Decision for dispute CAC-UDRP-102410

Case number	**CAC-UDRP-102410**
Time of filing	**2019-04-08 13:15:51**
Domain names	**bcdafa.com, dafacn5.com, dafavip4.com, dafacn8.com**

Case administrator

Name	**Šárka Glasslová (Case admin)**

Complainant

Organization	**Emphasis Services Limited**

Respondent

Name	**fei zhang**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending or decided legal proceedings relating to the disputed domain names.

IDENTIFICATION OF RIGHTS

The Complainant proved to be the owner of the trademark DAFA, registered in Hong Kong since October 3rd 2011 (reg. no. 302048148), Malaysia since October 28th 2011 (reg. no. 2011019075) and Philippines since October 24th, 2014 (reg. no. 42014505034).

The Complainant also proved to own rights on the trademark D DAFABET (device) through the EU Registration no. 012067138 having effects from August 14th, 2013.

FACTUAL BACKGROUND

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

The Complainant, through its subsidiaries and licensees, is active in the online gaming and betting fields under the brands DAFABET and DAFA.

The Complainant registered its trademark rights on "DAFA" and/or "D DAFABET" in numerous jurisdictions including Malaysia, Philippines, Hong Kong, European Union, United Kingdom, Australia and Israel.

The Complainant also owns and operates several gaming sites under the brand "dafa" and “dafabet” (including dafabet.com, dafabet.co.ke and dafa888.com).

“DAFABET” is a well-known trademark due to sponsorship of various sport clubs and was classified by eGaming Review as one of the most influential e-gaming operators in the world.

The disputed domain names were registered on August 31st, 2017 (dafacn8.com and dafacn5.com) and on August 11th,

2016 (dafavip4.com and bcdafa.com).

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The disputed domain names are confusingly similar to the trademarks owned by the Complainant. The addition of the letters, words and numbers at the start or end of the domain name is not sufficient to exclude the confusing similarity test as the trademark “DAFA” is entirely contained in all disputed domain names.

The Respondent is not connected with the Complainant nor authorized to use/register the trademark “DAFA” as part of a domain name. Furthermore, the Respondent is using the Complainant’s graphics, images, designs, contents and logo and this may get internet users to think that the disputed domain names are affiliated to the Complainant.

Disputed domain names were registered in bad faith as the Respondent was aware of the Complainant’s rights on the trademarks “DAFA” and “DAFABET” due to prior rights, reputation of the trademark and contents of the websites.

The Respondent used the domain names in bad faith as the websites to which the domain names are linked were clones of the Complainant’s website. Furthermore, the Respondent was involved in a recent UDRP case against the Respondent (CAC no. 101053) where the Panelist found that the domain names involved were infringing the Complainant’s trademark rights.

RESPONDENT:

No administratively compliant Response was 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. The disputed domain names are confusingly similar to a trademark in which the Complainant has rights.

The Complainant proved to be the owner of “DAFA” and “DAFABET” trademarks in various jurisdictions. The disputed domain names are all composed by the element “DAFA” combined with words such as “VIP” or numbers and letters (i.e. 4; CN8; CN5; BC).

The trademark “DAFA” is fully recognizable in all the disputed domain names. The addition of numbers, letters or non-

distinctive words is not sufficient to exclude the confusing similarity assessment. According to a consolidated case law in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for the purposes of UDRP standing.

Furthermore, the addition of ".com" is generally disregarded under the first element confusing similarity test in view of its technical function.

As a consequence, the Panelists finds that the disputed domain names are confusingly similar to the Complainant's trademarks, for the purposes of the First Element of the Policy.

2. The Respondent lacks rights or legitimate interests in the disputed domain names.

Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. Once such a prima facie case is made, the Respondent carries the burden of demonstrating its 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.

In this case, the Panelists finds that the Complainant's submitted evidence and allegations are sufficient to establish a prima facie case of Respondent's lack of rights and legitimate interests in the disputed domain names.

According to the information provided by the Complainant and not contested by the Respondent, Mr. Fei Zhang is not commonly known by the domain name nor is he authorized to use or register domain names which include the Complainant's trademark, "DAFA".

Furthermore, <bcdafa.com> (the Complainant did not submit evidence relating to the use of <dafavip4.com>; <dafacn8>; <dafacn5.com>) linked to a website which reproduced the Complainant's trademark and the same look and feel of the Complainant's official website. Such use does not amount to a legitimate noncommercial or fair use for the purposes of the Policy.

In any case, the Respondent failed to reply to the Complainant's assertions and did not explain its possible right or legitimate interest in registering and using the disputed domain names.

For these reasons, the Panelist takes the view that the Respondent lacks rights or legitimate interests in the disputed domain names for the purposes of the Policy.

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

According to the evidence provided by the Complainant, the Respondent was aware of the Complainant's rights on "DAFA" and "DAFABET" at the time of the registration of the disputed domain names.

First, the disputed domain names have been registered well after the Complainant's trademarks which in view of the sponsorships of various premier league football clubs are well known. Furthermore, the Respondent registered 4 domain names containing the DAFA trademark. In the recent past, the Respondent was involved in other domain name's abusive registrations (CAC case no. 101053 involving 18 "DAFA" formative domain names and CAC case no. 102391 involving <dafabetcity.com>). It appears that the Respondent is engaged in a pattern of bad faith conduct with the aim of preventing the trademark holder from reflecting its mark in a domain name. Lastly, the disputed domain name <bcdafa.com> led to a website which reproduced the Complainant's trademark D DAFABET with identical graphic stylizations and the same look and feel of the Complainant's official website.

As regards use in bad faith, the Respondent used <bcdafa.com> in a way that could cause confusion for internet users. As previously stated, the website reproduced the Complainant's trademarks and similar graphics, images, colors and design of

the Complainant's official website. Such use could disrupt the Complainant's business and take unfair advantage of the reputation of DAFA and DAFABET trademarks.

The Complainant did not submit any evidence attesting to the use of the other disputed domain names which are currently inactive. Considering that these domain names are all composed by the Complainant's trademark DAFA and in view of the Respondent's abusive use of <bcdafa.com>, it is hardly conceivable that they were used in good faith. Furthermore, the Respondent had the chance to explain the reason of the registration/use of the disputed domain names in this administrative proceeding or prior the proceeding directly to the Complainant which sent to the Respondent a cease and desist letter but failed to do so.

For these reasons, the Panelist finds the evidence submitted as sufficient to prove use and registration in bad faith for the purposes of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BCDAFA.COM**: Transferred
2. **DAFACN5.COM**: Transferred
3. **DAFAVIP4.COM**: Transferred
4. **DAFACN8.COM**: Transferred

PANELLISTS

Name	**Andrea Mascetti**

DATE OF PANEL DECISION 2019-05-20

Publish the Decision