Decision for dispute CAC-UDRP-102208

Case number	**CAC-UDRP-102208**
Time of filing	**2018-10-31 11:05:00**
Domain names	**avgsupporttech.com**

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	**Aady Smith**

OTHER LEGAL PROCEEDINGS

None of which the Panel is aware.

IDENTIFICATION OF RIGHTS

The Complainant is entitled to all the right title and interest in a series of trademarks for AVG registered for consultancy in the area of software, including its installation and maintenance. Included in those trademarks is International trademark No. 920231 for AVG, which was registered on February 2, 2007 (“the AVG trademark”). The Complainant's said entitlement arises from the fact that the entitlement was assigned from Avast Software B.V. to the Complainant on May 2, 2018. Avast Software B.V. is the legal successor of the company AVG Netherlands B.V., the former owner of the trademarks. These transactions are documents in evidence provided by the Complainant and examined by the Panel.

FACTUAL BACKGROUND

The Complainant is a Czech company that has been engaged internationally in the provision of antivirus software since 1991.

The Complainant is entitled to all the right title and interest in a series of trademarks for AVG registered for consultancy in the area of software, including its installation and maintenance. Included in those trademarks is International trademark No. 920231 for AVG, which was registered on February 2, 2007 (“the AVG trademark”). The Complainant's said entitlement arises from the fact that the entitlement was assigned from Avast Software B.V. to the Complainant on May 2, 2018. Avast

Software B.V. is the legal successor of the company AVG Netherlands B.V., the former owner of the trademarks. These transactions are documented in evidence provided by the Complainant that have been examined by the Panel.

The Complainant distributes its antivirus software i.a. via its website at www.avg.com where a customer can find product information and directly download the AVG antivirus software. Through this website, the Complainant also provides support to its customers regarding its antivirus products.

The Complainant has been concerned about the registration and use of the disputed domain name by the Respondent. The domain name was registered by the Respondent on September 24, 2017 and resolves to a website that purports to provide paid services concerning the Complainant's antivirus to the Complainant's customers. It offers connection to what are said to be exceedingly qualified and adept technical experts to"perceive and take care of specialized issues with quick impact" and asserts that the experts are available 24/7. It then expresses an invitation to visit the website at www.avg.com.

The Complainant is concerned that the registration and use of the disputed domain name are damaging to the Complainant on the basis that the Respondent is either pretending to be the Complainant or is offering paid services to internet users as a partner or associate of the Complainant, which it is not.

Accordingly, the Complainant has filed this Complaint in which it seeks the transfer of the disputed domain name from the Respondent to itself.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

Language of the proceeding

In accordance with the para. 11 of the Rules, the language of this proceeding should be English. English is also the language of the Registration Agreement which is available at the registrar's website. Furthermore, the website under the disputed domain name <avgsupporttech.com> is in English which indicates that the Respondent targets global audience and prefers communication in English.

The Complainant and its rights

The Complainant has provided its customers with one of the most famous and effective antimalware security suite or antivirus software and has done so since from 1991. The Complainant is well known in the market globally as a reliable company with a long history and as a security pioneer offering a wide range of protection, performance and privacy solutions for customers and businesses.

The Complainant is the owner of, inter alia, the following trademarks all of which are registered for consultancy in the area of software, installation, maintenance of software:

(a)- registered international word mark AVG no. 930231 for goods and services in the classes 9 (software), 37 (repair and maintenance of computer) and 42 (consultancy in the area of software and hardware, installation, updating, renewal and maintenance of computer software), Czech application with designation for AU, JP, KR, NO, SG, TR and by virtue of Article 9sexies of the Madrid Protocol also for CH, CN, HR, ME, RS, UA, with registration date February 2, 2007;

(b) - registered international figurative mark (black and white logo) no. 945555 for goods and services in the classes 9 (software), 16 and 42 (consultancy in the area of software and hardware, installation updating, renewal and maintenance of computer software) Czech application with designation for AU, KR, NO, SG, TR and by virtue of Article 9sexies of the Madrid Protocol also for CH, CN, HR, ME, RS, UA with registration date August 1, 2007;

