

ADMINISTRATIVE PANEL DECISION

Covivio v. Privacy Service Provided by Withheld for Privacy ehf /
Charlie Maddie
Case No. D2022-0425

1. The Parties

The Complainant is Covivio, France, represented by GODIN Associés, France.

The Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / Charlie Maddie, United States of America ("United States").

2. The Domain Name and Registrar

The disputed domain name <coviviocapital.com> (the "Domain Name") is registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on February 8, 2022. On February 8, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On February 2, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on February 9, 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 February 14, 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 February 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 7, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 8, 2022.

The Center appointed Nicholas Smith as the sole panelist in this matter on March 10, 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 French investment and property development company, founded in 1968 but trading under the “Covivio” name since 2018. The Complainant operates websites promoting its services including its main website at “www.covivio.eu”. The Complainant’s main website features the Complainant’s logo, which consists of a stylized form of the word “Covivio”.

The Complainant is the owner of a trademark registration for the word COVIVIO (the “COVIVIO Mark”) in the European Union, registered on March 7, 2018 (registration number 017514423) for services in classes 36, 37 and 42.

The Domain Name was registered on August 8, 2021. The Domain Name is presently inactive but prior to the commencement of the proceeding resolved to a website (“the Respondent’s Website”) purporting to offer investment services in competition with the Complainant. The Respondent’s Website reproduces the Complainant’s logo, reproduces images of the Complainant’s key employees and lists as its address the Complainant’s address in Paris.

5. Parties’ Contentions

A. Complainant

The Complainant makes the following contentions:

- (i) the Domain Name is identical or confusingly similar to the Complainant’s COVIVIO Mark;
- (ii) the Respondent has no rights nor any legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

The Complainant is the owner of the COVIVIO Mark, having registered the COVIVIO Mark in the European Union. The Domain Name is confusingly similar to the COVIVIO Mark since it wholly incorporates the COVIVIO Mark and adds the descriptive word “capital”.

There are no rights or legitimate interests held by the Respondent in respect of the Domain Name. The Respondent is not commonly known by the Domain Name nor does the Respondent have any authorization from the Complainant to register the Domain Name. The Respondent is not making a legitimate noncommercial or fair use of the Domain Name. Rather the Respondent is using the Domain Name to resolve to a website that impersonates the Complainant and purports to offer services in direct competition with the Complainant. Such use is not a *bona fide* offering of services.

The Domain Name was registered and is being used in bad faith. The Respondent has used the Domain Name to impersonate the Complainant which clearly shows its awareness of the Complainant at the time of registration. By using the Domain Name to resolve to a website that impersonates the Complainant and offers competing services, the Respondent is using the Domain Name to divert Internet users searching for the Complainant to the Respondent’s Website for commercial gain and to disrupt the business of a competitor. Such conduct amounts to registration and use of the Domain Name in bad faith.

B. Respondent

The Respondent did not reply to the Complainant's contentions. However shortly after the appointment of the Panel the Respondent sent an email to the Center with the following content "Do you want to buy the domain?"

6. Discussion and Findings

A. Identical or Confusingly Similar

To prove this element the Complainant must have trade or service mark rights and the Domain Name must be identical or confusingly similar to the Complainant's trade or service mark.

The Complainant is the owner of the COVIVIO Mark, having registered the COVIVIO Mark as a trademark in the European Union. The Domain Name wholly incorporates the COVIVIO Mark, adds the term "capital" and the ".com" generic Top-Level Domain which may be disregarded as an essential element of any domain name.

Other UDRP panels have repeatedly held that "[w]here 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", see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). The Panel finds that the Domain Name is confusingly similar to the COVIVIO Mark.

Consequently, the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

To succeed on this element, a complainant must make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. If such a *prima facie* case is made out, then the burden of production shifts to the respondent to demonstrate rights or legitimate interests in the domain name.

Paragraph 4(c) of the Policy enumerates several ways in which a respondent may demonstrate rights or legitimate interests in a domain name:

"Any of the following circumstances, in particular but without limitation, if found by the panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

The Respondent is not affiliated with the Complainant in any way. It has not been authorized by the Complainant to register or use the Domain Name or to seek the registration of any domain name incorporating the COVIVIO Mark or a mark similar to the COVIVIO Mark. There is no evidence that the Respondent is commonly known by the Domain Name or any similar name. In particular, while the

Respondent's Website purports to be the website of an entity known as Covivio, for the reasons set out below the Panel is satisfied that the Respondent is not a legitimate entity and is simply impersonating the Complainant. There is no evidence that the Respondent has used or made demonstrable preparations to use the Domain Name in connection with a legitimate noncommercial or fair use.

The Respondent has used the Domain Name to operate a website that impersonates the Complainant. It does so by reproducing the Complainant's logo, reproducing images of senior Complainant management, purporting to operate from the same physical location as the Complainant, and purporting to offer investment services in direct competition with the Complainant, under its COVIVIO Mark. Such conduct does not, on its face, amount to the use of the Domain Name for a *bona fide* offering of goods or services.

The Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has had the opportunity to put on evidence of its rights or legitimate interests, including submissions as to why its conduct amounts to a right or legitimate interest in the Domain Name under the Policy. In the absence of such a Response, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

For the purposes of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent has registered or has 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 the complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has 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 the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted 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 the respondent's website or location (paragraph 4(b) of the Policy).

The Panel finds that the Respondent was aware of the Complainant and its reputation in the COVIVIO Mark at the time the Domain Name was registered. The Respondent's Website purports to offer services in direct competition with the Complainant and reproduces the Complainant's logo and address. The registration of the Domain Name in awareness of the COVIVIO Mark and in the absence of rights or legitimate interests amounts under these circumstances to registration in bad faith.

The Respondent has used the Domain Name (which wholly incorporates the COVIVIO Mark) to operate a website that impersonates the Complainant and purports to offer investment services in competition with the Complainant. Consequently the Panel finds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant and the Complainant's COVIVIO Mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's Website (paragraph 4(b)(vi) of the Policy).

Accordingly, the Panel finds that the Respondent has registered and used the Domain Name in bad faith 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 Domain Name <covivocapital.com> be transferred to the Complainant.

/Nicholas Smith/

Nicholas Smith

Sole Panelist

Date: March 16, 2022