Decision for dispute CAC-UDRP-100815

Case number	**CAC-UDRP-100815**
Time of filing	**2014-08-15 11:27:11**
Domain names	**dafa789.com, 59369.com**

Case administrator

Name	**Lada Válková (Case admin)**

Complainant

Organization	**Emphasis Services Limited**

Respondent

Name	**Gao Congfeng**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that are pending or decided and which relate to the disputed domain names.

IDENTIFICATION OF RIGHTS

Complainant states that "through its subsidiaries, [Complainant] operates websites offering online gaming and betting with licenses issued in the Philippines and the Isle of Man. The Complainant owns and operates several gaming sites under the brand 'Dafa' (i.e. dafabet.com & dafa888.com). The Complainant has, for 12 years, used the name 'Dafa' in varying combinations to designate its online gaming and betting offerings." Complainant further states, and provides evidence to support, that it is the owner of multiple federal trademark registrations for marks that consist of or contain "DAFA," including No. 302048148 in Hong Kong for DAFA for use in connection with, inter alia, "[c]asino services" (registered September 11, 2012).

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

Complainant claims that through its subsidiaries it operates websites offering online gaming and betting with licenses issued in the Philippines and the Isle of Man. Complainant owns and operates several gaming sites under the brand “Dafa” (i.e. dafabet.com & dafa888.com). Complainant states it has been using for 12 years the name “Dafa” in varying combinations to designate its online gaming and betting offerings.
In fact Complainant contends that it, has registered its rights over the brand “Dafa” in Malaysia and Hong Kong and has likewise secured a CTM registration [under the name of its wholly owned subsidiary Asian BGE (Isle of Man) Limited] for the name and graphic representation (logo) for “Dafabet”.

According to Complainant, “Dafabet” is a well-known mark and is currently the shirt sponsor for the Aston Villa Football Club and an official partner for the Everton Football Club, both playing the English Premier League (where the Dafabet mark and logo are prominently displayed).

Furthermore, Dafabet is also the sponsor of the name sponsor for the recently concluded World Snooker Championship. Dafabet was also named by eGaming Review as 19th among the 40 most influential e-gaming operators in the world.

PARTIES' CONTENTIONS:

COMPLAINANT:

Identical or Confusingly Similar

According to the Complainant, Respondent's registered domain names are confusingly similar to the "Dafa" mark owned by the Complainant. Essentially, Respondent has appropriated the trademark Dafa by abbreviating it and illegally used Complainant's IP to lead consumers to believe that it is affiliated with Complainant.

Rights or Legitimate Interests

Complainant claims it is the owner of intellectual property rights pertaining to "Dafa" due to its registration in various jurisdiction and its usage and notoriety. Complainant denies any direct connection with Respondent that Respondent's use of the Complainant's intellectual property in its domain name and website are unauthorized and illegal.

Complainant states that Respondent will not be able to show prior usage, registration or any right to use the mark "Dafa" for its website. In fact, Respondent's illegal usage of Complainant's logos, images and content on its website belies and claim to the mark "Dafa" except as blatant copying and cloning of the Complainant's website in bad faith.

Bad Faith

Complainant contends that Respondent's illegal use of the Complainant's intellectual property on its website is indicative of its intentions in using "Dafa" in its domain name. The Respondent is making it appear that its websites are affiliated with the Complainant by not only using the "Dafa" mark in its domain, but also making the website appear almost exactly the same as that of Complainant.

According to Complainant it is evident from screenshots of Respondent's websites that Respondent is not only using the marks of the Complainant in its domain name, but it has virtually cloned the website by illegally using the Complainant's graphics, images, designs, content and logos. This is a blatant to attempt to deceive the public in thinking that they are associated with the Complainant and transact business with them.

Furthermore, Complainant claims that the Respondent is well aware that Complainant is the owner of the mark "Dafa" because of:

4. Registrations in various jurisdictions;

5. Goodwill and notoriety of the trademarks;

6. Respondent's illegal usage of Complainant's logos, content, images and designs in its website;

Moreover, Complainant states that "Dafa" and "Dafabet" are not only registered marks in various jurisdictions, it is likewise well known marks due to sponsorship with the English Premier League and the World Snooker Championship. Further, any claim of Respondent to lack of knowledge over Complainant's ownership over the name "Dafa" is negated by the fact that it has used the Complainant's marks on its website.