(c)- registered international figurative mark (color logo) no. 946070 for goods and services in the classes 9 (software), 16 and 42 (consultancy in the area of software and hardware, installation updating, renewal and maintenance of computer software) Czech application with designation for AU, KR, NO, SG, TR and by virtue of Article 9sexies of the Madrid Protocol also for CH, CN, HR, ME, RS, UA with registration date February 2, 2007;

(d) - registered EU word mark AVG no. 013174875 for goods and services in the class 9 (software) and 42 (use of computer software for security) with priority from August 14, 2014;

(e)- registered EU word mark AVG" no. 3893716 for goods and services in the class 9 (software) with priority from July 24, 2006;

(f)- registered EU figurative mark (black and white logo) no. 5484431 for goods and services in the class 9 (software), 16 and 42 (consultancy in the area of software and hardware, installation updating, renewal and maintenance of computer software) with priority from November 20, 2006;

(g)-registered EU figurative mark (black and white logo) no. 3957313 for goods and services in the class 9 (software), 16 and 42 (consultancy in the area of software and hardware, installation updating, renewal and maintenance of computer software) with priority from August 3, 2004;

(h)- registered U.S. word mark no. 3122712 for goods and services in the class 9 (computer software and programs for security protection) with priority from September 14, 2014; and

(i) - registered U.S. figurative mark (black and white logo) no. 3629247 for goods and services in the class 9 (computer software programs for computer antivirus protection) and 42 (technical consultancy in the field of software and computer hardware, computer software installation)

collectively "the Complainant's family of AVG trademarks".

Avast Software B.V. is a legal successor of the company AVG Netherlands B.V. By virtue of law, rights and obligations of AVG Netherlands B.V. passed on its successor. The rights to intellectual property, including the mentioned trademarks, were assigned by Avast Software B.V. to the Complainant by the agreement of May 2, 2018. Therefore, it is not an obstacle to this Complainant that the Complainant has not yet been registered as an owner of the trademarks.

The Complainant distributes its antivirus via its website www.avg.com , which was registered on November 1, 1994. On this website customers can find product information and can directly download AVG antivirus. Through this website, the Complainant also provides support to its customers in case they need any help regarding the antivirus.

This dispute concerns the domain name <avgsupporttech.com> registered by the Respondent on September 24, 2017. It follows that the domain name was registered with the knowledge of all the older above mentioned trademarks of the Complainant. The website under the disputed domain name purports to be used by the Respondent to offer to the Complainant' s customers paid services regarding the Complainant's antivirus software. It is expressly stated on the Respondent´s website as follows: "Frequently customers confront issues while uninstalling/reinstalling and installing AVG antivirus on their separate systems and, in such situations, clients can connect with the exceedingly qualified and adept technical experts who are prepared to perceive and take care of specialized issues with quick impact and our experts are available 24/7… By opting support from our website we may charge you some amount depending on support type and agreement of our terms. For official website, please visit www.avg.com."

The domain name <avgsupporttech.com> is confusingly similar to the Complainant's family of AVG trade and service marks (both statutory and common law) named above; the Respondent has no rights or legitimate interests in respect of the <avgsupporttech.com> domain name and the domain name has been registered and is being used in bad faith.

A. The disputed domain name is confusingly similar to the Complainant´s trademarks

The Word trademark AVG is at the core of Complainant's family of marks. It has no generic meaning in common English or in any other language. The Complainant's trademarks are thus highly distinctive and the AVG trademark is a globally known brand with reputation as the Complainant is among the antivirus software market leaders, according to the respected OPSWAT Report.

Based on a large number of users of the Complainant´s antivirus, it can be assumed that the word AVG is automatically associated with the Complainant by ordinary customers and Internet users.

The disputed domain name is confusingly similar to the Complainant´s registered trademarks.

