Decision for dispute CAC-UDRP-102665

Case number	**CAC-UDRP-102665**
Time of filing	**2019-10-04 09:22:29**
Domain names	**avastsupporthelpnumber.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	**prince jain**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of other legal proceedings concerning the disputed domain name which are pending or decided.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of, inter alia, the following trademarks all of which are registered also for software products:
- registered international word mark AVAST! no. 1011270 for goods and services in the classes 9, including software (Czech application with designation for AU - DK - EE - FI - GB - GR - IE - JP - LT - SE - TR and by virtue of Article 9sexies of the Madrid Protocol also for the following countries: AT - BG - BX - CN - CY - DE - FR - HU - IT - LV - PL - PT - RO – RU - SI - SK – VN) with registration date April 15, 2009;
- registered international word mark AVAST no. 839439 for goods and services in the classes 9 and 42, including software (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 word trademark “AVAST” no. 010253672 for goods and services in the classes 9, 16, 42 with priority from August 25, 2011;
- registered US word trademark no. 85378515 for goods and services in the classes 9 with priority from July 22, 2011 and with registration date July 17, 2012;
- registered US figurative trademark no. 87236956 for goods and services in the classes 9, 42 with priority from November 15, 2016 and with registration date September 5, 2017;

- registered international figurative trademark no. 1376117 for goods and services in the classes 9, 42 (US application with designation for CO – DE – FR – IT – MX – RU) with registration date May 10, 2017;
- registered Indian national trademark avast! No. 1827321 for goods in class 9.

FACTUAL BACKGROUND

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

The Complainant (previously Panya International s.r.o.) 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. Therefore, it is not an obstacle to this Complainant that the Complainant has not yet been registered as an owner of Indian national trademark No. 1827321.

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 https://support.avast.com) the Complainant also offers customer support relating to AVAST software.

This dispute concerns the domain name <avastsupporthelpnumber.com> created on July 21, 2018. It follows that the disputed domain name was registered with the knowledge of older above mentioned trademarks of the Complainant. The website under the disputed domain name is supposed to be used by the Respondent to offer paid service concerning the Complainant's AVAST software to the Complainant´s customers. The provided services are specified under the disputed domain name as follows: "It is given below the mentioned list: Installation issue, Uninstallation issue, Scanning and removal of virus, Trojan house and other suspicious threat, The avast antivirus cannot be downloaded, There might be avast activation error message, The performance of your pc will slow down, You are not able to upgrade the latest version, Some other unspecified error and faults."

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

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

Word "AVAST" is at the core of Complainant's family of marks. It has no specific meaning in modern English. Due to long history of the Complainant, large number of the customers and its commercial activities, the Complainant's trademarks are highly distinctive and the AVAST trademark is a globally known brand with reputation selling on the 7th rank among antivirus software globally.

Based on a large number of the users of the Complainant´s solution, it can be assumed that the word "AVAST" is automatically connected with the Complainant by an ordinary customer.

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

"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 parts "-support-" "-help-" and "-number-" are descriptive in nature meaning providing help to the customers over the telephone. These words are 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 parts are 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>.

Moreover, the Respondent contributes to the confusion of the public by placing the trademark "AVAST" and logo of the Complainant on the websites available under disputed domain name and by imitating trade dress of the Complainant (Respondent uses orange colour which is very typical for the Complainant and its AVAST product) presumably in order to

abuse this very famous trademark, logo and Complainant´s good reputation in his favour.

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 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 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 register or use the disputed domain name by the Respondent.

The use of the Complainant’s logo and trademark under the disputed domain name in the absence of Complainant’s authorization represents illegal unauthorized conduct of the Respondent (copyright and trademark infringement).

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 he has not provided the trademarked service but has used the trademark to bait Internet users and then switch them to his competing service.

