Decision for dispute CAC-UDRP-102419

Case number	**CAC-UDRP-102419**
Time of filing	**2019-04-08 13:16:59**
Domain names	**df6262.com**

Case administrator

Name	**Šárka Glasslová (Case admin)**

Complainant

Organization	**Emphasis Services Limited**

Respondent

Name	**xiaoyu wang**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any pending or decided legal proceedings which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the registered owner of several trade marks for "DAFA" and graphical representation of "dafabet". The Complainant submitted evidence of the following trade mark registrations:

(i) Hong Kong SAR trade mark registration no. 302048148 for "DAFA", registered on 3 October 2011 in class 41;
(ii) Malaysia trade mark registration no. 2011019075 for "DAFA", registered on 28 October 2011 in class 41;
(iii) Philippines trade mark registration no. 42014505034 for "DAFABET", registered on 24 October 2014 in classes 38 and 41; and
(iii) EU trade mark registration no. 012067138 for "d dafabet", registered on 17 February 2014 in classes 38 and 41.

FACTUAL BACKGROUND

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

The Complainant, Emphasis Service Limited, through its subsidiaries and licensees, operates websites offering online gaming and betting with licenses issued in the Philippines, Curacao, UK, Ireland and Kenya. The Complainant owns and operates several gaming sites under the brand "dafa" (i.e. dafabet.com, dafabet.co.ke and dafa888.com). The Complainant is regarded as a prominent e-gaming operator worldwide (ranked 23rd among most influential e-gaming operators in the world by eGaming Review).

The Complainant has used the name "Dafa" in varying combinations to designate its online gaming and betting offerings and has registered its rights over the brand "Dafa" in Malaysia, Philippines and Hong Kong. The Complainant also has registered its rights over the graphical representation of the brand "Dafabet" in various jurisdictions.

The Complainant's brand "Dafabet" is well-known because of various sponsorships of commercial clubs (Official Main Team

Sponsor of Fulham FC; Official Main Club Sponsor of Celtic FC; Official Betting Partner of Leicester City FC; Official Betting Partner Wales; Official Title Sponsor Masters-Snooker; previously also Fnatic eGaming Team; Aston Villa F.C.; West Bromwich Albion F.C.; Everton F.C.; Burnley F.C.; Blackburn Rovers F.C.; Sunderland F.C.).

The disputed domain name was registered on 10 January 2017.

On 4 April 2019, the Complainant sent a cease and desist letter by email to 0f155605fa6b48e0be3ee11c7715e8db.protect@whoisguard.com (WhoisGuard Protected). On 5 April 2019, the Registrant of the disputed domain name (Namecheap, Inc.) informed the CAC that WhoisGuard Inc. is no longer providing any services to the disputed domain name and provided the current details of the Respondent. The Registrant also confirmed that the language of the registration agreement is English.

The Respondent has not filed a Response.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The Complainant made the following contentions:

With respect to identical or similar domain, the Complainant asserts that the disputed domain is confusingly similar to the brand owned by the Complainant (dafa), except with the deletion of letters but maintaining phonetic similarity with that owned by the Complainant. Further, the Complainant claims that the contents of the domains involved reveal that they are basically clones of the Complainant's website and illegally use the Complainant's graphics, images, designs, content and logos.

Regarding Respondent's rights or legitimate interests, the Complainant argues that the Respondent does not have any legal right to use the name "dafa" as part of its domain name. The Complainant states that the Respondent is not in any way connected with the Complainant nor is it authorized to use the Complainant's intellectual property rights for its operations as a licensee or in any capacity. Further, the Complainant submits that illegal use by the Respondent of the Complainant's graphics, images, designs, content and logos is indicative of the Respondent's intention to deceive users to think that their websites are affiliated with the Complainant.

The Complainant asserts it is the owner of intellectual property rights pertaining to "Dafa" and "Dafabet" due to its registration in various jurisdiction and its usage and notoriety. The Complainant also expressly denies any direct connection with the Respondent and confirms that the Respondent's use of the Complainant's intellectual property in its domain name and website are unauthorized and illegal.

According to the Complainant, the Respondent will not be able to show prior usage, registration or any right to use the mark "Dafa" or "Dafabet" for its website. The Complainant further asserts that the Respondent's illegal usage of the Complainant's logos, images and content on its website amounts to blatant copying and cloning of the Complainant's website in bad faith.

Turning to the bad faith argument, the Complainant makes the following assertions:

• The Respondent is not only using the marks of the Complainant in its domain name, but it has virtually cloned the website by illegally using the Complainant's graphics, images, designs, content and logos. The Complainant argues that this is a blatant attempt to deceive the public in thinking that they are associated with the Complainant and transact business with them.

• The Respondent is well aware that the Complainant is the owner of the mark "Dafa" and "Dafabet" because of registrations in various jurisdictions; goodwill and notoriety of the trademarks; the Respondent's illegal usage of the Complainant's logos, content, images and designs in its website.

• "Dafa" and "Dafabet" designations are not only registered marks in various jurisdictions, but are also well known marks due to sponsorship with well known football clubs, the English Premier League and the World Snooker Championship. The Complainants further submits that the fact the Respondent expressly uses the name "Dafa" on its website supports the finding that the Respondent is aware of the Complainant's rights in the name.

• The Complainant states that the Respondent was sent a cease and desist letter but did not reply and have persisted in their illegal activities.

• The Complainant further claims that the Respondent's bad faith is supported by the fact that this Complaint is the second time that a UDRP case is being filed by the Complainant against the Respondent, noting that in UDRP Case No. 101053, the CAC found for the Complainant against the Respondent involving similar domains containing the same infringing content.