It is well established that the specific top level of a domain such as ".com", ".org", ".tv" or ".net" does not affect the domain name for the purpose of determining the identity or similarity of domain name and a trademark (Magnum Piercing, Inc. v D. Mudjackers and Garwood S. Wilson, Sr. WIPO Case No. D-2000-1525; Hugo Boss A.G. v. Abilio Castro, WIPO case No. DTV2000-0001; Radale Inc. v. Cass Foster, WIPO case No. DBIZ2002-00148. Carlsberg A/S v. Brand Live television, WIPO case NO. DTV-2008-0003).

The Complainant´s AVG trademark is entirely reproduced in the disputed domain name. From the perspective of the average customer, AVG is the distinctive part in the disputed domain name. It is the first dominant part to which the attention of the public is concentrated. The additional part "supporttech" is descriptive in nature. It consists of two generic terms "support" and "tech" which together means providing technical help to the customers. This phrase is very often used by any producer of products or provider of services in order to repair, maintain, update, install etc. product or service. Therefore, this additional part is not able to change the overall impression of the domain name and does not eliminate the confusing similarity with the trademarks of the Complainant. This is even more so where Complainant itself provides customer support directly on its official website www.avg.com to which the Respondent refers on its website to which the disputed domain name resolves. On the contrary, this makes the confusion more likely as it gives the impression that the website is operated by the Complainant with the intention of providing support to its own customers.

It is well accepted that where the relevant trademark is recognizable within the disputed domain name, the addition of descriptive terms would not prevent a finding of confusing similarity under the first element. Similarly, numerous prior panels have held that the fact that a domain name wholly incorporates a complaint´s registered mark is sufficient to establish identity or confusing similarity for the purposes of the Policy despite the addition of other words to such marks.

On balance, there is high presumption that an ordinary consumer will believe that the disputed domain name is owned by the Complainant or its partner and will give access to the website only due to its misleading character, on the assumption that the support is provided directly by the Complainant or its official partners.

Moreover, the Respondent contributes to the confusion of the public by placing a logo in the shape of the shield using the same colours and in the same order as the Complainant uses in its very famous logo (which is also registered as a figurative trademark) on the main (and only) page presumably in order to abuse this very famous logo in favour of the Respondent.

Thus, there can be no question but that the disputed domain name is confusingly similar to the Complainant´s family of marks AVG for purposes of the Policy and in particular to the AVG trademark.

B. The respondent has no right or legitimate interests in respect of the disputed domain name

No evidence suggests that the Respondent has been commonly known by consumers by the disputed domain name or by its distinctive part AVG included in the disputed domain name before the beginning of this dispute nor ownership of any identical or similar trademark nor use of any identical or similar brand by the Respondent before the registration of the disputed domain name. The Complainant did not grant any license or authorization to the Respondent to register or use the disputed domain name.

Before the dispute the Respondent did not 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 because it did not not provide the trademarked service but used the trademark to bait Internet users and then switch them to its competing service (Nikon, Inc. v Technilab, WIPO Case no. D2000-1774). Moreover, the Respondent does not accurately disclose its relationship with the Complainant (Oki Data Americans, Inc. v. ASD, Inc., WIPO case no. D2001-0903). The Respondent placed the confusing logo (similar to the Complainant´s logo) on the home page of the website with the description “AVG TECH SUPPORT (For complete Antirus Support”” and misleadingly states that the service is provided by the “adept and skilled professionals, guaranteed specialized experts “implying that the service is provided by the official AVG partner or is under the Complainant´s control.