Respondent intentionally tries to make impression of cooperation with the Complainant. The Respondent placed the Complainant´s trademark (in same cases also logo) on every page of the website and mimics trade dress of the Complainant using orange colour. Furthermore, after description of the service on the main page, the Respondent states official website, telephone number and seat of the Complainant what falsely implies that the service is provided by the Complainant or with its authorization.

The relationship with the Complainant is only indicated in the disclaimer placed at the bottom of the pages in small letters stating that: “We are a third party tech support service provider offering online remote tech support for third party products. Any use of brand names, third party trademarks, products and services is only referential purposes only. Thereby, we disclaim any sponsorship, association or endorsement of or by any third-parties. If your product comes under warranty, the support service is also available free from the manufacturer.“ However, such disclaimer might not be entirely legible for the average Internet users and will barely get into their attention given that it is depicted at the bottom of the website. The average Internet user will not notice the disclaimer as it usually not read and analyse every page before contacting the Respondent and ordering the service.

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 in bona fide. The Respondent was clearly aware of the registration and the use of the Complainant´s trademarks before the registration of the disputed domain name as follows from the Respondent´s explicit references on its website to the Complainant’s trademark, AVAST Antivirus software, logo, official website, telephone number and seat.

Furthermore, the disputed domain name is used by the Respondent to reach the Complainant´s customers and offer them the identical (and therefore competing) 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 “professional team” what in the context of the disputed website and used logo gives misleading impression that the Respondent is certified by Complainant to provide the service. The quality of the service provided by the Respondent is not under the Complainant´s control and therefore such service can very easily harm good reputation built by the Complainant for years. It follows that under the Complainant´s trademark the Responded promotes competitive service and thus intentionally damages the Complainant.

Factors finding in favor of the conclusion that the disputed domain name has been registered and is being used in bad faith

are mainly similarity between the Complainant's official website and the website under the disputed domain name (in particular, use of trade dress of the Complainant), the content of the website, including references to Complainant's trademark, AVAST software, official site, telephone number, seat and reputation of the Complainant which prove clear indication that the Respondent was aware of Complainant, its business and marks .

The Respondent uses the Complainant´s trademark solely for the commercial gain to misleadingly divert the Complainant´s consumers and to tarnish the trademarks at issue by creating the likelihood of confusion with the Complainant´s marks. The circumstances indicate that the Respondent is using the disputed domain name in a way which has confused or is likely to confuse people or business into believing that the domain name is registered to, operated or authorised by, or otherwise connected with the Complainant.

Furthermore, the use of a proxy service by the true owner hidden behind the Respondent is often by itself an indicator of bad faith.

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

According to Paragraph 4(a) of the Policy, a complainant is required to prove each of the following three elements to obtain an order that a domain name should be transferred or cancelled:

(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 has examined the evidence available to it and has come to the following conclusion concerning the satisfaction of the three elements of paragraph 4(a) of the Policy in these proceedings:

RIGHTS

The disputed domain name is confusingly similar to the Complainant's trademarks. This finding is based on the settled practice in evaluating the existence of a likelihood of confusion of:

a) disregarding the top-level suffix in the domain name (i.e. ".com"), and

b) not finding that the addition of a generic word or words or a combination thereof (such as "SUPPORT", "HELP" or NUMBER"), clearly indicating a site offering support for products branded with the distinctive element "AVAST", would be sufficient to distinguish a domain name from a trademark.

Therefore, the Panel comes to the conclusion that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

The onus to make out a prima facie case that the Respondent lacks rights or legitimate interests is placed on the Complainant. However, 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 (see e.g. WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

The Complainant has put forward that the Respondent is not commonly known by the disputed domain name other than for the purpose of registering the disputed domain name. Neither is the Respondent in any way related to the Complainant. Nor has the Respondent been granted an authorization or license to use the disputed domain name by the Complainant. This has not been contested by the Respondent. Instead, the Respondent has failed to provide any information and evidence whatsoever that could have shown that it has relevant rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a) (ii) of the Policy).

The Complainant has further shown that 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).

