Decision for dispute CAC-UDRP-101064

Case number	CAC-UDRP-101064
Time of filing	2016-04-26 09:19:23
Domain names	df85.net, dafa95.net, dafa85.net, dafa111222.com, dafa23456.com, 888dafaylc.com, 888dfylc.com, dafa000111.com, dafa222333.com, dafa333444.com, dafa34567.com, dafa444555.com, dafa45678.com, dafa555666.com, dafa666777.com, dafayulechen.com, df111888.com, df23456.com, df34567.com, df45678.com, df56789.com, dfdc888.com, wwwdafa85.com, wwwdafa95.com, wwwdf85.com, wwwdf95.com, wwwdfylc.com

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	Emphasis Services Limited

Respondent

Name	zhouhan zhou

OTHER LEGAL PROCEEDINGS

There are no other pending legal proceedings.

IDENTIFICATION OF RIGHTS

The Complainant relies on prior rights on various trademarks protected in Class 41 for casino facilities:

- word & device European union trademark DAFABET No 012067138, also protected in Class 38 for providing access to poker tournament;

- European union trademark DAFABET No 012067088, also protected in Class 38 for providing access to poker tournament;

- Malaysian trademark DAFA No 2011019075;

- Hong Kong national trademark DAFA No 302048148138.

The disputed domain names were created on October 26 or October 27, 2015 and resolve to the websites dedicated to gambling services.

The list of the disputed domain names is as follows in the complaint dated April 25, 2016:

df85.net
dafa95.net
dafa85.net

dafa111222.com
dafa23456.com
dafa345345.com
888dafaylc.com
888dfylc.com
dafa000111.com
dafa222333.com
dafa333444.com
dafa34567.com
dafa444555.com
dafa45678.com
dafa555666.com
dafa666777.com
dafa95.net
dafayulechen.com
df111888.com
df23456.com
df34567.com
df45678.com
df56789.com
df56789.com
dfdc888.com
wwwdafa85.com
wwwdafa95.com
wwwdf85.com
wwwdf95.com
wwwdfylc.com

The domain name < dafa345345.com> is not mentioned any more in the amended complaint dated May 3, 2016. The Panel asked the Complainant to explain if it wants to keep this domain name in the list of the disputed domain names. The Complainant did not respond. Therefore, this domain name shall not be taken into account.

FACTUAL BACKGROUND

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

The UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY of the Internet Corporation for Assigned Names and Numbers (ICANN) (the “Policy”) provides that Complainant must prove each of the following to obtain transfer or cancellation of the disputed domain names:

1. that Respondent’s domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
2. that Respondent has no rights or legitimate interests in respect of the domain name; and
3. the domain name has been registered and is being used in bad faith.

Identical or Confusingly Similar

The Respondent’s registered domain names are confusingly similar to the “Dafa” mark owned by the Complainant. Essentially, Respondent has appropriated the trademark Dafa and added numbers after the mark. 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. It further added that a domain may be deemed as identical or similar if it incorporates the primary, distinctive element of the trademark. In this complaint, the Respondent copied the whole mark of “Dafa” and merely added numbers.

Rights or Legitimate Interests

As previously mentioned, Complainant 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. Respondent will not be able to show prior usage, registration or any right to use the mark “Dafa” for its website.

Bad Faith

As above-stated, the Respondent is engaged in the same line of business as that of Complainant which renders his use of the domain names in bad faith as it is an attempt to mislead users that the Complainant and the Respondent are related.

This is indicative of its intentions in using the Complainant’s mark “Dafa” and "df" in its domain names.

The criteria for the determination of usage of domain name in bad faith is set forth in the Policy, paragraph 4(b)(iv) of 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 Respondent is well aware that the Complainant is the owner of the mark “Dafa” because of:
1. Registrations in various jurisdictions;
2. Goodwill and notoriety of the trademarks;

• As previously mentioned, “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.

• The Respondent has been sent a cease and desist letter, but no reply was received and they have persisted in their illegal activities

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

On June 10, 2016, the Panel requested the Complainant to:

- produce the Whois of the contested domain names, to mention their creation date, and to produce the screenshots of the accessible respective websites. An extract of Whois data was produced together with the related screenshots, for each disputed domain name, within the prescribed deadline;

- produce the license agreement with the owner of the cited European Union trademarks and the alleged assignment to the Complainant. Indeed, the Complainant responded, producing new exhibits proving that the European trademarks were assigned to its benefit.

