Decision for dispute CAC-UDRP-101909

Case number	CAC-UDRP-101909
Time of filing	2018-03-02 15:06:37
Domain names	avastcoin.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	Avast Software s. r. o.
Organization	AVAST Software B.V.

Complainant representative

Organization	Rudolf Leška, advokát

Respondent

Organization	Avastcoin Limited

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

AVAST Software s.r.o. is the owner of several registrations for the trademark AVAST, among which the following:

- AVAST!, international registration No. 1011270 of 15 April 2009, for goods in class 9, designating Australia, Denmark, Estonia, Finland, UK, Greece, Ireland, Japan, Lithuania, Sweden, Turkey, Austria, Belgium, Benelux. China, Cyprus, Germany. France, Hungary, Italy, Latvia, Poland, Portugal, Romania, Slovenia, Slovakia and Vietnam;

- AVAST, EUTM registration No. 010253672, claiming a priority date of 25 August 2011, covering goods in classes 9, 16 and 42;

- AVAST (figurative), US registration No. 5279796, claiming a priority date of 15 November 2016, covering goods in classes 9 and 42.

FACTUAL BACKGROUND

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

These UDRP proceedings are brought by two different Complainants, namely the Czech company AVAST Software s.r.o. and the Dutch company AVAST Software B.V. (hereinafter collectively referred to, when necessary, as the “Complainant”).

AVAST Software s.r.o. is one of the largest security software companies in the world, using next generation technologies to fight cyber attacks in real time. AVAST Software s.r.o. operates on the market since 1988 and is well-known thanks to its popular software named AVAST, which has more than 400 million users. AVAST Software s.r.o. distributes its products on-line through its website at www.avast.com.

AVAST Software B.V. is an affiliate of AVAST Software s.r.o.. Since 1991, AVAST Software B.V. provides to its customers one of the most effective antivirus software in the world. AVAST Software B.V. offers a wide range of protection, performance and privacy solutions for customers and businesses through the very well-known AVG antivirus software. AVG antivirus customers exceed 200 million worldwide, and AVG software acquired more than 20 awards from independent industry comparative tests. The AVG software is distributed on-line at www.avg.com, where the Complainant also offers customers assistance.

AVAST Software B.V. is the owner of European, US and international registrations designating many countries worldwide, for the trademark AVG and for a device trademark used in connection with its activity, all preceding the date of registration of the disputed domain name <avastcoin.com>, which occurred on 25 September 2017.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

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

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 name (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 name has been registered and is 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 UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

I. CONFUSING SIMILARITY

According to the Panelist, the disputed domain name is confusingly similar to the Complainant’s registered trademark AVAST, since it fully incorporates this trademark followed by the descriptive English words “coin”, which refers to the Respondent’s activity as carried out through the website corresponding to the disputed domain name. Moreover, the trademark AVAST is the first component of the disputed domain name and highly recognizable within it.

For these reasons, the Panelist concludes that the Complainant has met the first requirement under the Policy.

II. THE RESPONDENT’S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DOMAIN NAME

Paragraph 4(c) of the Policy lists several circumstances, which if found by the Panel to be proved shall demonstrate the Respondent's rights or legitimate interests to the disputed domain name for the purposes of Paragraph 4(a)(ii). These circumstances, include the fact that the Respondent:

(i) before any notice of the dispute, uses, or makes demonstrable preparations to use, the disputed domain name, or a name corresponding to the disputed domain name, in connection with a bona fide offering of goods or services; or

(ii) either as an individual, business, or other organization, has been commonly known by the disputed domain name, even if the Respondent has acquired no trademark or service mark rights; or

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

The Complainant maintains that the Respondent lacks rights or legitimate interests in the disputed domain name for a number of reasons, among which that the Respondent “is not known by the names comprised in the disputed domain name, nor owes any identical or similar trademark, nor has ever used any identical or similar brand before the registration”.

