Decision for dispute CAC-UDRP-101068

Case number	**CAC-UDRP-101068**
Time of filing	**2015-10-07 10:08:09**
Domain names	**dafa88vip.com**

Case administrator

Name	**Lada Válková (Case admin)**

Complainant

Organization	**Emphasis Services Limited**

Respondent

Organization	**dai yushu**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending or decided legal proceedings relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant has shown evidence of trademark registrations in Hong Kong (Trademark No. 302048148 DAFA, registered on 03 November 2011) and the European Union (Trademark No. 012067138 DAFABET & device, registered on 17 February 2014). The Complainant has submitted evidence of pending trademark applications in the Philippines (e.g. Trademark No. 42014505034 DAFABET & device, and No. 42014505494 DAFA888) but the Panelist will not consider them for these specific proceedings since the Complainant has already shown proof of registered rights prior to the date of the disputed domain name which was registered on 29 May 2014.

The Complainant further claims that the marks DAFA and DAFA888 are well known marks due to sponsorship with football clubs in the English Premier League and the World Snooker Championship. No evidence has been submitted related to the Complainant's sponsorship activities.

The Respondent is in default and therefore, it has not put forward any rights to the disputed domain name.

FACTUAL BACKGROUND

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

The Complainant claims that the domain name is confusingly similar to the “Dafa” and "Dafa888" marks owned by the Complainant. The addition of a generic term ("vip") and deleting a number ("8") in the mark do not dispel the confusing similarity.

Further, the Complainant claims that the Respondent does not have any right or legitimate interest to the disputed domain name. In addition to the trademark rights put forward by the Complainant as well as other intellectual property rights used by the Respondent on the web site located at the domain name (eg. design, content, logos, etc.), the Complainant denies any

direct connection with the Respondent. The Respondent does not have any trademark registration or any right to use the mark “Dafa” or "Dafa88" for its website.

The Complainant also claims that the use of the Complainant’s intellectual property on its website and Respondent's "cloning" of the Complainant's website is indicative of bad faith registration and use of the disputed domain name. According to the Complainant, Policy, paragraph 4(b)(iv) is applicable to this disputes:

“(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 further notes that the Respondent has been sent a cease and desist letter, but no reply was received and no changes on the website were introduced.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has put forward several trademark registrations and applications for DAFA, DAFABET and DAFA888. This Panel will not consider the trademark applications put forward by the Complainant for DAFA888, since in the Panel's opinion, the Complainant has enough rights based on its DAFA mark to succeed on this requirement.

The Panel considers that the Complainant's mark DAFA (see particulars above) is confusingly similar to the challenged domain name. The main distinctive element of the challenged domain name is the DAFA name, followed by the numbers 888 that strengthens the association with the Complainant (since it is an element used by the Complainant), and the generic acronym "vip" which has a minimal impact on the comparison (Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite, WIPO Case No. D2001-1070)

Accordingly, the Complainant has, to the satisfaction of the Panel, shown the Domain Name is confusingly similar to the trademark 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, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the Domain Name (within the meaning of paragraph 4(a)(ii)of the Policy).

The Respondent appears to have replicated to a large extent the Complainant's website (including designs, logos, content, etc.).

Since the Respondent is in default, the Panel does not have the benefit of a response. As a result, the Panel can only make a decision based on the complaint and the content of the website located at the disputed domain name. Based on the website, the Panel finds that the Respondent is not 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, since the Respondent appears to be carrying out a parallel business to Complainant's (commercial in nature). In absence of a response and taking into account arguments in the Complaint, the Panel also finds that Respondent is not commonly known by the disputed domain name.

Regarding whether the Respondent, before having any notice of the dispute, has been using the domain name in connection with a bona fide offering of goods or services, this Panel finds that there cannot be any 'bona fide' when the Respondent is

using a name that is confusingly similar with a trademark, for the same type of services, and where the Respondent has appropriated itself of the Complainant's website concept and content. Following WIPO Case No. D2002-0946 Philip Morris Incorporated v. Alex Tsypkin, the Panel is satisfied the presentation of Respondent's website is likely to mislead Internet users into believing the site is operated or endorsed by or affiliated with Complainant. Use which intentionally trades on the fame of another cannot constitute a bona fide offering of goods or services: Madonna Ciccone, p/k/a Madonna v. Dan Parisi and <madonna.com>, WIPO case D2000-0847. The Respondent cannot plausibly argue that he did not intentionally adopt the disputed domain name so as to benefit from the goodwill of the Complainant's mark.

