Decision for dispute CAC-UDRP-102796

Case number	**CAC-UDRP-102796**
Time of filing	**2019-12-06 15:50:26**
Domain names	**avgsupportnummers.com**

Case administrator

Name	**Šárka Glasslová (Case admin)**

Complainant

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

Complainant representative

Organization	**Rudolf Leška, advokát**

Respondent

Organization	**AVGSupport**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Claimant relies on inter alia the following registrations of "AVG" as a word mark:
International mark no. 930231 in classes 9, 37 and 42 with registration date 2 February 2007;
EU mark no. 013174875 in classes 9 and 42 with priority date 14 August 2014;
EU mark no. 3893716 in class 9 with priority date 24 July 2006;
US mark no. 3122712 in class 9 with priority date 14 September 2014.

FACTUAL BACKGROUND

The Complainant and its predecessors and/or their affiliates have supplied antivirus software under the mark "AVG" since 1991. The AVG software now has over 200 million users worldwide and has won numerous awards.

The Complainant is the owner of registrations of the mark "AVG" as the assignee of Avast Software BV which is the legal successor of AVG Netherlands BV, although in some cases these transfers have not yet been recorded in the registrations.

The disputed domain name locates a website with German text which purports to promote a service of online technical support for AVG's antivirus tool. Viewers are invited to contact the supplier by telephone.

At the bottom of a fairly long home page there is a copyright notice reading:

"© Copyright AVG Kundendienst. Alle Rechte vorbehalten" ("© Copyright AVG customer service. All rights reserved")

and a disclaimer reading:

"Haftungsausschluss: Wir sind eine dritte Partei Einzelfirma, und wir werden mit keinen anderen dritten Partei-Firmen vereinigt. Wir sind ein vertrauenswürdiger Online-Unterstützungsanbieter und wir bieten auch unsere Dienstleistungen durch Fern-Zugang, telephonisches Gespräch, Live-Chat an und auch AVG bieten wir für die ganze Webpost zusammenhängenden Störschüben an. Wir respektieren auch Warenzeichen, Firmenzeichen, Markennamen, Produkte und Dienstleistungen von anderen Parteien; diese werden nur für Bezugnahme verwendet"

("Disclaimer: We are a third party sole proprietorship and we are not associated with any other third party companies. We are a trustworthy online support provider and we also offer our services through remote access, telephone conversation, live chat and we also offer AVG for all web related disruptions. We also respect trademarks, logos, brand names, products and services from other parties; these are used for reference only")

(translations to English as provided by Google translation tool).

The Complainant and its predecessor have not authorised the Respondent to use the mark "AVG" or to provide a service as purportedly promoted on the Respondent's website.

PARTIES CONTENTIONS

No administratively compliant response has been filed.

RIGHTS

It is clear and not disputed that the Complainant owns registered rights in the word mark "AVG". As the Complainant points out, the disputed domain name consists of this distinctive mark combined with the descriptive terms "support" and "nummers" (which is German for "numbers"). The Panel has no doubt that many Internet users would be likely to assume that the disputed domain name locates a website relating to the Complainant's software.

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

It is not clear whether the Respondent is actually supplying a service of technical support for users of the Complainant's antivirus software and the Panel will assume in the Respondent's favour that it is. On the other hand, it is not disputed that the Complainant has not authorised the Respondent to provide the service or to use its mark in doing so.

In line with the Decision in WIPO Case No. D2001-0903 Oki Data Americas, Inc v ASD, Inc, which has been followed in numerous subsequent decisions of Panels under the Policy, the Panel considers that the supplier of an ancillary service, such as technical support, does not acquire a right or legitimate interest in a domain name incorporating the mark of the supplier of the primary product or service by using it to promote or supply the ancillary service without the latter's authorisation unless at least the following conditions are met:

1. The Respondent is actually offering the goods or services at issue.

2. The Respondent is using the website located by the domain name only to supply a service ancillary to the product or service supplied under the mark in issue.

3. The Respondent's website accurately discloses its relationship with the owner of the mark with sufficient prominence and clarity to avoid confusion.

4. The Respondent must not try to corner the market in related domain names.

As the Complainant points out, the disclaimer at the bottom of the home page of the Respondent's website has very little prominence and even when read it does not make it clear that the service promoted on the website is not provided by the Complainant. An Internet user who has already been led by the disputed domain name to believe that this is a site operated by the Complainant may well understand the disclaimer to be stating that the Complainant is an independent company. The confusion is exacerbated by the copyright notice which implies that the content of the website has been produced by or on behalf of the Complainant.

Accordingly, the Panel considers that the conditions of the Oki Data decision are not met and that the Respondent's use of the disputed domain name does not confer any right or legitimate interest within the meaning of paragraph 4(a)(ii)of the Policy.

There is no other basis on which the Respondent could claim any right or legitimate interest in respect of the disputed domain name or any corresponding name. 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 Panel finds on the undisputed evidence that the Respondent has used the disputed domain name to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the Respondent's website and the services offered through it.

In accordance with paragraph 4(b)(iv) of the Policy this constitutes evidence of the registration and use of the disputed domain name in bad faith. There is no evidence displacing this presumption.

Accordingly, 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

The disputed domain name consists of the Complainant's distinctive registered mark followed by descriptive terms and is clearly confusingly similar to the mark.

The Respondent's website purports to advertise a service of technical support for the Complainant's product but does not disclose the Respondent's lack of relationship with the Complainant with sufficient clarity to avoid confusion. In line with the Oki Data decision the Panel considers that this use does not confer any right or legitimate interest in the domain name and there is no other basis on which the Respondent could claim such right or legitimate interest.

The Respondent has used the disputed domain name to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's mark; paragraph 4(b)(iv) of the Policy applies.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **AVGSUPPORTNUMMERS.COM**: Transferred

PANELLISTS

Name	**Jonathan Turner**

DATE OF PANEL DECISION 2020-01-22

Publish the Decision