

ADMINISTRATIVE PANEL DECISION

VIVENDI v. ShenZhaoYong

Case No. D2023-2543

1. The Parties

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

The Respondent is ShenZhaoYong, China.

2. The Domain Name and Registrar

The disputed domain name <vivendilagardere.com> is registered with 22net, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on June 13, 2023. On June 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 15, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 15, 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 June 15, 2023.

On June 15, 2023, the Center transmitted another email communication to the Parties in English and Chinese regarding the language of the proceeding. On June 15, 2023, the Complainant submitted 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 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 Chinese and English of the Complaint, and the proceedings commenced on June 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 17, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 20, 2023.

The Center appointed Jonathan Agmon as the sole panelist in this matter on August 8, 2023. 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 Complainant has activities in music, television, film, video games, telecommunications, tickets, and video hosting services. The Complainant has 38,315 employees, and a total revenue of some EUR 9.6 billion worldwide in 2022.

In September 2021, the Complainant commenced a takeover of Lagardère S.A. (“Lagardere”). The merger has been approved by the European Commission and is expected to be completed by the end of 2023.

The Complainant is the owner of various VIVENDI trademarks internationally, including but not limited to the following:

- International trademark Registration no. 687855 for VIVENDI, registered on February 23, 1998; and
- International trademark Registration no. 930935 for VIVENDI, registered on September 22, 2006.

The Complainant also states that it has owned the domain name <vivendi.com> since November 12, 1997.

The Complainant has provided evidence that the Respondent registered the disputed domain name on June 10, 2023. The disputed domain name is currently inactive, and resolves to an error message, stating “Unable to connect”.

5. Parties’ Contentions

A. Complainant

The Complainant argues that the disputed domain name is confusingly similar to the Complainant’s registered VIVENDI mark as the Respondent has intentionally registered a confusingly similar domain name that incorporates the Complainant’s mark in its entirety.

The Complainant also argues that the Respondent lacks any rights or legitimate interests in the marks or the disputed domain name as it has not licensed or permitted the Respondent to use any of its trademarks or register the disputed domain name and that the Respondent registered and continues to use the disputed domain name 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. In the Complainant’s email to the Center dated June 15, 2023, they requested that the language of the proceeding be English for the following main reasons:

- (i) the English language is the language most widely used in international relations and is one of the working languages of the Center;
- (ii) The disputed domain name consists of Latin characters rather than Chinese characters; and
- (iii) requiring the Complaint to be translated into Chinese would result in the Complainant having to incur substantial expenses for translation.

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.”

Section 4.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)) states the following:

“Noting the aim of conducting the proceedings with due expedition, paragraph 10 of the UDRP Rules vests a panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case. Against this background, panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios include (i) evidence showing that the respondent can understand the language of the complaint, (ii) the language/script of the domain name particularly where the same as that of the complainant’s mark, (iii) any content on the webpage under the disputed domain name, (iv) prior cases involving the respondent in a particular language, (v) prior correspondence between the parties, (vi) potential unfairness or unwarranted delay in ordering the complainant to translate the complaint, (vii) evidence of other respondent-controlled domain names registered, used, or corresponding to a particular language, (viii) in cases involving multiple domain names, the use of a particular language agreement for some (but not all) of the disputed domain names, (ix) currencies accepted on the webpage under the disputed domain name, or (x) other indicia tending to show that it would not be unfair to proceed in a language other than that of the registration agreement.”

Having considered the relevant factors and interests of the respective Parties, the Panel determines that it would be appropriate for English be the language of the proceeding. The Panel is persuaded that the Respondent would not be prejudiced as the disputed domain name consists of Latin characters instead of Chinese characters. Further, the Respondent had been notified by the Center, in both Chinese and English, of the commencement of the proceeding, the language of the proceeding, and deadline for filing a Response in Chinese or English. The Respondent therefore had ample opportunity to object to the Complainant’s language request and/or propose to submit his Response in Chinese but did not do so. In the absence of any rebuttal argument or justification therefore 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

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant has provided evidence that it owns the VIVENDI registered trademark.