The relationship with the Complainant is only indicated in the disclaimer placed at the very bottom of the pages in small letters stating that: “We are an independent 3rd party tech support service providing company and do not have any affiliation with any brand unless specified. Any use of Trademark, Logo, brand or services is only for references. By opting support from our website we may charge you some amount depending on support type and agreement of our terms. For official website, please visit www.avg.com.” Such disclaimer will barely get into attention of average Internet users. The average Internet user will not notice the disclaimer as it is situated at the bottom of the page. Average Internet user usually do not read and analyse all content of every page before contacting the Respondent and ordering the service. In such a case the existence of the disclaimer cannot by itself cure the lack of bona fide (Thirty & Co. v. Jake Marcum, Marcum Creative, LLC, WIPO Case no. D2016-1212). The disclaimer is not effective as it comes after a full page of marketing where the "AVG" appears many times and is placed below the place where a telephone number to order Respondent's service is depicted (and is not perceptible immediately by the public (Dr. Ing. h.c. F. Porsche AG v. Sabatino Andreoni, WIPO Case No. D2003-0224; Pliva, Inc. v. Eric Kaiser, WIPO Case No. D2003-0316; DRS Number 02801 Parties The Emigration Group Limited v Sanwar Ali). In such a case the existence of the disclaimer cannot by itself cure the lack of bona fide (Thirty & Co. v. Jake Marcum, Marcum Creative, LLC, WIPO Case no. D2016-1212). It is worth pointing out that it is only by unauthorised use of the trademark that the potential customer is brought to the website (containing the disclaimer) in the first place.

Moreover, the use of the misleading logo usually excludes any possibility of bona fide reference to Complainant’s services (in case of bona fide nominative fair use of a trademark, only textual reference is usually acceptable).

Furthermore, bona fide cannot be found in this case as the Respondent misleadingly creates the impression that the services offered on the website are provided by the Complainant by reference to the official website of the Complainant www.avg.com. This directly proves that the Respondent was aware of Complainant´s logo, its website, the trademarks as well as its popularity and good reputation when creating the disputed domain name.

The Respondent was seeking to create a false impression of association with the Complainant, which does not constitute a bona fide offering of goods or services or a legitimate non-commercial or fair use of the disputed domain name (Carrefour v Whois Agent, Whois Privacy Protection Service Inc. / Andres Saavedra, WIPO Case no. D2016-0608).

The Complainant points out the recent case no. 101661 (Avast Software B.V. in the matter of the dispute domain name avgcustomersupport.com) with almost identical facts in which the Panel held that the disputed domain name was registered with intention to obtain financial advantage from the similarity between the disputed domain name and complainant´s trademark as the disputed domain name currently resolves to a commercial website offering services in connection with the complaint´s products and displaying the complainant´s logo as if it was an official website linked to the complainant.

C. The disputed domain name has been registered and is being used in bad faith

There is no indication that the disputed domain name was registered and is used bona fide. The Respondent was clearly aware of the registration and the use of the Complainant´s trademarks before the registration of the domain name as follows from the Respondent´s explicit references on his website to the official Claimant's website, logo and his AVG Antivirus Software (as stated above). Rather than curtail customers´ confusion, the unnoticeable disclaimer at the bottom of the Respondent´s website merely confirms the Respondent´s knowledge and bad faith disregard of Complainant's rights (Thirty & Co. v. Jake Marcum, Marcum Creative, LLC, WIPO Case no. D2016-1212).

Panels have consistently found that the mere registration of a domain name that is confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. As indicated in the case Avast Software s.r.o. v Waseem Shafi CAC case no. 101661, the Complainant´s AVG trademark is deemed well known and highly distinctive.

Furthermore, the disputed domain name is used by the Respondent to reach the Complainant´s customers and offer them the identical or very similar service as is offered by the Complainant on its website and by the Complainant´s official partners. This could suggest (incorrectly) that the Respondent operates as an affiliate or a partner of the Complainant. This is supported by the Respondent´s statement on the website that the service is provided by the "guaranteed specialized experts" in the context of the disputed website and use of the logo which gives the misleading impression that the Respondent is certified by Complainant to provide the service. However, the official partners of the Complainant with the right to provide official support to the customers are clearly specified by the Complainant on its website and the Respondent is not included. The Respondent is not related in any way to the Complainant´s business. The quality of the service provided by the Respondent is not under the Complainant´s control and therefore his service can very easily harm the good reputation built by the Complainant over years.