Absent any other explanation from the Respondent, the Panel is satisfied that the Respondent has no right or legitimate interest to the domain name.

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the Domain Name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

The Panel agrees with the Complainant that this appears to be a classic case of cybersquatting whereby the Respondent is deliberately using a domain name that is confusingly similar to registered marks to attract Internet users to its web site, by creating a likelihood of confusion with those registered marks as to the source, sponsorship, affiliation or endorsement of its web site. Respondent's registration of a domain name that is confusingly similar to Complainant's DAFA marks where the website reproduces Complainant's website evidences a clear intent to trade upon the goodwill associated with the Complainant.

The fact that the Complainant has not shown rights in China, where the Respondent presumably has its seat is immaterial in this case since the Respondent knew or should have known about the Complainant's trademark rights (SportSoft Golf, Inc. v. Hale Irwin's Golfers' Passport, NAF Case No. FA94956).

The fact that the Respondent has blatantly taken design, content and logos from the Complainant's website supports a finding that the domain name was registered and is being used in bad faith. See also Kabushiki Kaisha ASTY and Kabushiki Kaisha F.D.C. PRODUCTS v. LiHai, WIPO Case No. D2003-0963 ("The material on the Respondent's website referring to "the landing of an overseas well-known silver jewelry brand", displaying the mark "4°C" and clearly plagiarizing FDC's business concept compel the conclusion that the Respondent set out to appropriate to himself the business concept of the Complainants in relation to their silver jewelry for use in connection with his own silver jewelry and that this strategy included the registration of the disputed domain name.").

From the above it is clear that Respondent's registration and use of the challenged domain name falls squarely within the parameters of ICANN paragraph 4(b)(iv) of the Policy.

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. The Panel however notes that the Complainant requested to add more domain names to the complaint. Those additional domain names were presumably owned by the Respondent and registered with the same registrar. The request by the Complainant was sent to the CAC after the Notification of Commencement of Administrative Proceedings had been issued, but before the Panel had been appointed. The CAC informed the Complainant that "At this stage of the proceedings it is not possible to add more domain names. If you want to claim more domain names, you have to file a separate Complaint".

The Panel is aware of a number of decisions dealing with the addition of domain names to the Complaint after such Complaint has been filed (Société Air France v. Spiral Matrix, WIPO Case No. D2005-1337, <airfrancereservation.com> inter alia, Department of Management Services, State of Florida v. Digi Real Estate Foundation, WIPO Case No. D2007-0547, <myflorrida.com>, Société Air France v. Kristin Hirsch, Hirsch Company, WIPO Case No. D2008-1213, <airfrancesite.info>). In the present case, the CAC decided not to allow the Complainant add new domain names to the Complaint albeit inviting the

Complainant to file a new Complaint for those domain names. The Panel considers that such decision from the CAC has not jeopardized the ability of the Complainant to seek relief regarding those new domain names and therefore does not consider necessary to make any specific finding on this point.

PRINCIPAL REASONS FOR THE DECISION

1. The Panel finds that the disputed domain name <dafa88vip.com> is confusingly similar to the Complainant's registered trademarks.

2. The Panel finds that the Respondent is not using the domain name in connection with a bona fide offering of goods or services, nor is making a legitimate non-commercial or fair use of the disputed domain name, nor is commonly known under the disputed domain name.

In lack of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

3. The Complainant also proved that the Respondent deliberately registered and used the domain name that is confusingly similar to the Complainant's marks to attract, for commercial gain, Internet users to its web sites, by creating a likelihood of confusion with Complainant's marks as to the source, sponsorship, affiliation or endorsement of its website and the services offered at such website.

The Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **DAFA88VIP.COM**: Transferred

PANELLISTS

Name	**Jose Checa**

DATE OF PANEL DECISION 2015-11-16

Publish the Decision