Decision for dispute CAC-UDRP-102373

Case number	**CAC-UDRP-102373**
Time of filing	**2019-03-12 13:37:44**
Domain names	**avastsupport.com**

Case administrator

Name	**Šárka Glasslová (Case admin)**

Complainant

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

Complainant representative

Organization	**Rudolf Leška, advokát**

Respondent

Name	**Pham Dinh Nhut**

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 name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several trademark registrations for AVAST (word mark), including the following:

- international registered no. 839439 for goods and services in the classes 9 and 42, including software (Basis German registration with designation for AU - DK - EE - FI - GB - GR - IE - JP - LT - SE – TR - US and by virtue of Article 9sexies of the Madrid Protocol also for the following countries: AT - BG - BX – CH - CN - CY - FR - HU - IT – KZ - LV - PL - RO – RU - SI - SK) with registration date June 22, 2004;

- registered EU no. 010253672 for goods and services in the classes 9, 16, 42 with priority from August 25, 2011.

The Complainant is also the owner of the IR no. 1011270 AVAST! trademark and the US no. 87236956 AVAST figurative trademark, both in class 9, and the domain name <avast.com>.

FACTUAL BACKGROUND

The Complainant is a large security software company using next-gen technologies to fight cyber attacks in real time. The

Complainant is well known on the market globally as a reliable company with a long tradition from 1988. Its popularity on the market is supported by the fact that AVAST software has more than 400 million users.

Furthermore, the Complainant is a legal successor of the company which was earlier named Avast Software s.r.o. (previously Avast Software a.s.). By virtue of law, rights and obligations of the previous Avast Software s.r.o. company passed on its successor – the Complainant.

The Complainant distributes its products i.a. via its website <www.avast.com> where a customer can find product information and can directly download AVAST software. On this official website (under <support.avast.com>) the Complainant also offers customer support relating to AVAST software.

This disputed domain name was created on October 14, 2006 by a third person. However, after its creation the domain name was transferred several times. According to the Domain report prepared by WHOIS the Respondent became holder of the disputed domain name in December 2011.

The Respondent uses the disputed domain name for advertising on a parking page comprised of pay-per-click links. Some links (which are shown after clicking on the content of the website) relate to the Complainant´s antivirus AVAST (some links refer to official website <avast.com>), some refers to competitor's products. As the content of the disputed domain name is changing in time it also contains unrelated links (for example advertisement on flowers, cars etc.).

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:
The Complainant contends that the disputed domain name is confusingly similar to the Complainant's trademark since it incorporates the mark in its entirety with the sole addition of the postfix "support". Support is a descriptive term in the software branch. The generic Top-Level domain suffix ".com" is insufficient to change the overall impression and do not eliminate the confusing similarity with the Complainant's prior trademark.

The Complainant states that "AVAST" is the distinctive part in the disputed domain name. It is the first dominant part to which an attention of the public is concentrated. An additional part "-support" is descriptive in nature meaning providing help to the customers. Therefore, this additional part is not able to change overall impression and does not eliminate the confusing similarity with the older trademarks of the Complainant and this is even more true in a situation where Complainant itself provide customer support under its official website <support.avast.com>. The Complainant argues that quite on the contrary, it would make the confusion more likely as it makes an impression that the contested website is operated by the Complainant with the intention to provide support to its own customers.

Moreover, the Complainant emphasises that the Respondent contributes to the confusion of the public by placing the trademark "AVAST" of the Complainant on the websites available under disputed domain name presumably in order to abuse this very famous trademark in his favour and by illegally offering Complainant's copyrighted software AVAST for download.

The Complainant states that the Respondent has no rights or legitimate interests in respect of the disputed domain name because:

- no evidence suggests that the Respondent has been commonly known within the consumers by the disputed domain name or by the distinctive part "AVAST" included in the disputed domain name before the beginning of this dispute;
- no ownership of any identical or similar trademark nor use of any identical or similar brand by the Respondent before the registration of the contested domain name is shown;
- the Complainant did not grant any license or authorization to register or use the disputed domain name by the Respondent;
- the use of the Complainant's trademark on every page of the disputed website in the absence of Complainant's authorization represents illegal unauthorized conduct of the Respondent.