As indicated on the website to which the disputed domain name resolves, it is used also for the illicit distribution of the Complainant's AVG antivirus: "Get in touch with our team to get the latest version or to get any help regarding update your AVG Anti-Virus". However, the Complainant did not provide an authorization for such distribution of its software protected by the copyright. With regard to the End User License Agreement (the EULA) para. 2.1, the user of the AVG solution may install and use it or to support up to the agreed number of devices. However, in the Agreement the Complainant expressly prohibits any resale or further distribution of the solution branded AVG. Unauthorized distribution of AVG Solution by the Respondent violates the EULA as well as applicable copyright laws.

The Respondent uses the Complainant´s trademark solely for commercial gain misleadingly to divert the Complainant´s consumers and to tarnish the trademarks at issue by creating the likelihood of confusion with the Complainant´s marks. By the exploitation of the Complainant´s trademark the Respondent gains the profit (the service provided under the disputed domain name is paid) and as such causes significant damage to the Complainant.

RESPONDENT:

The Respondent did not file a Response in this proceeding.

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

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 Panel accepts and it finds that the Complainant has rights in all of the trademarks described above and defined as “the Complainant’s family of AVG trademarks" and in particular the registered international word mark AVG no. 930231 for goods and with registration date February 2, 2007 ("the AVG trademark") to which the Panel will address specific comme ts for the purposes of this decision.

The Complainant’s trademark rights arise in the following way. On May 2, 2018 the company Avast Software B.V. became the legal successor to the company AVG Netherlands B.V. Pursuant to that transaction, the rights to intellectual property, including the aforesaid trademarks, were assigned by Avast Software B.V. to the Complainant.These assignments were effected by two Contracts on assignment of intellectual property which are exhibited to the Complaint and which the Panel has examined. On the basis of those and related documents that are also exhibited to the Complaint the Panel finds that the Complainant is entitled to all the right, title and interest in the AVG trademark and the Complainant’s family of AVG trademarks.

The Panel next finds that the disputed domain name is confusingly similar to the AVG trademark and the Complainant’s family of AVG trademarks for the following reasons.

First, the disputed domain name includes the entirety of the AVG trademark and that word is by far the dominant part of the disputed domain name. Accordingly, the attention of the internet user would naturally be drawn to that part of the disputed domain name and would inculcate in the mind of the user the idea that the disputed domain name was an official domain name of the Complainant.

Secondly, the disputed domain name includes the combined word “supporttech.“ This combined word is widely understood to signify technical support or support of a technical nature and in conjunction with the well known AVG brand of anti-virus software it could not possibly be taken by an internet user to mean anything other than technical support for AVG software. This must strengthen in the mind of the internet user the notion that the disputed domain name is an official domain name of AVG and that it is in effect an offer by Complainant to provide technical support for its AVG anti-virus software, which of course must have been the intention of the Respondent.

Thirdly, taken as a whole, the disputed domain name would convey to the objective bystander that it related to the activities of the Complainant and the official provider of AVG anti-virus software and in particular to the provision of technical support for that software.

Internet users would also be encouraged to use the domain name to obtain access to the Respondent’s website because they would assume that it would only be the Complainant itself or an approved partner that would be providing the technical support offered.

As the Complainant rightly submits, the fact that a domain name contains the entirety of a trademark, together with activities related to the goods and services known to be provided under the trademark, makes it very probable that the domain name would be seen as confusingly similar to the trademark in the present case. The Panel so holds.

As the Complainant also rightly submits, this conclusion is affirmed as the Complainant itself provides technical support directly on its official website at www.avg.com and the Respondent refers to this on the website to which the disputed domain name resolves.

It is also now well established that the addition of a generic top level domain, such as “.com”, as in the present case, cannot negate confusing similarity that is otherwise present, as it is in the present case.

Thus, there can be no question but that the disputed domain name is confusingly similar to the AVG trademark and the Complainant´s family of AVG marks and the Panel so finds.