Finally, Complainant contends that Respondent has been sent a cease and desist letter, but no reply was received and they have persisted in their illegal activities

PARTIES CONTENTIONS

RESPONDENT:

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Name <dafa789.com> is identical or confusingly similar to a trademark or service mark in which the complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy). However, the Complainant has not shown that the Domain Name <59369.com> is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the Domain Name <dafa789.com> (within the meaning of paragraph 4(a)(ii)of the Policy). The Panel makes no finding on this element with respect to the Domain Name <59369.com>.

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the Domain Name <dafa789.com> has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).The Panel makes no finding on this element with respect to the Domain Name <59369.com>.

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

As noted above, Complainant states, and provides evidence to support, that it is the owner of multiple federal trademark registrations for marks that consist of or contain "DAFA," including No. 302048148 in Hong Kong for DAFA for use in connection with, inter alia, "[c]asino services" (registered September 11, 2012). The Panel finds that the Domain Name <dafa789.com> is confusingly similar to Complainant's DAFA trademark despite the addition of the numbers "789," which the Panel finds does not eliminate any confusing similarity. This is especially true where, as here, the trademark is “the dominant portion of the domain name,” LEGO Juris A/S v. Domain Tech Enterprises, WIPO Case No. D2011-2286, or where the trademark in the domain name represents “the most prominent part of the disputed domain name[] which will attract consumers’ attention.” Kabushiki Kaisha Toshiba dba Toshiba Corporation v. WUFACAI, WIPO Case No. D2006-0768.

Complainant has neither stated nor provided any evidence that it has rights in or to any mark that contains or is similar to 59369. Rather, Complainant has stated that Respondent's website using the Domain Name <59369.com> is "illegally using the Complainant’s graphics, images, designs, content and logos, all of which are indicative of Respondent’s intention to deceive users to think that their websites are affiliated with the Complainant." However, such usage is not relevant to the first factor of the UDRP. Accordingly, because Complainant has not shown that it has any rights in or to the mark 59369 (or any mark similar thereto), Complainant cannot prevail on the first element of the UDRP with respect to the Domain Name <59369.com> and, therefore, the Panel must deny Complainant's requested relief with respect to the Domain Name <59369.com>

Complainant has stated that it "denies any direct connection with Respondent that Respondent’s use of the Complainant’s intellectual property in its domain name and website are unauthorized and illegal. Respondent will not be able to show prior usage, registration or any right to use the mark 'Dafa' for its website. In fact, Respondent’s illegal usage of Complainant’s logos, images and content on its website belies and claim to the mark 'Dafa' except as blatant copying and cloning of the Complainant’s website in bad faith."

Under the Policy a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP (see WIPO Overview 2.0, paragraph 2.1).

Accordingly, as a result of Complainant's allegations and without any evidence from Respondent to the contrary, the Panel is satisfied that Complainant has proven the second element of the Policy with respect to the Domain Name <dafa789.com>.The Panel makes no finding on this element with respect to the Domain Name <59369.com>.

Complainant states, and provides evidence to support, that "Respondent is making it appear that its websites are affiliated with the Complainant by not only using the 'Dafa' mark in its domain, but also making the website appear almost exactly the same as that of Complainant." The Panel finds that such actions constitute bad faith, with respect to the Domain Name <dafa789.com>, pursuant to paragraph 4(b)(iv) of the UDRP, which provides: "by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site 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 your web site or location or of a product or service on your web site or location." The Panel makes no finding on this element with respect to the Domain Name <59369.com>.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Partially Accepted/Partially Rejected

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **DAFA789.COM**: Transferred
2. **59369.COM**: Remaining with the Respondent

PANELLISTS

Name	**Douglas M. Isenberg**

DATE OF PANEL DECISION 2014-09-29

Publish the Decision