The disputed domain name comprises of the Complainant's VIVENDI mark in its entirety with the addition of the suffix "lagardere", which relates to another company's name/mark. Prior UDRP panels have held that the addition of a third-party trademark would not by itself prevent a finding of confusing similarity. (See [WIPO Overview 3.0](#), section 1.12.)

It is established that in cases where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements. (See [WIPO Overview 3.0](#), section 1.8.) Thus, the disputed domain name, which in this case incorporates the Complainant's mark in its entirety and contains the additional element "lagardere", is confusingly similar to the Complainant's mark.

Further, it is well established that the addition of a generic Top-Level Domain ("gTLD") ".com" is typically disregarded under the first element when considering the confusing similarity between the Complainant's trademark and the disputed domain name (see [WIPO Overview 3.0](#), section 1.11.1).

Consequently, the Panel finds that the Complainant has shown that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

Once the complainant establishes a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the disputed domain name (see [WIPO Overview 3.0](#), section 2.1).

In the present case, the Complainant has demonstrated *prima facie* that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant has provided evidence that it owns trademark registrations of the VIVENDI mark long before the date that the disputed domain name was registered and that the Complainant is not affiliated with nor has it licensed or otherwise permitted the Respondent to use the Complainant's trademark (see *LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master*, WIPO Case No. [D2010-0138](#)).

Further, the Respondent did not submit a Response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain name which would be sufficient to rebut the Complainant's *prima facie* case. In the particular circumstances of the present case, the disputed domain name is inactive, and therefore is obviously not being used for a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use.

The Panel is therefore of the view that the Respondent has no rights or legitimate interests in respect of the disputed domain name and accordingly, paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

The complainant must also show that the respondent registered and is using the disputed domain name in bad faith (see Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence that the Respondent registered the disputed domain name long after the Complainant registered its VIVENDI trademark. Given the accumulation of good will and distinctiveness of the Complainant's mark in the media industry over the course of its approximately 25-year history, it is highly unlikely that the Respondent did not know of the Complainant and its VIVENDI mark prior to the registration of the disputed domain name. This is also evident from the fact that the disputed domain

name was registered on June 10, 2023, less than 24 hours after it was reported that the Complainant's acquisition of Lagardere was approved by the European Commission.

In addition, the disputed domain name incorporates the entirety of the Complainant's VIVENDI mark along with suffix "lagardere" which the Panel finds is an attempt by the Respondent to confuse and/or mislead Internet users seeking or expecting the Complainant. This is exacerbated by the fact that the Complainant is in the process of acquiring Lagardere. The attempt by the Respondent to confuse or mislead Internet users by registering the disputed domain name raises the presumption that likelihood of confusion will inevitably result and will cause diversion of Internet traffic from the Complainant's site. As such, this Panel finds that given the total circumstances of this case, as described below, the registration of the disputed domain name, despite its passive holding, is to be regarded as use in bad faith under the Policy.

The Complainant has also submitted evidence that the disputed domain name is being passively held by the Respondent as it resolves to an inactive website. Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. While 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, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. (See [WIPO Overview 3.0](#), Section 3.3.) In this case, (1) the mark VIVENDI is distinctive in the media industry, (2) the Complainant has submitted evidence showing that the VIVENDI mark has significant reputation, (3) the Respondent failed to submit a response and did not provide any evidence, and (4) it is the Panel's finding that it is implausible that the Respondent can put the disputed domain name to any good faith use under the circumstances of this case.

Based on the evidence presented to the Panel, including the confusing similarities between the disputed domain name and the Complainant's marks, the degree of distinctiveness and reputation of the mark, the implausibility of any good faith use of the disputed domain name by the Respondent, and the fact that no Response was submitted by the Respondent in response to the Complaint, the Panel draws the inference that the disputed domain name was registered and is being used in bad faith.

Accordingly, having regard to the circumstances of this particular case, the Panel finds that the Complainant has met its burden under paragraph 4(a)(iii) 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, <vivendilagardere.com>, be transferred to the Complainant.

Given that the disputed domain name also includes the name of Lagardere and absent consent therefrom to this proceeding the Panel's order of transfer of the disputed domain name <vivendilagardere.com> to the Complainant is without prejudice to the rights of Lagardere SA.

/Jonathan Agmon/

Jonathan Agmon

Sole Panelist

Date: August 22, 2023