

## **ADMINISTRATIVE PANEL DECISION**

Viaplay Group AB v. Jurgen Neeme  
Case No. DCO2022-0065

### **1. The Parties**

The Complainant is Viaplay Group AB, Sweden, represented by Zacco Sweden AB, Sweden.

The Respondent is Jurgen Neeme, Estonia.

### **2. The Domain Name and Registrar**

The disputed domain name <viaplay.co> is registered with Dynadot, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 22, 2022. On August 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 23, 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 August 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 on August 25, 2022.

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 of the Complaint, and the proceedings commenced on September 5, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 25, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 28, 2022.

The Center appointed Manuel Moreno-Torres as the sole panelist in this matter on October 7, 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 Swedish corporation doing business worldwide as an entertainment and media provider. While the original company MTG, was founded in 1987 the current Complainant is the result of various corporate operations.

The Complainant is the owner of a large number of trademarks in many jurisdictions. As such, European Union Intellectual Property Office VIAPLAY No. 010352375 registered on March 21, 2012. However, the Complainant refers to first trademark use in 2008 in the Nordic countries.

The disputed domain name was registered on November 22, 2020 and resolves to a pay-per-click ("PPC") website. Likewise there is an offer to sell the disputed domain name in the Registrar's website.

The Complainant's VIAPLAY reputation and fame has been well established in previous UDRP decisions. See *Nordic Entertainment Group AB v. 蒋黎 (leed johnny) and 钱梦琳 (Qian Meng Dan)*, WIPO Case No. [D2022-0083](#).

The Complainant sent a cease and desist letter to the Respondent on July 5, 2022 who never replied. The Respondent has been found to have registered domain names in bad faith in several cases. As such, *Compagnie française d'assurance pour le commerce extérieur (Coface) v. Redacted for Privacy / Jurgen Neeme, hello@thedomain.io*, WIPO Case No. [DCO2020-0086](#).

#### 5. Parties' Contentions

##### A. Complainant

The Complainant contends that the disputed domain name includes the term "viaplay" which is identical to its registered trademark, VIAPLAY. Thus, the mark is clearly recognizable. Indeed, the Complainant notes that the addition of the country-code Top-Level-Domain ("ccTLD") does not have any impact on the overall impression of the disputed domain name.

The Complainant has found no information indicating that the Respondent is somehow trading under a name corresponding to the disputed domain name. Further, the Complainant highlights that no authorization or license has been given to the Respondent to use the mark VIAPLAY. Likewise, the Complainant insists that the Respondent is not an authorized representative of the Complainant's products or services.

By redirecting to a parking page with PPC links does not tantamount to a *bona fide* offering since such links compete or capitalize the Complainant's reputation and goodwill. Accordingly, states the Complainant, the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services. The Respondent's goal is to generate traffic or income through the PPC links or to sell the disputed domain name for an out-of-pocket price of USD 9.960,00.

With regard to the third requirement the Complainant alleges that the registration of a famous or widely-known trademark by an unaffiliated entity can be by itself create a presumption of bad faith. Further, the Respondent is using the disputed domain name in attempt to attract internet user to its website for a commercial gain or another sort of benefit derived from the links included in the website to which the disputed domain resolves.

However, says the Complainant, the Respondent is trying to sell the disputed domain name for a value exceeding the out-of-pocket costs directly related to its registration.

In addition the Complainant notes the failure of the Respondent to respond its cease and desist letter. Therefore, this should be take into account for a finding of bad faith.

Finally, the Respondent has been engaged in a number of UDRP cases in relation to well-known cases. See, *Facebook, Inc., Instagram, LLC, WhatsApp Inc., Facebook Technologies, LLC v. Jurgen Neeme, hello@thedomain.io and Jay Neeme*, WIPO Case No. [D2019-1582](#).