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"), 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 shall 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.

According to Paragraph 4 (a) of the Policy, the Complainant must prove each of the following: (i) the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (ii) the Respondent has no rights or legitimate interests in respect of the domain name; (iii) the domain name has been registered and is being used in bad faith.

A. Identical or confusingly similar domain name

The Complainant demonstrated that it owns various trade mark registrations for the mark "DAFA" as well as "DAFABET". It is well established that nationally or regionally registered trademark confers on its owner sufficient rights to satisfy the requirement of having trademark rights for the purposes of standing to file a UDRP case. Therefore, the Panel finds that the Complainant has established such rights.

It is also well established that the generic top level suffix .com may be disregarded when considering whether a disputed domain name is confusingly similar to a trade mark in which the Complainant has rights.

The disputed domain name is a combination of letters "df" and numbers "6262". Having compared the textual components of the trade mark (dafa) and of the domain name (df), the Panel believes that the trade mark is recognizable in the domain name. Pronunciation of letters "DF" is phonetically similar to the Complainant's "DAFA" trade mark, and it is also visually similar. The Panel believes that, in the context of this case, the letters "D" and "F" bear greater level of distinctiveness than the missing vowels "A" and the missing numbers "6262". Furthermore, the Panel have also taken note of the content of the website associated with the disputed domain name, in particular the fact that the website uses the Complainant's registered trade marks "DAFABET" as well as "DAFA".

The Panel therefore finds that the disputed domain name is confusingly similar to a trade mark or service mark in which the Complainant has rights.

B. Lack of rights or legitimate interests

The Complainant argues that the Respondent does not have any legal right to use the name "dafa" as part of its domain name, and that the Respondent is not in any way connected with the Complainant nor is it authorized to use the Complainant's intellectual property rights for its operations as a licensee or in any capacity. The Complainants submits that illegal use by the Respondent of the Complainant's graphics, images, designs, content and logos is indicative of the Respondent's intention to deceive users to think that their websites are affiliated with the Complainant.

The Respondent has not filed a Response and there is no evidence that the Respondent has used or has been preparing to use the disputed domain name in connection with a bona fide offering of goods or services, or for a legitimate non-commercial or fair use, without intent for commercial gain.

The Panel therefore finds that the Respondent has no rights or legitimate interest in the disputed domain name.

C. Registration and use of the disputed domain name in bad faith

With respect to the bad faith argument, the Complainant states that the Respondent is not only using the marks of the Complainant in its domain name, but it has virtually cloned the website by illegally using the Complainant's graphics, images, designs, content and logos. The Complainant further argues that this is a blatant attempt to deceive the public in thinking that they are associated with the Complainant and transact business with them. According to the Complainant, the Respondent is well aware that the Complainant is the owner of the mark "Dafa" and "Dafabet" because of registrations in various jurisdictions as well as goodwill and notoriety of the trademarks arising from sponsorship of well-known sports clubs and sports events. The Complainants further submits that the fact the Respondent expressly uses the name "DAFA" on its website supports the finding that the Respondent is aware of the Complainant's rights in the name.

It is well established that mere registration of a domain name that is confusingly similar to a widely-known trade mark by an unaffiliated entity can lead to the presumption of bad faith. Furthermore, typical circumstances demonstrating respondent's bad faith include a situation where the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark or its products or services on the respondent's website.

The Panel has found that the domain name is confusingly similar to the Complainant's trade mark "DAFA" which is likely to be widely-known because it is registered/used in numerous countries around the world and because of the Complainant's sponsorship of world-known sports leagues or events, such as the English Premier League and the World Snooker Championship.

Having compared evidence submitted by the Complainant (screenshot of the Complainant's website and screenshot of the website on the domain name), the Panel is satisfied that the Respondent's website not only contains trade marks of the Complainant but also copies or at least mimics the overall appearance, graphic design, images and other elements of the Complainant's website. In absence of the Respondent's Response, there seems no reasonable explanation as to why the Respondent would register and use the disputed domain name other than to intentionally attempt to attract, for commercial

gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's mark and the products and services offered on the Complainant's website, and to make the Respondent's website appear as affiliated with the Complainant.

Therefore, the Panel finds that the disputed domain name has been registered and has been used by the Respondent in bad faith.

The Panel wishes to point out that due to the change of the Respondent during the proceedings, the Panel disregarded the Complainant's argumentation regarding the cease and desist letter because the submitted evidence does not support the finding that the cease and desist letter was addressed or delivered to the Respondent.

The Panel also disregarded the Complainant's argumentation in the detailed explanations part of the Amended Complaint that the "Respondent had appropriated the trademark Dafabet and added a prefix letter before the mark" (including the reference to case law of the WIPO Arbitration and Mediation Center). While this argumentation does not apply to the case at hand, the Panel believes it was mistakenly copied by Complainant from its earlier submission(s) to CAC in similar case(s), and the Panel is satisfied with the Complainant's initial explanations concerning similarity of the domain name with its trade marks "DAFA".

Lastly, the Panel disregarded the Complainant's statement that an earlier UDRP case No. 101053 was filed by the Complainant against the Respondent because based on the contents of the file the Panel could not find any connection between the Respondent and the respondent in CAC case No. 101053.

In conclusion, the Panel finds that all three elements required by Paragraph 4 (a) of the Policy were met and, being consistent with earlier decisions of the CAC No. 101055, 100806, 101066 and 101064, makes the following decision.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **DF6262.COM**: Transferred

PANELLISTS

Name	**Mgr. Vojtěch Chloupek**

DATE OF PANEL DECISION 2019-06-05

Publish the Decision