In the decision in case no. 101661 (Avast Software B.V. in the matter of <avgcustomersupport.com>), 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 that the Complainant´s trademark as the disputed domain name resolved to a commercial website offering services in connection with the Complainant´s products. This domain name was transferred to the Complainant, as was the domain name in case no. 102208 (Avast Software s.r.o. in the matter of <avgsupporttech.com>), and Forum case no. FA1901001823512 regarding the domain name <avg-retail.us>.

The Panel concludes that the Respondent did not establish any right or legitimate interest to the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy). The Complainant has therefore also satisfied the requirement under paragraph 4(a)(ii) of the Policy.

BAD FAITH

The Panel finds that the Complainant has established that the disputed domain name was registered by the Respondent and is being used by the Respondent in bad faith. For this purpose, the Complainant has successfully put forward prima facie evidence that the Respondent has not made use, or demonstrable preparations for use, of either the disputed domain name in connection with a bona fide offering of goods or services, or of making a legitimate non-commercial or fair use of the

disputed domain name. On the contrary, the Respondent is using the Complainant's trademark to generate business for itself in breach of trademark law. The disclaimer provided on the website does not alter this assessment.

The disputed domain name is used by the Respondent to reach the Complainant´s customers and offer them the identical (and therefore competing) service as is offered by the Complainant on its website and by the Complainant´s official partners. This implies 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 "professional team" which in the context of the disputed website and used logo gives the misleading impression that the Respondent is certified by Complainant to provide the service. The quality of the service provided by the Respondent is not under the Complainant´s control and therefore such service can very easily harm good reputation built by the Complainant over the years. It follows that under the Complainant´s trademark the Respondent promotes competitive service and thus intentionally damages the Complainant.

Factors finding in favor of the conclusion that the disputed domain name has been registered and is being used in bad faith are mainly the similarities between the Complainant's official website and the website under the disputed domain name (in particular, use of trade dress of the Complainant), the content of the website, including references to Complainant's trademark, AVAST software, official site, telephone number, seat and reputation of the Complainant which prove clear indication that the Respondent was aware of Complainant, its business and marks (see e.g. CAC Case No. 100837 and CAC Case No. 101022).

The Respondent uses the Complainant´s trademark solely for the commercial gain to misleadingly divert the Complainant´s consumers and to tarnish the trademarks at issue by creating the likelihood of confusion with the Complainant´s marks. The circumstances indicate that the Respondent is using the disputed domain name in a way which has confused or is likely to confuse people or business into believing that the disputed domain name is registered to, operated or authorised by, or otherwise connected with the Complainant.

Furthermore, the use of a proxy service by the true owner hidden behind the Respondent is often by itself an indicator of bad faith.

There is no indication that the disputed domain name was registered and is being used in a bona fide manner. The Respondent must have been aware of the registration and the use of the Complainant´s trademarks before the registration of the disputed domain name as is shown by the Respondent´s explicit references on his website to the official Complainant's website and AVAST trademark. Rather than curtail customers´ confusion, the barely noticeable disclaimer on the Respondent's website merely confirms the Respondent´s knowledge and bad faith disregard of Complainant's rights (see e.g. the decision in WIPO Case no. D2016-1212: Thirty & Co. v. Jake Marcum, Marcum Creative, LLC).

Given the reputation of the Complainant and its trademarks, the Panel must conclude that the Respondent was fully aware of the Complainant's trademarks "AVAST" at the time of registering the disputed domain name <AVASTSUPPORTHELPNUMBER.COM>. Therefore, it has been established to the satisfaction of the Panel that the disputed domain name was registered and is being used in bad faith, in order to prevent the Complainant from making proper use of the mark in the disputed domain name.

Therefore, the Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy). The Complainant has therefore also satisfied the requirement under paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **AVASTSUPPORTHELPNUMBER.COM**: Transferred

PANELLISTS

Name	**Udo Pfleghar**

DATE OF PANEL DECISION 2019-11-12

Publish the Decision