The Panel partially disagrees with this statement. The disputed domain name corresponds to the Respondent business and trade name. The Respondent’s name is Avastcoin Limited, and the Respondent is a UK registered company with offices in London. As the Complainant did not provide any useful information in this respect, the Panel made some quick investigations on the Internet, in compliance with the powers conferred to her by the Rules. The Panel so found that the Respondent’s date of incorporation is 13 February 2018 (see https://suite.endole.co.uk/ a few days before the Complainant filed its first Complaint, subsequently amended). The Respondent operates in the field of crypto currency trading and mining.

So, contrary to the Complainant’s statement, when these UDRP proceedings started, the Respondent traded under a name corresponding to the disputed domain name, although its activity probably started shortly before this dispute was filed. The fact that the Respondent does not own a trademark corresponding to the disputed domain name is not, per se, evidence of lack of rights or legitimate interests in the disputed domain name. The same applies, in ordinary circumstances, also to the fact that the Complainant did not license or authorize the Respondent to use the Complainant’s trademark in the disputed domain name. As a matter of fact, the Respondent is operating in a field different from that of the Complainant, as it is engaged in the financial sector.

Notwithstanding the above, in the case at issue there are certain circumstances that should be taken into consideration and that lead the Panel to conclude that the Complainant has made at least a prima facie case, that the Respondent lacks rights or legitimate interests in the disputed domain name.

Firstly, the fact that the Complainant’s trademark enjoys reputation in its field. According to the Complainant, the AVAST antivirus software is used by more than 400 million users worldwide. When making a search on the name “avast” in Google, all results refer to the Complainant.

Secondly, the fact that despite the activity carried out by the Respondent is different from that of the Complainant (financial trading vs. antivirus software), the fact that the Respondent only operates on-line through an Internet platform and in relation to virtual or digital currency makes the two fields much closer. While the consumers of reference may not believe that the Complainant has suddenly started working in the Respondent’s field, it may believe that the Internet platform of the Respondent is supported by the Complainant, which through its products makes the services offered by the Respondent safer, at least from a technological point of view.

Thirdly, the fact that the Complainant’s trademarks AVG and related device, were displayed prominently on the Respondent’s website, as shown in one of the screenshots supplied by the Complainant may suggest to the relevant consumers that there is an affiliation with, or an endorsement by the Complainant, which is evidently not the case. This is even more so considering that both the trademarks AVAST and AVG are well-known to the general public and belong to related companies.

The Respondent had the opportunity to rebut the Complainant's arguments, but failed to do so. Therefore, the Panel takes the view that the Complainant made at least a prima facie case that the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue

III. THE REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME IN BAD FAITH

The Respondent registered a domain name, which is identical, in its most distinctive part, to the earlier Complainant's well-known trademark. Moreover, the Respondent prominently displayed one of the Complainant's well-known trademarks in the website corresponding to the disputed domain name. As the Respondent is trading in digital currency through an on-line Internet platform, while the Complainant is offering cyber security services, and the two fields are not so far apart, the consumers may believe that there is some kind of association or connection between the Respondent and the Complainant, which is not the case.

Therefore, the Panel concludes that the Respondent was very well aware of the Complainant's trademarks and activities at the time of the registration of the disputed domain name and that it is more likely than not that the Respondent registered and used the disputed domain name to intentionally attempt to attract, for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or of the trading services offered by the Respondent through the website corresponding to the disputed domain name.

The Panel further notes that at the time of the registration of the disputed domain name, the Respondent hid its identity behind a privacy service. Although this circumstance is not, per se, evidence of bad faith, it can become so when other facts supports a finding of bad faith, as in the case at issue. In this respect, account should be taken also to the fact that the website connected with the disputed domain name at the time of the filing of the Complaint, is no longer accessible. The obscuration of the website, after the filing of these UDRP proceedings coupled with all other circumstances mentioned above is, in the Panel's view, another element of bad faith.

For all circumstances mentioned above, the Panel finds that the Complainant has successfully proved that the Respondent registered and is being using the disputed domain name in bad faith in accordance with paragraph 4(a)(iii)of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **AVASTCOIN.COM**: Transferred

PANELLISTS

Name	**Angelica Lodigiani**

DATE OF PANEL DECISION 2018-04-15

Publish the Decision