## **B. Respondent**

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

## **6. Discussion and Findings**

Under paragraph 4(a) of the Policy, to succeed the Complainant must satisfy the Panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

There are no exceptional circumstances within paragraph 5(f) of the Rules to prevent the Panel from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a Response. Under paragraph 14(a) of the Rules in the event of such a "default" the Panel is still required "to proceed with a decision on the complaint", whilst under paragraph 14(b) it "shall draw such inferences there from as it considers appropriate". This dispute resolution procedure is accepted by the domain name registrant as a condition of registration.

### **A. Identical or Confusingly Similar**

The Complainant has clearly established trademark rights over VIAPLAY. Therefore, the test relies of the comparison between the trademark and the disputed domain name <viaplay.co>. It is apparent that the VIAPLAY trademark is fully reproduced in the disputed domain name. See Section 1.7 WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Panel also notes that ccTLDs are generally irrelevant to the consideration of identity or confusing similarity between a trademark and a domain name. See *AB Electrolux v. Alberto Lizcano, Alpunto*, WIPO Case No. [DCO2017-0023](#).

Accordingly, the first requirement is met under paragraph 4(a)(i) of the Policy.

### **B. Rights or Legitimate Interests**

Paragraph 4(a)(ii) of the Policy requires the complainant to establish that the respondent has no rights or legitimate interests in the disputed domain name.

The records provide evidence that the Respondent has no authorization or license to use VIAPLAY in the corresponding disputed domain name. The Panel also notes that the records show no evidence that the Respondent is known by the disputed domain name. Further, the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services because it is resolving to a website with PPC links not connected with any dictionary value of the disputed domain name but to its trademark value to bait and switch Internet users. This does not amount to rights or legitimate interests. Besides, since there is an offer for sale and the disputed domain name is reproducing Complainant's trademark, the Respondent seemingly registered the disputed domain name in an attempt to obtain a commercial gain based on the fame of VIAPLAY. In other words, the Respondent is taking advantage of a well established trademark as it is VIAPLAY.

The Panel also highlights that the composition of the disputed domain name carries out a high risk of implied affiliation with the Complainant's trademark. See section 2.5.1. [WIPO Overview 3.0](#).

[WIPO Overview 3.0](#), section 2.1 says that: "While 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 often-impossible 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."

Based on the circumstances depicted above, the Panel finds that the Complainant has made out a *prima facie* case.

Therefore, the burden of production on this element shifts to the Respondent to come forward with relevant evidence showing rights or legitimate interest in the disputed domain name. However, the Respondent did not reply to the Complainant's contentions.

The Panel finds that the Respondent lacks rights or legitimate interests under paragraph 4(a)(ii) of the Policy and therefore the second requirement is met.

### **C. Registered and Used in Bad Faith**

[WIPO Overview 3.0](#) considers bad faith under the UDRP as "broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark". That said, the "mere registration of a domain name that is identical or confusingly similar 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](#). Additionally the Panel finds that some other circumstances depicted in paragraph 4(b) of the Policy matches in this case:

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

For the Panel, the identical reproduction of the mark in the disputed domain name and the attempt to sell it evidence previous knowledge of the mark when registering the disputed domain name. Thus paragraph 4(b)(i) matches with the facts in this case.

Besides, the reproduction of the mark in the disputed domain name prevents the owner from reflecting the mark in the corresponding domain name. The involvement of the Respondent in a number of UDRP cases allows the Panel to note that paragraph 4(b)(ii) applies as well.

Finally, the disputed domain name impersonates the Complainant and in practice the Internet user is baited and redirected to a site with PPC links by an individual unrelated to the Complainant. That said, this is to be considered in bad faith according to paragraph 4(b)(iv).

Accordingly, the Panel determines that the disputed domain name was registered and is being used in bad faith.

## **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, <viaplay.co> be transferred to the Complainant.

*/Manuel Moreno-Torres/*

**Manuel Moreno-Torres**

Sole Panelist

Date: October 21, 2022