Decision for dispute CAC-UDRP-101055

Case number	CAC-UDRP-101055
Time of filing	2017-03-14 11:08:32
Domain names	df011.com, df022.com, df655.com, df877.com, df622.com, df266.com, df766.com

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	Emphasis Services Limited

Respondent

Organization	Protection Privacy

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant owns:

(i) Malaysia trade mark registration no. 2011019075 for “DAFA”, registered on 28 October 2011 in class 41.

(ii) Hong Kong SAR trade mark registration no. 302048148 for “DAFA”, registered on 3 October 2011 in class 41.

(iii) EUTM registration no. 012067138 for the graphic representation “d dafabet” with colours red, yellow, and white, which was registered on 17 February 2014 in classes 38 and 41.

(iv) Philippines trade mark registration no. 42014505034 for “DAFABET”, registered on 24 October 2014 in classes 38 and 41.

FACTUAL BACKGROUND

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

The Complainant, Emphasis Service Limited, through its subsidiaries and licensees, operates websites offering online gaming and betting with licenses issued in the Philippines, the United Kingdom, the Isle of Man and Curacao. The Complainant owns and operates gaming sites under the brand “DAFA” (i.e. dafabet.com and dafa888.com). The Complainant has used the name “DAFA” for many years to designate its online gaming and betting offerings.

The Complainant has registered its rights over the mark “DAFA” and "DAFABET", as set out under "Identification of rights" above. The registrations in Malaysia, Hong Kong and the EUTM registration all predate the registrations of the disputed

domain names.

“DAFABET” is a well-known mark through its various sponsorships of commercial clubs (Official Main Club Sponsor of Sunderland FC; Official Main Club Sponsor of Celtic FC; Official Main Club Sponsor of Burnley FC; Official International Betting Partner of Everton FC; Official Main Club Sponsor of Blackburn Rovers FC; Official Main Team Sponsor of Fnatic eSports; Official Betting Partner of Wales). Dafabet was also named by eGaming Review as 23rd among the 40 most influential e-gaming operators in the world.

The Respondent registered the disputed domain names on 11 September 2014.

The Complainant sent a cease and desist letter to the Respondent on 13 December 2016.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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).

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 disputed domain names (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

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

PROCEDURAL FACTORS

The Complainant requests that the language of proceedings be English. It says that to use any other language would unduly prejudice its rights, due to the continued use in bad faith by the Respondent of the disputed domain names and intellectual property of Complainant in its cloned website. The Complainant believes that the Respondent can understand English as the contact information on the websites are all Philippine numbers, which indicates that the Respondent is based in the Philippines where English is widely spoken. The Complainant says it is willing to translate and have these proceedings continue on a dual language basis, if needed, should the Respondent object to proceedings being in English. The Complainant refers to the case of Remy Martin & Co. vs. Lan Qing Tian/Qingtian Lan (WIPO Case No. D2016-1567), in which it was ruled that English is an acceptable language for the proceedings even where the registration agreement is in Chinese if the merits of the case strongly favour the complainant and translating the Complaint would cause unnecessary delay.

The Panel finds that in the circumstances outlined by the Complainant and in the absence of any objection by the Respondent, that the proceedings be conducted in English.

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

Paragraph 4 (a) of the Policy requires the Complainant to prove each of the following three elements:

(i) The disputed domain names are identical or confusingly similar to a trade mark or service mark in which the Complaint has rights.
(ii) The Respondent has no rights or legitimate interests in the disputed domain names.

(iii) The disputed domain names have been registered and used in bad faith.

A. Rights
It is well established that the generic top level suffix .com may be disregarded when considering whether a disputed domain name is confusingly similar to a trade mark in which the Complainant has rights.

The Complainant owns trade mark registrations for the mark “DAFA”. The Respondent has used in the disputed domain names the letters “df" with a series of numbers attached to them. The articulation of the lower case letters "df" phonetically mimic the Complainant’s “DAFA” trade mark. As well as the disputed domain names being phonetically similar to the Complainant's mark "DAFA", they link to websites that are visually similar with the Complainant’s website and also use the Complainant's mark "DAFA".

The Panel finds that the disputed domain names, df011.com, df022.com, df655.com, df877.com, df622.com, df266.com and df766.com, are confusingly similar to a trade mark or service mark in which the Complainant has rights.

B. Lack of rights or legitimate interests.
The Complainant asserts that the Respondent does not have a legal right to use the name “DAFA” as part of its domain name, and that the Respondent is not in any way connected with the Complainant, nor authorized to use its intellectual property rights for its operations as a licensee or in any capacity. The Complainant says that the Respondent is illegally using the Complainant’s graphics, images, designs, content and logos, which indicates the Respondent’s intention to deceive users to think that their websites are affiliated with the Complainant.

The Respondent has not filed a Response and there is no evidence that the Respondent has used or has been preparing to use the disputed domain names in connection with a bona fide offering of goods or services, or for a legitimate non-commercial or fair use, without intent for commercial gain.

The Panel finds that the Respondent has no rights or legitimate interest in the disputed domain names.

C. Registration and use of the disputed domain names in bad faith.
The Complainant asserts that the Respondent is well aware of the Complainant's mark “DAFA” because of the Complaint's registrations of the mark in various jurisdictions, the goodwill and notoriety of the marks, and the Respondent’s illegal usage of the Complainant’s logos, content, images and designs in its website. Any claim by the Respondent to lack of knowledge over the Complainant’s ownership of the name “DAFA” is negated by the fact that the Respondent has used the Complainant’s marks on its website. Further, the Complainant says that the Respondent has not replied to its cease and desist letter, and has persisted in its illegal activities.

The Panel finds that the Complainant owns registrations for the trade mark “DAFA” in various jurisdictions. The marks are likely to be well known because of the Complainant’s sponsorship of the English Premier League and the World Snooker Championship. By using letters that sound like the Complainant’ trade mark, the Respondent appears to be intentionally trying to deceive Internet users into believing that the disputed domain names with the prefix “df” are in some way connected to the Complainant.

There appears no reason why the Respondent would register and use the disputed domain names that are confusingly similar to the Complainant’s mark “DAFA” other than to intentionally attempt to attract, for commercial gain, Internet users to the Respondent’s websites, by creating a likelihood of confusion with the Complainant's mark. In addition there appears no reason for the Respondent’s unauthorised use of the Complainant’s trade mark "DAFA" on its websites other than to make it appear that those websites are affiliated with the Complainant.

The Panel finds that the disputed domain names have been registered and have been used by the Respondent in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **DF011.COM**: Transferred
2. **DF022.COM**: Transferred
3. **DF655.COM**: Transferred
4. **DF877.COM**: Transferred
5. **DF622.COM**: Transferred
6. **DF266.COM**: Transferred
7. **DF766.COM**: Transferred

PANELLISTS

Name	**Mrs Veronica Bailey**

DATE OF PANEL DECISION 2017-04-22

Publish the Decision