

ADMINISTRATIVE PANEL DECISION

RealVNC Limited v. Martina Kalinka

Case No. D2022-3402

1. The Parties

The Complainant is RealVNC Limited, United Kingdom, represented by Taylor Vinters LLP, United Kingdom.

The Respondent is Martina Kalinka, Germany.

2. The Domain Name and Registrar

The disputed domain name <realvnc.net> is registered with PSI-USA, Inc. dba Domain Robot (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 13, 2022. On September 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 16, 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 September 19, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant submitted the amended Complaint on September 24, 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 September 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 17, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 20, 2022.

The Center appointed Kateryna Oliinyk as the sole panelist in this matter on November 1, 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 company that provides remote access software which was incorporated under the name "RealVNC Limited" in 2002 and has used that name continuously since that date. The Complainant has had continuous and exclusive use of the REALVNC Trademark for nearly 20 years.

In the period before the registration of the disputed domain name, the Complainant won multiple awards within the remote access technology industry while trading online and offline under the REALVNC Trademark, including two Queens Awards for Enterprise in 2011, and had attended numerous events, including the Mobile World Congress, Telematics, and IDF, which it continues to do.

The Complainant operates the official website under the domain name <realvnc.com>, created on March 26, 2002. The Complainant also owns the domain names <vnc.com>, created on March 26, 2002, and <ultravnc.com>, created on December 14, 2002. The Complainant has been using all its domain names since their creation dates for its online presence. The Complainant has been using the REALVNC Trademark in various social media including, Twitter (@RealVNC was registered in 2009), Facebook (RealVNC page created in March 2010), LinkedIn, and YouTube (RealVNC joined in February 2010).

The Complainant is the owner of a number of trademark registrations around the world for the REALVNC Trademark, including:

- United Kingdom Trade mark Registration No. 905886312 for VNC, registered on February 25, 2010;
- United Kingdom Trade mark Registration No. 00003065343 for REALVNC, registered on October 24, 2014;
- United Kingdom Trade mark Registration No. 00913651674 for REALVNC, registered on May 14, 2015;
- United States Trademark Registration No. 86366467 for REALVNC, registered on October 6, 2015;
- European Union Trademark Registration No. 013651674, for REALVNC, registered on May 14, 2015.

The disputed domain name was registered on November 1, 2012, and resolves to a website showing a parking page containing various commercial or sponsored pay-per-click ("PPC") links to third-party websites which purport to offer computer software, including remote access and enterprise management software.

5. Parties' Contentions

A. Complainant

Identical or Confusingly Similar

The Complainant claims that it has registered and common law rights in the REALVNC trademark and that the disputed domain name include the Complainant's trademark in its entirety and is confusingly similar to the Complainant's REALVNC trademark.

The Complainant submits that the applicable Top-Level Domain ("TLD") in the disputed domain name should be viewed as a standard registration requirement and as such should be disregarded under the first element confusing similarity test.

No rights or legitimate Interests

The Complainant further contends that the Respondent does not have a right or legitimate interest to the disputed domain name because (1) there is no evidence that the Respondent's use of the disputed domain name is in connection with a *bona fide* offering of goods or services. The disputed domain name resolves to a parked page comprising PPC links which are intended to and do offer services which compete with the Complainant and/or capitalize on the Complainant's reputation and goodwill, and are in any event destined to mislead Internet users as to the origin of the services provided under the disputed domain name. Such use of the disputed domain does not represent a *bona fide* offering. (2) There is no indication that the Respondent has been commonly known by the disputed domain name or that the Respondent's name is in any way reflected in the disputed domain name. (3) The Complainant has not licensed or authorized the REALVNC trademark for use as a domain name or to be used to offer, whether via the Internet or otherwise, computer software or remote access services by any third party, including the Respondent.

Registered and used in bad faith

The Complainant submits that the REALVNC trademark is well known throughout the world as a result of the Complainant's continuous and exclusive use of them for nearly 20 years. The Complainant's use of the REALVNC trademark predates the registration of the disputed domain name. The entirety of the Respondent's use of the disputed domain name has post-dated the Complainant's registered and unregistered rights in its REALVNC trademark. The Respondent has, without permission, registered a widely-known trade mark, thereby creating a presumption of bad faith.

The Complainant claims that the Respondent is also using a privacy service, and not for any legitimate purpose where privacy is required, but solely to evade identification while using the Complainant's REALVNC trademark without the Complainant's permission to engage in commercial activity.

