANEL DECISION

VIVENDI v. luowenqiang
Case No. D2023-5058

1. The Parties

The Complainant is Vivendi, France, represented by Nameshield, France.

The Respondent is luowenqiang, China.

2. The Domain Name and Registrar

The disputed domain name <thevivendi.com> is registered with Gname.com Pte. Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on December 5, 2023. On December 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 6, 2023, 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 (REGISTERED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 6, 2023, 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 in English on the same day.

On December 6, 2023, the Center informed the parties in Chinese and English, that the language of the registration agreement for the disputed domain name is Chinese. On the same day, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

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 in English and Chinese of the Complaint, and the proceedings commenced on December 15, 2023. In accordance with

the Rules, paragraph 5, the due date for Response was January 4, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 9, 2024.

The Center appointed Joseph Simone as the sole panelist in this matter on January 15, 2024. 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 multinational mass media conglomerate headquartered in Paris. The company is active in various industries, including music, television, film, video games, telecommunications, ticket sales for entertainment, and video hosting services. With 38,315 employees, the Complainant's total revenue amounted to EUR 9.6 billion worldwide in 2022.

The Complainant has an extensive global portfolio of trade marks that include the brand VIVENDI, including the following:

- International Trade Mark Registration for VIVENDI No. 687855 in Classes 9, 35, 36, 37, 38, 39, 40, 41, and 42, registered on February 23, 1998, designating China, Switzerland, Germany, Denmark, etc.; and
- International Trade Mark Registration for VIVENDI No. 930935 in Classes 9, 16, 28, 35, 36, 38, 41, and 42, registered on September 22, 2006, designating China, Switzerland, Japan, etc.

The disputed domain name was registered on December 1, 2023.

Screenshots provided by the Complainant indicate that, at the time of filing the Complaint, the disputed domain name was inactive and resolved to an error page. At the time of issuance of this decision, the disputed domain name continued to resolve to an error page.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that it has prior rights in the VIVENDI trade mark and that it is a leader in its fields of business.

The Complainant also asserts that the disputed domain name registered by the Respondent is identical or confusingly similar to the Complainant's VIVENDI trade marks, and that the addition of the generic Top-Level Domain ("gTLD") ".com" does not affect the analysis as to whether the disputed domain name is identical or confusingly similar to the Complainant's trade marks.

Furthermore, the Complainant asserts that the addition of "the" is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trade mark and does not change the overall impression of the designation as being connected to the Complainant's trade mark. Thus, there is a likelihood of confusion between the disputed domain name and the Complainant's trade mark.

The Complainant claims that it has not authorized the Respondent to use the VIVENDI mark, and there is no evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services.

The Complainant also asserts that there is no evidence suggesting that the Respondent has any connection to the VIVENDI mark in any way, and that there is no plausible good faith reason for the Respondent to have registered the disputed domain name, especially considering the relevant circumstances. The Complainant therefore concludes that the registration and any use of the disputed domain name whatsoever must be in bad faith.

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 name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including:

- The fact that the disputed domain name is formed by words in Roman characters (American Standard Code for Information Interchange) and not in Chinese script;
- The English language is the language most widely used in international relations and is one of the working languages of the Center; and
- To proceed in Chinese, the Complainant would have had to retain specialized translation services, at a cost very likely to be higher than the overall cost of these proceedings, and the use of Chinese in this case would therefore impose a burden on the Complainant which must be deemed significant in view of the cost of these proceedings.

The Respondent was notified in both Chinese and English of the language of the proceeding and the commencement of the proceeding, and did not comment on the language of the proceeding or submit any response in either Chinese or English.

In exercising its discretion to use a language other than that of the registration agreement, the Panel must exercise such discretion judiciously and in the spirit of fairness to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.5.1).

Considering the circumstances of this case, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English, and as such, the Panel has issued this decision in English. The Panel further finds that such determination should not create any prejudice to either Party and should ensure that the proceeding takes place with due expedition.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trade mark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has demonstrated its rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

Disregarding the gTLD “.com”, the disputed domain name incorporates the Complainant’s trade mark VIVENDI in its entirety. Although the addition of the term “the” here may bear on assessment of the second and third elements, the Panel finds that the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

As such, and based upon the available information, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

The Complainant asserts that it has not authorized the Respondent to use its trade marks and there is no evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services.

There is no evidence adduced to show that the Respondent, prior to the notice of the dispute, had used or had demonstrated its preparation to use the disputed domain name in connection with a bona fide offering of goods or services. There is also no evidence adduced to show that the Respondent is commonly known by the disputed domain name or the Respondent is making a legitimate noncommercial or fair use of the disputed domain name. Thus, the Complainant has established its prima facie case with satisfactory evidence.

The Respondent did not file a response and has therefore failed to assert factors or put forth evidence to establish that he enjoys rights or legitimate interests in the disputed domain name. As such, the Panel concludes that the Respondent has failed to rebut the Complainant’s prima facie showing of the Respondent’s lack of rights or legitimate interests in the disputed domain name, and that none of the circumstances of paragraph 4(c) of the Policy is applicable in this case.

Accordingly, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered as evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant (the owner of the trade mark or service mark) or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the respondent registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) circumstances indicating that the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

The examples of bad faith registration and use set forth in paragraph 4(b) of the Policy are not meant to be exhaustive of all circumstances in which bad faith may be found. Other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

For reasons discussed under this and the preceding heading, the Panel believes that the Respondent's conduct in this case constitutes bad faith registration and use of the disputed domain name.

In the present case, the Panel notes that when the Respondent registered the disputed domain name, the VIVENDI trade marks were already widely known and directly associated with the Complainant's activities. UDRP panels have consistently found that the mere registration of a domain name that is 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. [WIPO Overview 3.0](#), section 3.1.4.

Given the extensive prior use and fame of the Complainant's marks, in the Panel's view, the Respondent knew the Complainant's marks when registering the disputed domain name.

The Respondent has provided no evidence to justify his choice of the term "vivendi" in the disputed domain name. In light of the foregoing, it would be unreasonable to conclude that, at the time of the registration of the disputed domain name, the Respondent was unaware of the Complainant's trade mark.

The Complainant's registered trade mark rights in VIVENDI for its products and services predate the registration date of the disputed domain name. A simple online search (such as via Baidu, Bing, etc.) for the term "vivendi" would have revealed that it is a renowned brand in the relevant industry.

The Panel is therefore of the view that the Respondent registered the disputed domain name with full knowledge of the Complainant's trade mark rights.

In light of the foregoing, there is no plausible good-faith reason for the Respondent to have registered the disputed domain name, especially considering the relevant circumstances.

While the disputed domain name does not resolve to an active website, having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each

case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). ([WIPO Overview 3.0](#), section 3.3). Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's trade mark, the composition of the disputed domain name, and the incomplete or false contact details provided by the Respondent when registering the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Based on the available record, the Panel finds that the Complainant has established 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 <thevivendi.com> be transferred to the Complainant.

/Joseph Simone/

Joseph Simone

Sole Panelist

Date: January 29, 2024