Decision for dispute CAC-UDRP-101054

Case number	CAC-UDRP-101054
Time of filing	2018-08-14 14:24:52
Domain names	dafabetsg.com, dafabetsg1.com, dafabetsg2.com, dafabetsg3.com

Case administrator

Name	Sandra Lanczová (Case admin)

Complainant

Organization	Emphasis Services Limited

Respondent

Name	Choong Wei Kiat

OTHER LEGAL PROCEEDINGS

None of which the Panel is aware.

IDENTIFICATION OF RIGHTS

The Complainant is the registered owner of several trademarks for DAFABET and the Panel accepts that evidence. The evidence shows that one such trademark is the word mark for DAFABET issued by the European Union Intellectual Property Office, No.012067088, registered on February 2, 2014 , of which the Complainant is the registered owner (“the DAFABET mark“). As it is well established that a trademark registered with a national or international body confers rights for the purposes of the UDRP on the registered owner of the mark, the Panel finds that the Complainant has established such rights.

FACTUAL BACKGROUND

The Complainant EMPHASIS SERVICES LIMITED (the “Complainant”), through its subsidiaries and licensees, operates websites that offer online gaming and betting services under licenses that have been issued to it in the United Kingdom, the Isle of Man, Ireland , the Philippines, Curacao and Kenya.

The Complainant uses the name DAFABET to operate its business which consists of several gaming sites on the internet. It operates under the name DAFABET, which is also its trademark. Its domain names, such as <dafabet.com> also incorporate the DAFABET trademark.

The Complainant’s DAFABET trademark is registered in several jurisdictions. It is particularly well known, as the Complainant is the sponsor of several football teams. The Complainant is regarded as one of the most prominent e-gamers.

The Respondent has registered all of the disputed domain names.

It is apparent from the WHOIS records available that the domain names were registered by the Respondent on the following dates.

<dafabetsg.com> - May 8, 2018;
<dafabetsg1.com> - May 11, 2018;
<dafabetsg2.com> - May 11, 2018; and
<dafabetsg3.com> - May 11, 2018.

Each of the domain names incorporates the DAFABET trademark in its entirety and other letters and numbers. It uses the domain names to resolve to websites that attempt to pass themselves off as the Complainant's official websites, carrying content identical to that on the Complainant's websites and offering services in competition to those of the Complainant.

The Complainant wishes to stop this conduct of the Respondent and to that end has brought this proceeding which seeks the transfer of the disputed domain names from the Respondent to the Complainant.

The Respondent has not filed a Response and is in default.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

Complainant made the following contentions.

IDENTITY OR CONFUSING SIMILARITY OF THE DOMAIN NAME WITH THE TRADEMARK

The Respondent is the registrant of each of the disputed domain names.

The disputed domain names are confusingly similar to the Complainant's DAFABET trademark. That is so because they all use the trademark DAFABET, to which has been added the letters "sg" and, in the case of the second, third and fourth domain names, consecutive numbers.

All of the domain names resolve to websites which are substantially clones of the Complainant's website, as the Respondent has illegally appropriated the Complainant's graphics, images, designs, content and logos and used them on its own websites.

Thus, the disputed domain names are confusingly similar to a trademark in which the Complainant has rights.

RIGHTS AND LEGITIMATE INTERESTS

The Respondent does not have any rights or legitimate interests in the disputed domain names. That is so for the following reasons.

The Complainant must first make out a prima facie case that the Respondent lacks rights or legitimate interests in the domain names. Once such a prima facie case is made out, the Respondent carries the burden of demonstrating that it does have rights or legitimate interests in the domain names. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP.

The Complainant submits that a prima facie case is made out for the following reasons.

Firstly, Respondent is not in any way connected with the Complainant nor is it authorized to use the Complainant's intellectual property for its operations as a licensee or in any other capacity.

Secondly, as well as using the word DAFABET in its domain names, Respondent is illegally using the Complainant's graphics, images, designs, content and logos on its website, all of which are indicative of Respondent's intention to deceive users into thinking that the Respondent's websites are affiliated with the Complainant.

Thirdly, on the known facts, it would be impossible for the Respondent to bring itself within any of the grounds available to a registrant to show a right or legitimate interest in the domain names.