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 name.

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, 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 name.

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

First and most importantly, the evidence shows that the Respondent has in effect stolen the Complainant's AVG and set about methodically to use it illegally by implying that the Complainant's anti-virus software is available, at a price, through the Respondent's website. It is thus pretending that it is the Complainant or that its activities are approved by the Complainant which they clearly are not. It is thus trying to make money by trading on the Complainant's good name and brand. Moreover it actively does more than that to create and continue this brazen deception by including a disclaimer on its website that is virtually useless and by adding to the illusion by citing the Complainant's actual website address, no doubt to give the impression that this is really the Complainant's website. Neither in combination or separately can any of the factors just mentioned possibly give rise to a right or legitimate interest in the domain name.

It follows that, in particular, there is no possible ground for saying that the Respondent used the domain name in connection with a bona fide offering of goods or services; there was nothing bona fide about the Respondent's conduct. The Panel therefore finds that none of the evidence can give rise to a right or legitimate interest in the disputed domain name.

The evidence of the Complainant is also to the effect that the Respondent is not related in any way to the Complainant's business, is not affiliated with the Complainant or authorized by it in any way to use the trademark AVG and does not carry out any activity for, nor has any business with, the Complainant.

It is also clear from the evidence that the Respondent is not commonly known by the disputed domain name under Policy 4(c)(ii).

These facts give rise to the prima facie case made out by the Complainant. Moreover, there are many prior UDRP decisions that support the Complainant's argument that they make out the prima facie case.

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 Panel finds that the Complainant has shown that the Respondent registered and used the disputed domain name 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 also within other provisions of paragraph 4(b).

That is so for the following reasons:

First, it is clear from the evidence that the entire conduct of the Respondent constitutes bad faith. It clearly knew of the Complainant's trademarks, as is seen from the extensive use it made of them. It then concocted a scheme to mislead and deceive internet users into believing that they were dealing with the Complainant or an approved partner of the Complainant. It then offered to sell software it must have known it had no right to sell. It then used a virtually worthless disclaimer and aggravated the pretense of the whole scheme by using the Complainant's own web address. All of this is bad faith on any test.

As to the other specific grounds relied on by the Complainant, the Panel accepts and adopts the arguments advanced in the Complainant's detailed and persuasive case.

As the Complainant argued, there is no indication that the disputed domain name was registered and used in a bona fide manner. The mere registration of a domain name that is confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. That is so in the present case. The disputed domain name has been used by the Respondent to reach the Complainant´s customers and offer them the identical or very similar services as are offered by the Complainant on its website and by the Complainant´s official partners, which falsely implies that the Respondent operates as an affiliate or a partner of the Complainant.

Also, the Respondent is not related in any way to the Complainant´s business. The quality of the service provided by the Respondent is not under the Complainant´s control and therefore its service can very easily harm the good reputation built by the Complainant over the years. As indicated on the Respondent's website, it is used also for the illicit distribution of the Complainant's AVG antivirus as it states: "Get in touch with our team to get the latest version or to get any help regarding update your AVG Anti-Virus". This is bad faith and is also in breach of the Complainant's End User License Agreement.

Finally, the Respondent has used the Complainant´s trademark solely for commercial gain to divert the Complainant´s consumers misleadingly and to tarnish the trademarks at issue by creating the likelihood of confusion with the Complainant ´s marks. By the exploitation of the Complainant´s trademark the Respondent gains the profit from the price paid for the service provided under the disputed domain name, which is a financial loss suffered by the Complainant. As just indicated the Panel accepts all of these arguments advanced by the Complainant and they are all consistent with many prior UDRP decisions.

The result is that it has been shown that the Respondent registered and used the disputed domain name in bad faith.

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. **AVGSUPPORTTECH.COM**: Transferred

PANELLISTS

Name	**The Hon. Neil Brown, QC**

DATE OF PANEL DECISION 2018-11-29

Publish the Decision