Decision for dispute CAC-UDRP-101074

Case number	**CAC-UDRP-101074**
Time of filing	**2015-10-07 11:49:00**
Domain names	**dafa8828.com, 18dafa.com, dafa8188.com, dafa8588.com, dafa8688.com, dafa8808.com, dafa8858.com, dafa8868.com, xindafa888.com**

Case administrator

Name	**Lada Válková (Case admin)**

Complainant

Organization	**Emphasis Services Limited**

Respondent

Name	**Wu Cheng**

OTHER LEGAL PROCEEDINGS

None that the Panel has been made aware of.

IDENTIFICATION OF RIGHTS

The Complainant has supplied evidence that it is the owner of a number of registered trade marks in the term DAFA and DAFABET, for example N° 302048148 in Hong Kong, registered on 3 October 2011 (DAFA), N° 2011019075 in Malaysia, registered on 28 October 2011 (DAFA), and Community Trade Mark N° 012067088, registered on 17 February 2014 (DAFABET).

FACTUAL BACKGROUND

The Complainant owns and operates gaming websites under the DAFA brand (www.dafabet.com and www.dafa888.com). DAFABET is currently the official club sponsor for Sunderland and Blackburn Rovers Football Clubs, and the official international betting partner for Everton and Celtic Football Clubs. It has also sponsored high level sporting events such as the World Snooker Championship, and was named by eGaming Review as the 21st most influential e-gaming operator in the world.

Nothing is known about the Respondent, apart from the fact that he is resident in China.

The disputed domain names were registered in May 2014. The Complainant has supplied evidence that they were previously being used to point to websites closely resembling those of the Complainant.

PARTIES CONTENTIONS

Parties' Contentions

Complainant

Identical or confusingly similar

The Complainant asserts that the disputed domain names are confusingly similar to the Complainant's DAFA brand as they all use the prefix "dafa", with a series of numbers or letters attached to the domain name. The Complainant highlights that in Nintendo of America, Inc. vs. Garett N. Holland et al (Case No. D2000-1483), the WIPO Arbitration and Mediation Center held that a user of a mark may not avoid likely confusion by appropriating another's entire mark and adding descriptive or non-distinctive matter to it, and further added that a domain may be deemed identical or similar if it incorporates the primary, distinctive element of the trade mark.

The Complainant also states that the disputed domain names are pointing to clones of the Complainant's website and are illegally using the Complainant's graphics, images, designs, content and logos.

No rights or legitimate interests

The Complainant states that the Respondent does not have a legal right to use the name "dafa" as part of its domain names. The Respondent is not in any way connected with the Complainant, nor is it authorized to use its intellectual property rights for its operations as a licensee or in any capacity. Furthermore, the Complainant argues that the Respondent is illegally using the Complainant's graphics, images, designs, content and logos, all of which are indicative of the Respondent's intention to deceive users and convince them that the Respondent's websites are affiliated with the Complainant.

Registered and used in bad faith

The Complainant highlights paragraph 4(b)(iv) of the Policy which states:

"(iv) by using the domain name, (Respondent) ha(s) intentionally attempted to attract, for commercial gain, Internet users to (Respondent's) 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 (Respondent's) web site or location or of a product or service on (Respondent's) web site or location."

The Complainant argues that, as evidenced by screenshots of the Respondent's websites, the Respondent is not only using the Complainant's trade marks in its domain names, but has virtually cloned the Complainant's website by illegally using the Complainant's graphics, images, designs, content and logos. In the Complainant's view, this is a blatant attempt to deceive the public and make them think that they are doing business with the Complainant.

In addition, the Complainant asserts that the Respondent is well aware that the Complainant is the owner of the DAFA trade mark due to (i) the Complainant's trade mark registrations in various jurisdictions, (ii) the goodwill and notoriety of such trade marks, and (iii) the Respondent's illegal usage of the Complainant's logos, content, images and designs on its website.

The Complainant also points out that DAFA and DAFABET are not only registered marks in various jurisdictions, but are also well known marks given the Complainant's sponsorship of the English Premier League and the World Snooker Championship. Furthermore, the Complainant points out that any claim by the Respondent to lack knowledge of the Complainant's trade marks is negated by the fact that the Respondent has used the Complainant's trade marks on its website.

The Complainant also points out that the Respondent has been sent a cease and desist letter, but no reply was received and the illegal activities have continued.

Respondent

The Respondent did not respond to the Complaint.