Accordingly, the Respondent has no rights or legitimate interests in the disputed domain names.

REGISTRATION AND USE IN BAD FAITH

The disputed domain names have been registered and are being used in bad faith.

The Complainant relies in particular on paragraph 4(b)(iv) of the Policy which deals with the creation of confusion with a trademark.

The intention of the Respondent can be discerned from the way in which it has illegally taken the Complainant's intellectual property and used it on its websites. The use of that material is designed to give the impression that the websites are affiliated with the Complainant by using the DAFABET mark in the domain name and by constructing websites that are almost the same as that of Complainant's official website. The Respondent has virtually cloned the Complainant's website by illegally using the Complainant's graphics, images, designs, content and logos in an attempt to deceive the public.

Moreover, the Respondent must have been aware of the DATABET mark when it registered the disputed domain names because the mark is registered in various jurisdictions, it has attracted goodwill and notoriety, the Respondent has illegally used the Complainant's logos, content, images and designs on its website and the Complainant itself has garnered recognition because of its sponsorship of several football teams.

In addition, Respondent was sent a cease and desist letter on behalf of the Complainant, but no reply was received, while the Respondent has continued its illegal activities.

Accordingly, the Respondent has registered and used the disputed domain name in bad faith.

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

This is a mandatory administrative proceeding pursuant to Paragraph 4 of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP") of the Internet Corporation for Assigned Names and Numbers ("ICANN"), the Rules for

Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the CAC Supplemental Rules.

Paragraph 15 of the Rules provides that the Panel is to decide the 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 that it deems applicable.
In that regard, the Panel also notes that the onus is on the Complainant to make out its case and past UDRP panels have consistently said that a complainant must show that all three elements of the Policy have been made out before any order can be made to transfer a domain name.

The Panel therefore turns to discuss the various issues that arise for decision on the facts as they are known.

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:
(i) The domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
(ii) The respondent has no rights or legitimate interests in respect of the domain name; and
(iii) The domain name has been registered and is being used in bad faith.

The Panel will therefore deal with each of these requirements in turn.

A. Identical or Confusingly Similar
The Complainant has adduced evidence that the Complainant is the registered owner of several trademarks for DAFABET and the Panel accepts that evidence. The evidence shows that one such trademark is the word mark for DAFABET issued by the European Union Intellectual Property Office, No.012067088, registered on February 2, 2014 , of which the Complainant is the registered owner (“the DAFABET mark"). As it is well established that a trademark registered with a national or international body confers rights for the purposes of the UDRP on the registered owner of the mark, the Panel finds that the Complainant has established such rights.

The Panel next finds that the disputed domain names are confusingly similar to the DAFABET mark for the following reasons:
First, the disputed domain names include the entirety of the DAFABET mark. Secondly, the disputed domain names include some letters that have been added to the word DAFABET, namely “sg ”. Thirdly, the disputed domain names, other than the first one, have had added to them in consecutive order, the numbers 1 , 2 and 3. These facts would undoubtedly convey to the objective bystander that the domain names related to the Complainant and to different aspects of its activities. It is also now well established that the addition of a generic top level domain, such as “.com” in the present case, cannot negate confusing similarity that is otherwise present, as it is in the present case.

Accordingly, the disputed domain names are confusingly similar to the Complainant’s trademark and the Complainant has thus shown the first of the three elements that it must establish.

B. Rights or Legitimate Interests
Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

But by virtue of paragraph 4(c) of the Policy, it is open to the Respondent to establish its rights or legitimate interests in a domain name, among other circumstances, by showing any of the following elements:
(i) before any notice to you [respondent] 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 [respondent] (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
(iii) you [respondent] are 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.

Thus, if a respondent proves any of these elements or indeed anything else that shows that it has a right or legitimate

interest in the domain name, the complainant will have failed to discharge its onus and the complaint will fail.
It is also well-established that a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests and that when such a prima facie case is made out, the respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent cannot do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP.

The Panel, after considering all of the evidence in the Complaint, finds that the Complainant has made out a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain names.

That prima facie case is made out from the following considerations.

First, the Respondent has chosen to take the Complainant's DAFABET trademark and to use it in a series of domain names, making only the minor alterations to the trademark referred to above.