The Complainant contends that by using the REALVNC trademark the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: "[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Considering that the Respondent did not reply to the Complainant's contentions, in order to determine whether the Complainant has met its burden as stated in paragraph 4(a) of the Policy, the Panel bases its Decision on the statements and documents submitted and in accordance with the Policy and the Rules. Under paragraph 14(b) of the Rules, where a Party does not comply with any provision of the Rules, the Panel "shall draw such inferences therefrom as it considers appropriate".

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following: (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and (iii) that the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

According to section 1.1.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") the term "trademark or service mark" as used in UDRP paragraph 4(a)(i) encompasses both registered and unregistered (sometimes referred to as common law) marks.

According to section 1.2 of the [WIPO Overview 3.0](#), ownership of a nationally or regionally registered trademark serves as a *prima facie* evidence that the Complainant has trademark rights for the purposes of standing to file this Complaint.

As summarized in section 1.3 of the [WIPO Overview 3.0](#), to establish unregistered trademark rights for purposes of the UDRP, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant's goods and/or services. Relevant evidence demonstrating such acquired distinctiveness (also referred to as secondary meaning) includes the duration and nature of use of the mark, the amount of sales under the mark, the nature and extent of advertising using the mark, the degree of actual public recognition, and consumer surveys. Particularly with regard to brands acquiring relatively rapid recognition due to a significant Internet presence, panels have also been considering factors such as the type and scope of market activities and the nature of the complainant's goods and/or services. The fact that a respondent is shown to have been targeting the complainant's mark (e.g., based on the manner in which the related website is used) may support the complainant's assertion that its mark has achieved significance as a source identifier.

The Complainant has clearly established that it is the proprietor of several trademark registrations for REALVNC trademark in different jurisdiction, and one of which was registered prior to the registration of the disputed domain name. The Complainant has claimed that, in addition to these registered trademark rights, it holds common law trademark rights to signs corresponding to the registered REALVNC trademark, arising as a result of its use during a period starting from 2002. Previous UDRP panels have found that the Complainant holds common law trademark rights for signs corresponding to the registered marks (see e.g., *Fenix International Limited v. c/o who is privacy.com / Tulip Trading Company, Tulip Trading Company Limited*, WIPO Case No. [DCO2020-0038](#); *Fenix International Limited v. WhoisGuard Protected, WhoisGuard, Inc. / Samuel Walton*, WIPO Case No. [D2020-3131](#); and *Fenix International Limited v. Domains By Proxy, LLC, Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2020-3048](#)).

The fact that some of the trademark registrations were neither applied for, nor registered, before creation of the disputed domain name on November 1, 2012, is not relevant at this stage of the inquiry although, of course, it may be highly relevant under the second or, particularly, the third issue. See e.g. [WIPO Overview 3.0](#), section 1.1.3.

That consideration is, in any event, irrelevant in this particular case as, based on the case records, the Complainant began using its REALVNC trademark, including its domain name <realvnc.com>, ten years before the Respondent apparently registered the disputed domain name.

As discussed below, the disputed domain name fully incorporates the REALVNC trademark, which supports a finding that the Respondent has targeted the Complainant with its registration, and respectively the Complainant's assertion that its trademark has achieved significance as a source identifier.

The Complainant submits that since its inception in 2002 it uses the REALVNC trademark as the principal business identified. The Complainant also produces the evidences of the online and offline presence, Internet publications, awards granted over the relevant period.

While the evidence in the Complaint is somewhat limited, on balance the Panel finds that the Complainant has established that it holds common law trademark rights for purposes of the Policy in signs corresponding to the registered REALVNC trademark, which were obtained prior to the creation of the disputed domain name.

Thus, the Panel finds that the Complainant has proved that it has rights in the REALVNC trademark.

The disputed domain name incorporates the entirety of the Complainant's REALVNC trademark, that leads to the finding that the disputed domain name is considered identical to the Complainant's trademark for purposes of the UDRP (section 1.7. of the [WIPO Overview 3.0](#)).

The applicable Top-Level Domain ("TLD") in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test (section 1.11.1. of the [WIPO Overview 3.0](#)).

