

ADMINISTRATIVE PANEL DECISION

Verizon Trademark Services LLC v. Jiri Capcuch Case No. D2023-1621

1. The Parties

The Complainant is Verizon Trademark Services LLC, United States of America (“United States”), represented internally.

The Respondent is Jiri Capcuch, Czech Republic.

2. The Domain Names and Registrar

The disputed domain names <totalbyvarizen.com>, <totalbyveraison.com>, <totalbyvierzon.com>, <totalbyvirizion.com>, <totoalbyverizion.com> are registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 13, 2023. On April 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On the same day, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 April 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 17, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 18, 2023.

The Center appointed Edoardo Fano as the sole panelist in this matter on May 30, 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.

The Panel has not received any requests from the Complainant or the Respondent regarding further submissions, waivers or extensions of deadlines, and the Panel has not found it necessary to request any further information from the Parties.

Having reviewed the communication records in the case file provided by the Center, the Panel finds that the Center has discharged its responsibility under the Rules, paragraph 2(a), "to employ reasonably available means calculated to achieve actual notice to the Respondent". Therefore, the Panel shall issue its Decision based upon the Complaint, the Policy, the Rules and the Supplemental Rules and without the benefit of a response from the Respondent.

The language of the proceeding is English, being the language of the Registration Agreements, as per paragraph 11(a) of the Rules.

4. Factual Background

The Complainant is a United States company operating in the technology and communication field and owning several trademark registrations consisting of or incorporating VERIZON, including the following:

- United States Trademark Registration No. 2,886,813 for VERIZON, registered on September 21, 2004.

The Complainant has also filed the following trademark applications:

- United States Trademark Application No. 97358855 for TOTAL BY VERIZON, filed on April 12, 2022;
- United States Trademark Application No. 97358961 for TOTAL BY VERIZON and design, filed on April 12, 2022.

The Complainant also operates on the Internet, offering the TOTAL BY VERIZON branded products and services at the website "www.totalbyverizon.com". The domain name <totalbyverizon.com> was registered on November 2, 2021.

The Complainant provided evidence in support of the above.

According to the Whois records, the disputed domain name <totoalbyverizion.com> was registered on January 7, 2023, while the disputed domain names <totalbyvarizen.com>, <totalbyveraison.com>, <totalbyvierzon.com> and <totalbyvirizion.com> were registered on January 9, 2023. The disputed domain names are resolving to landing pages featuring sponsored links to third parties' websites offering the same products and services provided by the Complainant under the trademark VERIZON.

5. Parties' Contentions

A. Complainant

The Complainant states that the disputed domain names are confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain names since it has not been authorized by the Complainant to register the disputed domain names or to use its trademarks within the disputed domain names, it is not commonly known by the disputed domain names and it is not making either a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain names: the disputed domain names are resolving to landing pages featuring sponsored links to third parties' websites offering the same products and services

provided by the Complainant under its trademarks, with the aim to divert consumers and/or to capitalize on the Complainant's notoriety.

The Complainant submits that the Respondent has registered the disputed domain names in bad faith, since the Complainant's trademark VERIZON is distinctive and well known in the technology and communication field. Therefore, the Respondent targeted the Complainant's trademark at the time of registration of the disputed domain names and the Complainant contends that the use of the disputed domain names with the purpose to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's trademark, attempting to capitalize on consumer recognition of the Complainant's trademark, qualifies as bad faith registration and use.

B. Respondent

The Respondent has made no reply to the Complainant's contentions and is in default. In reference to paragraphs 5(f) and 14 of the Rules, no exceptional circumstances explaining the default have been put forward or are apparent from the record.

A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, reasonable facts asserted by a complainant may be taken as true, and appropriate inferences, in accordance with paragraph 14(b) of the Rules, may be drawn. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements, which the Complainant must satisfy in order to succeed:

- (i) the disputed domain names are 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 names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

A. Identical or Confusingly Similar

The Panel finds that the Complainant is the owner of the trademark VERIZON both by registration and acquired reputation.

The Panel finds that the disputed domain names are confusingly similar to the trademark VERIZON, as in each one of the disputed domain names a couple of letters are added and/or substituted in the Complainant's trademark, which remains recognizable in the disputed domain names. The Panel notes that this is a typical case of a deliberate misspelling of a mark (so-called "typosquatting"), by adding, deleting, substituting or reversing the order of letters in a mark, where numerous UDRP panels in the past have found confusing similarity to be present. See [WIPO Overview 3.0](#), section 1.9.

