Decision for dispute CAC-UDRP-102134

Case number	**CAC-UDRP-102134**
Time of filing	**2018-08-24 09:10:16**
Domain names	**avg.business**

Case administrator

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

Complainant

Organization	**Avast Software s.r.o.**

Complainant representative

Organization	**Rudolf Leška, advokát**

Respondent

Name	**Jon Damer**

OTHER LEGAL PROCEEDINGS

There are no other legal proceedings the Panel is aware of which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several trademark registrations for the term “AVG” since 2006, including international trademark registration no. 930231 “AVG”, EUTM registrations nos. 13174875 and 3893716, as well as U.S. trademark registration no. 3122712.

FACTUAL BACKGROUND

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

The Complainant is a well-known company which distributes antivirus softwares with the brand "AVG", subject of many national and international trademark registrations all over the world. The Complainant has more than 200 million users worldwide.

The Respondent has registered the disputed domain name on on July 19, 2018, which, as of this day, is being used in connection with a parking page containing commercial links related to antivirus softwares.

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

1. IDENTICAL OR CONFUSING SIMILARITY

The Panel finds that the disputed domain name is identical to the trademark “AVG”, since it exactly reproduces such distinctive sign, while the top level domain ".business" can be disregarded in this assessment, as it is understood descriptively, only.

It is a well-established principle that when a domain name wholly incorporates the Complainant's registered mark, the first requirement under the UDRP shall be considered accomplished (see Six Continent Hotels, Inc. v. The Omnicorp, WIPO Case No. 2005-1249 and Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No. D2001-0903).

2. NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

According to the information provided by the Complainant, the Respondent is not affiliated nor authorized by the Complainant in any way. Likewise, the Complainant neither licensed nor authorized the Respondent to make any use of its trademark “AVG”, or to apply for registration of the disputed domain name on behalf of the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent. The Complainant also affirms that the Respondent is not commonly known by the disputed domain name.

It is undeniable that the Complainant is only required to make out a prima facie case that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the Policy.

Given all the above, the Panel accepts the contentions of the Complainant that the Respondent has no such rights or legitimate interests in the disputed domain name.

3. THE DISPUTED DOMAIN NAME HAS BEEN REGISTERED AND IS BEING USED IN BAD FAITH

The Panel finds that the Complainant successfully submitted prima facie evidence that the Respondent has made no use of, or demonstrable preparations to use, neither of the disputed 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.

As a matter of fact, the existence of pay per click advertising on the website is an indication of commercial gain. The Respondent has taken no positive steps, to the knowledge of the Panel, to displace the possible likelihood of confusion through the use of a name corresponding closely to a trademark held by and existing website operated by the Complainant (see, among others, WIPO Case no. D2013-1409).

As indicated in Avast Software s.r.o. v Waseem Shafi, CAC Case no. 101661, the Complainant´s AVG trademark is deemed well-known and highly distinctive. In this regard, it is hard to believe that the Respondent was not aware of the registration and the use of the Complainant´s trademarks before the registration of the disputed domain name, especially considering the Respondent´s explicit references (and the references of its competitors) in the pay per click links of the web page connected with the disputed domain name.

In the absence of a response from the Respondent and given the reputation of the Complainant and its trademarks, the Panel infers that the Respondent had the Complainant's trademarks "AVG" in mind when registering the disputed domain name. Consequently, the Panel believes that the same was registered and is being 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. **AVG.BUSINESS**: Transferred

PANELLISTS

Name	**Tommaso La Scala**

DATE OF PANEL DECISION 2018-09-27

Publish the Decision