The first element of paragraph 4(a) of the Policy is therefore satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make at least a *prima facie* showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

In light of the particular facts and circumstances of the case, the Panel draws the inference that the Respondent is not a licensee of, or otherwise affiliated with, the Complainant, and has not been authorized by the Complainant to use its REALVNC trademark.

Based on the case records, the Panel finds that there is no evidence that the Respondent has been commonly known by the disputed domain name, and there is no similarity or association between the name of the Respondent and the disputed domain name, which could demonstrate rights or legitimate interests of the Respondent. See, e.g., *World Natural Bodybuilding Federation, Inc. v. Daniel Jones TheDotCafe*, WIPO Case No. [D2008-0642](#).

According to section 2.9. of the [WIPO Overview 3.0](#), applying UDRP paragraph 4(c), panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users.

Taking into account that (1) the PPC links on the website under the disputed domain name appear to be largely competitive with the Complainant's service, and that (2) the disputed domain name fully incorporates the Complainant REALVNC trademark and closely imitates the Complainant's domain name <realvnc.com>, the Panel finds that the use of the disputed domain name could not constitute any *bona fide* offering of goods or services using the disputed domain name. [WIPO Overview 3.0](#), section 2.9 (Unless "genuinely

related to the dictionary meaning” of the disputed domain, “[pay-per-click] links do not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of Complainant’s mark or otherwise mislead Internet users”.) See, e.g., *Volkswagen AG v. Privacy Protection Services*, WIPO Case No. [D2012-2066](#) (“use of a domain name in connection with a web page that “only contains advertisements as sponsored links” is “for presumed commercial gain”); *Zions Bancorporation v. Domain Administrator, Fundacion Private Whois*, WIPO Case No. [D2014-0465](#) (“a parking website containing sponsored links... cannot be considered either a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the Domain Name as the Respondent is unduly profiting from the Complainant’s goodwill by misleading Internet users to its website”); and *Canyon Bicycles GmbH v. Domains By Proxy, LLC / Rob van Eck*, WIPO Case No. [D2014-0206](#) (a disputed domain name “pointing to a website featuring PPC [pay-per-click] links... could not be construed as a *bona fide* or legitimate noncommercial or fair use”).

By not submitting a Response, the Respondent has failed to invoke any circumstances which could demonstrate any rights or legitimate interests in the disputed domain name. Under such circumstances the Panel draws adverse inferences from this failure, where appropriate, in accordance with the Rules, paragraph 14(b).

Accordingly and absent specific allegations of the Respondent, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

As already outlined, the Complainant has unregistered rights in the REALVNC trademark which well predate the registration of the disputed domain name. As it was established by the panel, the disputed domain name fully incorporates the REALVNC trademark, which supports a finding that the Respondent has targeted the Complainant with its registration, and respectively the Complainant’s assertion that its trademark has achieved significance as a source identifier. The Panel also established that the PPC links on the website under the disputed domain name appear to be largely competitive with the Complainant’s service. At the same time, the Panel has also concluded that the Respondent has no rights or legitimate interests in a disputed domain name.

This is sufficient to satisfy the Panel that the Respondent must have been well aware of the Complainant and of the REALVNC trademark when it registered the disputed domain name and that it has targeted this trademark with the registration and use of the disputed domain name, likely in an attempt to confuse and attract Internet users for financial gain through the generation of revenue from PPC links.

Thus, the Panel comes to the conclusion that the circumstances of the present case justify a finding that the disputed domain name has been registered in bad faith, and the Panel, accordingly, finds that the disputed domain name was registered in bad faith.

As for the use of the disputed domain name, the Panel finds that the use of a domain name that is identical or confusingly similar to a trademark to obtain click-through-revenue can amount to bad faith use (see, among others, *Ifscience Limited v. Domains By Proxy LLC / Dr Chauncey Siemens*, WIPO Case No. [D2016-0909](#); *AMADEUS IT GROUP, S.A. v. Contact Privacy Inc. Customer 0151133672, Contact Privacy Inc. Customer 0151133672 / Milen Radumilo*, WIPO Case No. [D2018-2192](#)).

Based on the available record, the Panel finds that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the website.

Thus, the Panel establishes that the Respondent registered and is using the disputed domain name in bad faith.

The third element of paragraph 4(a) of the Policy is therefore satisfied.

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 <realvnc.net> be transferred to the Complainant.

/Kateryna Oliinyk/

Kateryna Oliinyk

Sole Panelist

Date: November 22, 2022