It is also well accepted that a generic Top-Level Domain, in this case ".com", is typically ignored when assessing the confusing similarity between a trademark and a domain name. See [WIPO Overview 3.0](#), section 1.11.1.

The Panel finds that the Complainant has therefore met its burden of proving that the disputed domain names are confusingly similar to the Complainant's trademark, pursuant to the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the Complainant to prove that the Respondent has no rights or legitimate interests in the disputed domain names.

The Respondent may establish rights or legitimate interests in the disputed domain names by demonstrating in accordance with paragraph 4(c) of the Policy any of the following circumstances, in particular but without limitation:

“(i) before any notice to you [the respondent] of the dispute, [the respondent’s] 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) [the respondent] 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) [the respondent] 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.”

According to paragraph 4(a) of the Policy, the Complainant has the burden of proving the three elements of the Policy. However, satisfying the burden of proving a lack of the Respondent’s rights or legitimate interests in respect of the disputed domain names according to paragraph 4(a)(ii) of the Policy is potentially quite difficult, since proving a negative circumstance is generally more complicated than establishing a positive one. As such, it is well accepted that it is sufficient for the Complainant to make a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain names in order to shift the burden of production to the Respondent. If the Respondent fails to demonstrate rights or legitimate interests in the disputed domain names in accordance with paragraph 4(c) of the Policy or on any other basis, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant in its Complaint, and as set out above, has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain names. It asserts that the Respondent, who is not currently associated with the Complainant in any way, is not using the disputed domain names for a legitimate noncommercial or fair use or in connection with a *bona fide* offering of goods or services. The use of the disputed domain names to host parked pages comprising pay-per-click (“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 trademark. See [WIPO Overview 3.0](#), section 2.9.

The *prima facie* case presented by the Complainant is enough to shift the burden of production to the Respondent to demonstrate that it has rights or legitimate interests in the disputed domain names. However, the Respondent has not presented any evidence of any rights or legitimate interests it may have in the disputed domain names.

The Panel therefore concludes that the disputed domain names are not being used in connection with a *bona fide* offering of goods or services.

The Panel therefore finds that paragraph 4(a)(ii) of the Policy has been satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that “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) that [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) that [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website 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 [the respondent's] web site or location or of a product or service on [the respondent's] web site or location".

Regarding the registration in bad faith of the disputed domain names, the Panel notes that months before the disputed domain names were registered the Complainant filed trademark applications for TOTAL BY VERIZON and published a press release to announce the introduction of the Total by Verizon product. Moreover, the reputation of the Complainant's trademark VERIZON in the technology and communication field is clearly established and the Panel finds that the Respondent likely knew of the Complainant and deliberately registered the confusingly similar disputed domain names, especially because the disputed domain names, all being misspelled versions of the Complainant's trademark applications and product Total by Verizon, were registered just after the Complainant's launched the Total by Verizon product, and they all resolve to host parked pages comprising PPC links to third parties' websites offering the same products and services provided by the Complainant under its trademarks.

The Panel further notes that the disputed domain names are also being used in bad faith since the Respondent is trying to attract Internet users to its websites by creating likelihood of confusion with the Complainant's trademark as to the disputed domain names' source, sponsorship, affiliation or endorsement, and hosting parked pages with PPC links, even in the case where they were automatically generated, referring to the same field of products and services as the Complainant's trademark, and the Respondent cannot disclaim responsibility for the parking pages content. See [WIPO Overview 3.0](#), section 3.5.

The above suggests to the Panel that the Respondent intentionally registered and is using the disputed domain names in order both to disrupt the Complainant's business, and to attract, for commercial gain, Internet users to its websites in accordance with paragraph 4(b)(iv) of the Policy.

The Panel finds that the Complainant has presented evidence to satisfy its burden of proof with respect to the issue of whether the Respondent has registered and is using the disputed domain names in bad faith.

The Panel therefore finds that paragraph 4(a)(iii) of the Policy has been 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 names, <totalbyvarizen.com>, <totalbyveraison.com>, <totalbyvierzon.com>, <totalbyvirizion.com> and <totoalbyverizion.com>, be transferred to the Complainant.

/Edoardo Fano/

Edoardo Fano

Sole Panelist

Date: June 7, 2023