Secondly, the Panel finds on the evidence that Respondent is not in any way connected with the Complainant nor is it authorized to use the Complainant's intellectual property as a licensee or in any other capacity.

Thirdly, as well as using the word DAFABET in its domain names, Respondent is targeting and copying the Complainant by illegally using the Complainant's graphics, images, designs, content and logos on its website, all of which are indicative of Respondent's intention to deceive users into thinking that its Respondent's websites are affiliated with the Complainant.

Fourthly, on the known facts, it would be impossible for the Respondent to bring itself within any of the grounds available to a registrant to show a right or legitimate interest in the domain names.

These facts give rise to the prima facie case made out by the Complainant. The Respondent has not filed a Response or made any other answer to the claims of the Complainant and is in default. Accordingly, the prima facie case has not been rebutted and the Complainant has made out the second of the three elements that it must establish.

C. Registered and Used in Bad Faith

The Complainant must prove on the balance of probabilities both that the disputed domain name was registered in bad faith and that it is being used in bad faith: Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003.

Paragraph 4(b) of the Policy sets out four circumstances, any one of which is evidence of the registration and use of a domain name in bad faith, although other circumstances may also be relied on, as the four circumstances are not exclusive. The four specified circumstances are:
(i) circumstances indicating that the respondent has registered or 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 trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's 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 the respondent's website or location or of a product or service on the site or location.

The Complainant relies on paragraph 4(b)(iv) of the Policy, the creation of confusion with the trademark.

The Panel finds that the Complainant has shown that the Respondent registered and used the disputed domain names in bad faith both in general and in particular because the Respondent's conduct puts the case squarely within paragraph 4(b)(iv) of the Policy and probably within other provisions of paragraph 4(b).

First, the Panel has examined the Screenshots adduced in evidence by the Complainant and agrees with the Complainant that they show the Respondent is using the Complainant's trademark in its domain names and the use the Respondent makes of the domain names by causing them to resolve to the Respondent's websites. The screenshots also that the Respondent is virtually cloning its websites to be a mirror image of the Complainant's official website by illegally using the Complainant's graphics, images, designs, content and logos. The Panel agrees with the Complainant that this is a blatant attempt to deceive the public into thinking that the websites are associated with the Complainant and that it would be legitimate for them to transact business through them.

Secondly, the Panel has no alternative on the evidence but to find that the Respondent is and was at all material times well aware that the Complainant was the owner of the mark DAFABET and that it knew this when it registered the domain names and at all times when it set up its websites and used them in the manner described above. That is so because, as the Complainant submits:
(a) The DAFABET trademark was registered in several jurisdictions;
(b) The DAFABET trademark has acquired a lot of goodwill and notoriety;
(c) Respondent has made illegal use of Complainant's logos, content, images and designs in its websites;and
(d) The Complainant's fame is partly due to its sponsoring several football clubs.

Clearly, these facts show that the Complainant's trademark was so well known that the Respondent knew that it was in effect stealing and using a well known and popular name for its own dishonest purposes and without permission to do so.

Finally, Respondent has been sent a cease and desist letter, but no reply was received and it has persisted in its illegal activities.

The above matters bring the case squarely within paragraph 4(b)(iv) of the UDRP, i.e. "by using the domain name(s), (the Respondent) ... intentionally attempted to attract, for commercial gain, Internet users to (its) 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 (its) web site or location or of a product or service on (its) web site or location".

Accordingly, the Panel finds that within the plain meaning of the Policy, the Respondent registered and used the disputed domain names in bad faith.

Finally, in addition and having regard to the totality of the evidence, the Panel finds that, in view of Respondent's registration of the disputed domain names using the DAFABET trademark and in view of the conduct that Respondent has engaged in when using the disputed domain names, Respondent registered and used them in bad faith within the generally accepted meaning of that expression.

Accordingly, the Complainant has shown the third of the three elements that it must establish.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **DAFABETSG.COM**: Transferred
2. **DAFABETSG1.COM**: Transferred
3. **DAFABETSG2.COM**: Transferred
4. **DAFABETSG3.COM**: Transferred

PANELLISTS

Name	The Hon. Neil Brown, QC

DATE OF PANEL DECISION 2018-09-10

Publish the Decision