The Complainant has shown, to the satisfaction of the Panel, that the disputed domain names are confusingly similar to a trade mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has shown, to the satisfaction of the Panel, that the Respondent has no rights or legitimate interests in respect of the disputed domain names (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

The Complainant has shown, to the satisfaction of the Panel, that the disputed domain names have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

PROCEDURAL FACTORS

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

PRINCIPAL REASONS FOR THE DECISION

Paragraph 15 of the Rules states that the Panel shall decide a Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law deemed applicable.

In the case of default by a Party, Rule 14 states that if a Party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under the Rules, the Panel shall draw such inferences therefrom as appropriate.

In this case the Respondent has not submitted any Response and consequently has not contested any of the contentions made by the Complainant. The Panel is therefore obliged to make its decision on the basis of the factual statements contained in the Complaint and the documents made available by the Complainant to support its contentions.

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following for a panel to order a transfer of the domain name(s) at issue:

(i) the domain name registered by the respondent is identical or confusingly similar to a trade mark or service mark in which Complainant has rights; and

(ii) the respondent has no rights or legitimate interests in the domain name; and

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

Taking each of these issues in turn, the Panel decides as follows:

A. Identical or Confusingly Similar

Based on the evidence put forward by the Complainant, the Panel finds that the Complainant has trade mark rights in the term DAFA.

The Panel notes that all the disputed domain names incorporate the Complainant's DAFA trade mark in its entirety. The mere addition of numbers (and in one case, three additional letters) does nothing to distinguish the disputed domain names from the Complainant's trade mark.

It is widely accepted that the generic Top Level Domain suffix .COM is generally irrelevant for the purpose of assessing identity or confusing similarity between a trade mark and a domain name.

On the basis of these considerations, the Panel finds that the disputed domain names are confusingly similar to a trade

mark in which the Complainant has rights, in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The second element that the Complainant must prove is that the Respondent has no rights or legitimate interests in respect of the disputed domain names (Policy, paragraph 4(a)(ii)).

Paragraph 4(c) of the Policy sets out various ways in which a respondent may demonstrate rights or legitimate interests in the domain name(s) at issue, as follows:

"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 trade mark or service mark rights; or

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

The Panel has considered the evidence put forward by the Complainant and is of the view that the Complainant has presented a clear prima facie showing of the Respondent's lack of rights or legitimate interests in the disputed domain names. As a result of its default, the Respondent has failed to rebut that showing.

The Respondent cannot be considered to be making a bona fide offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy referred to above, given that the disputed domain names were previously pointing to websites closely resembling the Complainant's website, with similar content, layout, graphics and logos. Neither can such use be said to be a legitimate non-commercial or fair use of the domain names within the meaning of paragraph 4(c)(iii). Furthermore, no evidence has been supplied that the Respondent is commonly known by the disputed domain names, as referred to at paragraph 4(c)(ii).

Given the above, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names and that paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

The third element that the Complainant must prove is that the disputed domain names have been registered and are being used in bad faith (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy sets out various circumstances which may be treated by the Panel as evidence of the registration and use of a domain name in bad faith, as follows:

"For the purposes of Paragraph 4(a)(iii), 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 you have registered or you have 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 trade mark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the

mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location."

The Panel is satisfied that the Respondent's conduct falls within paragraph 4(b)(iv) of the Policy. By using the disputed domain names, the Respondent has intentionally attempted to attract, for commercial gain, internet users to his website, by creating a likelihood of confusion with the Complainant's trade mark as to the source, sponsorship, affiliation, or endorsement of his website or of a product or service on his website. This is underlined by the fact that the Complainant uses www.dafa888.com, and the Respondent has registered several variations of the domain name <dafa888.com> using slightly different number combinations, and in one case, a three letter prefix.

In addition, given the Complainant's notoriety, the fact that its trade marks pre-date the registration of the domain names, and the content of the websites to which the domain names were pointing, it is clear that the Respondent registered the domain names in bad faith.

The Panel therefore finds that the disputed domain names have been registered and are being used in bad faith and that paragraph 4(a)(iii) of the Policy is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **DAFA8828.COM**: Transferred
2. **18DAFA.COM**: Transferred
3. **DAFA8188.COM**: Transferred
4. **DAFA8588.COM**: Transferred
5. **DAFA8688.COM**: Transferred
6. **DAFA8808.COM**: Transferred
7. **DAFA8858.COM**: Transferred
8. **DAFA8868.COM**: Transferred
9. **XINDAFA888.COM**: Transferred

PANELLISTS

Name	**Jane Seager**

DATE OF PANEL DECISION 2015-11-17

Publish the Decision