The Complainant submits that the Respondent registered and used the disputed domain name in bad faith for the following reasons:

- in case the disputed domain name was transferred to third party, it is well established that the date a panel will consider in assessing bad faith is the date on which the current registrant acquired the domain name (WIPO Overview 3.0);
- as summarised in WIPO Overview 3.0, in cases where the domain name registration is masked by a privacy or proxy service and the complainant credibly alleges that a relevant change in registration has occurred, it would be incumbent on the respondent to provide satisfactory evidence of an unbroken chain of registration;
- respondent failure to do so has led panels to infer an attempt to conceal the true underlying registrant following a change in the relevant registration;
- such an attempt may in certain cases form part of a broader scenario whereby application of UDRP paragraph 4(b)(iv), read in light of paragraph 4(a)(ii), can support an inference of bad faith registration for the respondent to rebut;
- 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 AVAST software of the Complainant. Furthermore, the Panel held that the respondent cannot claim rights as a first-served registrant as it ought to have searched for the pre-existence of the Complainant´s trademark before acquiring the disputed domain name (Capitalmatch Pty Ltd v. Registrar Technician, BestRegistrar.Com, WIPO case no. D2015-2165);
- there is no indication that the disputed domain name was registered and is used in bona fide;
- furthermore, the use of a proxy server by the true owner hidden behind the Respondent is markedly corroborate a finding of bad faith(Carrefour v Whois Agent, Whois Privacy Protection Service Inc. / Andres Saavedra, WIPO Case no. D2016-0608).

RESPONDENT:
No administratively compliant Response has been filed. The Respondent did not reply to the Complainant’s contentions.

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.

The language of the Registration Agreement is Vietnamese. However, in view of the circumstances of the case, including the undisputed allegations of the Complainant that the website corresponding to the disputed domain name is entirely in English, and the fact that Respondent has been given a fair chance to object but has not done so, the Panel determines in accordance with paragraph 11(a) of the UDRP Rules that the language of the proceeding be English.

PRINCIPAL REASONS FOR THE DECISION

1. The Panel finds that the disputed domain name is confusingly similar to the Complainant’s word trademark AVAST.

The disputed domain name <avastsupport.com>, as it reproduces the trademark in its entirety, with the mere addition of the

discribing suffix "support" and the generic Top-Level Domain ".com", which is usually disregarded in the assessment of confusing similarity is considered to be confusingly similar to the relevant mark for purposes of the first element.

Prior decisions 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 purposes of the Policy despite the addition of other words to such marks. (e.g. CAC UDRP Case 101760, EAuto, L.L.C. v. EAuto Parts, WIPO Case no. D2000-0096; Caterpillar Inc. v. Off Road Equipment Parts, WIPO Case no. FA0095497).

2. The Panel finds that the Respondent is not affiliated with or authorized by the Complainant in any way. There is no evidence of the fact that the Respondent might have been commonly known by the disputed domain name or by a name corresponding to the disputed domain name. The Panel also notes that the Respondent's use of the disputed domain name in connection with a pay-per-click website with sponsored links expressly referring to the Complainant's trademark and products does not amount to a bona fide offering of goods or services or to a legitimate non-commercial or fair use (Nikon, Inc. v Technilab, WIPO Case no. D2000-1774). Hence, the second element is fulfilled.

3. According to the evidence submitted by the Complainant, which the Respondent has not challenged, the Respondent acquired the disputed domain name after the Complainant established trademark rights over the sign AVAST, based on the trademark registrations cited above and its use of the mark in connection with the Complainant's software since November 2011. In view of the substantial identity of the disputed domain name with the distinctive part of Complainant's trademark AVAST and its domain name <avast.com>, the Panel finds that the Respondent was likely aware of the Complainant's trademark at the time of registration (Capitalmatch Pty Ltd v. Registrar Technician, BestRegistrar.Com, WIPO case no. D2015-2165). The Respondent's registration of a domain name encompassing a well-known trademark also suggests opportunistic bad faith (CAC case no. 101909).
In view of the current use of the disputed domain name described above, the Panel finds that the Respondent intentionally attempted to attract Internet users to its website for commercial gain, by causing a likelihood of confusion with the Complainant's trademark AVAST as to the source, sponsorship, affiliation or endorsement of its website according to paragraph 4(b)(iv) of the Policy.
Moreover, the Respondent's use of a privacy service and the circumstance that it has engaged in a pattern of domain name registrations corresponding to registered trademarks are further circumstances demonstrating the Respondent's bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **AVASTSUPPORT.COM**: Transferred

PANELLISTS

Name	**Dr. jur. Harald von Herget**

DATE OF PANEL DECISION 2019-04-20

Publish the Decision