The disputed domain names are composed either with the verbal element DAFA, which is a coined trademark or with the consonants “DF” of the verbal trademark DAFA, which is composed with two consonants and one vowel.

Adding numbers does not exclude any likelihood of confusion, taking into account the fact that the disputed domain names

are used for gambling services, for which numbers are very important.

This analysis does not apply to three of the disputed domain names, which include other letters than “D” “A” and ““F”, what excludes any likelihood of confusion:

888dfylc.com
dfdc888.com
wwwdfylc.com

The Complainant has, to the satisfaction of the Panel, shown that, under the exception of 888dfylc.com, dfdc888.com and wwwdfylc.com, the Domain Names are confusingly similar to its DAFA and DAFABET trademarks in which the Complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The provided screenshots relating to each disputed domain name mention the website address www.dafa9999.com. It shows the intent to rely on the DAFA and DAFABET trademarks’ image, although there is no relation or partnership between the parties.

The Respondent did not even try to contest the cease and desist letter. It merely answered “Give us a week. I’m changing the company name! Thank you!”

Given the type of service provided by the parties, the Panel finds that it can not tolerate any domain name registration that is confusingly similar to the opposed trademarks and that resolves to misleading websites.

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

BAD FAITH

The complaint was sent by post to the Respondent and it was returned because the postal address mentioned on the Whois is “insufficient” to enable the delivery of post.

Providing insufficient postal addresses to be mentioned on the Whois database is a violation of the disputed domain names registration agreements.

The response to the cease and desist letter was sent by email from the address dafa888du@gmail.com, that includes the trademark DAFA. It announced a modification of the company name, suggesting that it was supposed to resolve the dispute.

Nothing happened and the complaint even remained unanswered.

The Panel is of the opinion that the disputed domain names were registered in bad faith within the meaning of paragraph 4(b)(iii)of the Policy: “you have registered the domain name primarily for the purpose of disrupting the business of a competitor”.

Furthermore, given the here above facts, the Panel is of the opinion that the disputed domain names were used in bad faith, within the meaning of paragraph 4(b)(iv)of the Policy “ 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 has, to the satisfaction of the Panel, shown the 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

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

Respondent suggested that it would modify its company name after receiving a cease and desist letter. It did not happen and he did not respond to the complaint.

All disputed domain names are composed either with the DAFA coined trademark, or with its consonents DF.

All disputed domain names resolve to gambling websites mentioning the website www.dafa9999.com, to clearly rely on the DAFA trademarks which are protected for casino services.

Complainant made a prima facie case that the disputed domain names were registered without any right or legitimate interest and were registered and used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **DF85.NET**: Transferred
2. **DAFA95.NET**: Transferred
3. **DAFA85.NET**: Transferred
4. **DAFA111222.COM**: Transferred
5. **DAFA23456.COM**: Transferred
6. **888DAFAYLC.COM**: Transferred
7. **888DFYLC.COM**: Remaining with the Respondent
8. **DAFA000111.COM**: Transferred
9. **DAFA222333.COM**: Transferred
10. **DAFA333444.COM**: Transferred
11. **DAFA34567.COM**: Transferred
12. **DAFA444555.COM**: Transferred
13. **DAFA45678.COM**: Transferred
14. **DAFA555666.COM**: Transferred
15. **DAFA666777.COM**: Transferred
16. **DAFAYULECHEN.COM**: Transferred
17. **DF111888.COM**: Transferred
18. **DF23456.COM**: Transferred
19. **DF34567.COM**: Transferred
20. **DF45678.COM**: Transferred
21. **DF56789.COM**: Transferred
22. **DFDC888.COM**: Remaining with the Respondent
23. **WWWDAFA85.COM**: Transferred
24. **WWWDAFA95.COM**: Transferred
25. **WWWDF85.COM**: Transferred
26. **WWWDF95.COM**: Transferred
27. **WWWDFYLC.COM**: Remaining with the Respondent

PANELLISTS

Name	**Marie Marie-Emmanuelle Haas, Avocat**

DATE OF PANEL DECISION 2016-07-04

Publish the Decision