

ADMINISTRATIVE PANEL DECISION

Digital Ventures Malta Limited v. Alin Boatca, Cleopatra
Case No. DCO2023-0056

1. The Parties

The Complainant is Digital Ventures Malta Limited, Malta, represented by BUCKWORTHS Limited, United Kingdom.

The Respondent is Alin Boatca, Cleopatra, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <viva-street.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 June 30, 2023. On June 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 2, 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 July 3, 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 amendment to the Complaint on July 5, 2023.

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 July 6, 2023. The Respondent sent email communications to the Center on July 6 and 7, 2023. The Complainant requested a suspension on July 18, 2023. On July 18, 2023, the Center suspended the proceedings until August 17, 2023. The Respondent sent a further email in reply on July 18, 2023. On August 23, 2023, the Complainant requested the reinstatement of the proceedings. On August 24, 2023, the Center reinstated the proceedings. In accordance with the Rules, paragraph 5, the due date for Response was September 1, 2023. On September 8, 2023, pursuant to

paragraph 6 of the Rules, the Center informed the Parties of the commencement of the panel appointment process.

The Center appointed Marilena Comanescu as the sole panelist in this matter on September 26, 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 an entity incorporated in Malta and headquartered in London, United Kingdom and is providing advertising escort services in the United Kingdom.

The Complainant owns the United Kingdom Trademark registration number UK00003034923 for the word VIVASTREET, filed on December 13, 2013, and registered on April 4, 2014, covering services in Nice class 38.

The Complainant owns the domain name <vivastreet.co.uk> registered on August 26, 2003.

The disputed domain name, <viva-street.co>, was registered on June 30, 2022, and at the time of filing the Complaint, it resolved to a website providing advertising escort services in London.

The Respondent operates in the same market as the Complainant, namely it is providing advertising escort services in the United Kingdom.

The Respondent sent several informal email communications to the Center on July 6, 7, and 18, 2023, to be detailed in section 5.B below.

5. Parties' Contentions

A. Complainant

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

Notably, the Complainant contends that the disputed domain name is confusingly similar to its trademark used since 2014 and domain name used since 2003; that the Respondent has no rights or legitimate interests in the disputed domain name; and that the Respondent registered and is using the disputed domain name in bad faith, being a competitor of the Complainant and using the Complainant's trademark to disrupt the Complainant's business and also it is highly likely that the Respondent has been using the disputed domain name in order to make commercial gain from the diversion of Internet users from the Complainant's website to the Respondent's website.

B. Respondent

The Respondent did not formally reply to the Complainant's contentions, but it sent four informal communications to the Center, on July 6, 7, and 18, 2023.

In the communication of July 6, 2023, the Respondent stated that the disputed domain name "can be transferred into the Complainant's account".

Further, on July 7, 2023 the Respondent contested the Complainant's rights claiming mainly that the Complainant's "nature of business is different" than the disputed domain name; the "colors and design

between the websites are very very different, graphic and products organisations are trully different"; the disputed domain name "has only one category named london escorts agency! It is not a directory" and does not contain other kind of categories such as cars, properties, jobs.

Further, in its last two communications, the Respondent states that the disputed domain name is "now available for transfer to other parties only if the agreements are meet. An amount can be discussed."

6. Discussion and Findings

In view of the absence of a formal Response, the discussion and findings will be based upon the contentions in the Complaint and any reasonable position that can be attributable to the Respondent. Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

- (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 the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Panel will further analyze the potential concurrence of the above circumstances.

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 trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

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

The Panel finds the entirety of the mark is reproduced within the disputed domain name, with a hyphen added between the words composing the mark "viva" and "street". Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, 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.

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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, 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.

In its informal communications the Respondent claims, *inter alia*, purported differences between the Complainant's listed object of activity and/or services claimed by the VIVASTREET trademark and the services provided under the disputed domain name, and potential differences between the layout on the Complainant's website and the layout of the website under the disputed domain name.

However such allegations are not relevant since the disputed domain name is identical, except for a hyphen added, to the Complainant's trademark and domain name, the Respondent is a competitor of the Complainant, and the disputed domain name is used to promote similar competing services to those provided by the Complainant under its trademark since 2014 and website since 2003.

UDRP panels have held that domain names identical to Complainant's trademark carry a high risk of implied affiliation and that the use of a domain name for illegal activity (e.g. impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), sections 2.5.1 and 2.13.1.

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.

In the present case, the Panel notes that the disputed domain name was registered in bad faith, with knowledge of the Complainant and its trademark particularly because it reproduces the Complainant's trademark and domain name with an insignificant alteration (the hyphen), and because the Respondent is a competitor of the Complainant. Furthermore, the use of the disputed domain name in relation to similar services corroborates this judgement.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but 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.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt "to attract, for commercial gain, Internet users to [the respondent's] 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 [the respondent's] website or location" is evidence of registration and use in bad faith.

At the time of filing the Complaint, the disputed domain name was used in connection with a website providing escort services, under the name "VIVA STREET".

Given that the disputed domain name reproduces the Complainant's trademark and domain name, the website operated under the disputed domain name provides identical services to those provided by the Complainant under its VIVASTREET trademark and corresponding website, the Respondent is a competitor of the Complainant, the Panel finds that the Respondent intended to attract Internet users accessing the website corresponding to the disputed domain name who may be confused and believe that the website is held, controlled by, or somehow affiliated or related to the Complainant, for its commercial gain. This activity may also disrupt the Complainant's business and tarnish its trademark.

Furthermore, paragraph 4(b)(iii) of the Policy provides another evidence of bad faith the situation when the respondent has registered the domain name primarily for the purpose of disrupting the business of a

competitor. In the present case, the parties are direct competitors, providing similar services on the same market. The Respondent used the disputed domain name to promote such competing services.

The use of privacy or proxy services, together with the other elements in this case, supports a further inference of bad faith.

The Respondent's failure to provide a response in the present proceeding but instead sending several inconsistent communications being either in consent with the Complainant's request, further contesting the Complaint however without supporting relevant evidence, and lastly informing that the disputed domain name is for sale and that an offer for purchase is awaited, is further evidence of bad faith behaviour in the eyes of this Panel.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

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

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, <viva-street.co>, be cancelled.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: October 5, 2023