

Decision for dispute CAC-UDRP-102848

Case number **CAC-UDRP-102848**

Time of filing **2020-01-06 16:20:48**

Domain names **avk.com**

Case administrator

Name **Šárka Glasslová (Case admin)**

Complainant

Organization **AVK Holding A/S**

Complainant representative

Organization **Plougmann Vingtoft Advokatanpartsselskab**

Respondent

Organization **BEST WEB LIMITED**

Respondent representative

Organization **Muscovitch Law P.C.**

OTHER LEGAL PROCEEDINGS

The Panel has been informed by the both parties, that the Complainant brought a similar complaint related to the same disputed domain name in 2019. The previous complaint (CAC case No. 102513) has been dismissed due the procedural reasons as the Complainant failed to specify the Mutual Jurisdiction. The Panel is not aware of any other proceedings related to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of AVK trademark international registrations (No. 624473A, 624473B and 624473C with the filling date 8 August 1994 and No. 971496A with the filling date 4 April 2008) and the AVK trademark Chinese registration (no. 1191333-7 with the filling date 11 June 1997). The disputed domain name <avk.com> was registered on 5 September 2003 and the Respondent is the owner of a portfolio of other domain names.

PARTIES CONTENTIONS

FACTS ASSERTED BY THE COMPLAINANT:

Key contentions of the Complaint may be summarized as follows:

The Complainant AVK Group is a privately-owned industrial group currently comprising over 100 companies worldwide engaged in developing and producing valves, hydrants and accessories for water and gas distribution, sewage treatment and fire protection. The Complainant has numerous trademark registrations on both AVK <w> and AVK <device> throughout the world, including international registrations 624473A, 624473B, 624473C and 971496A, Chinese registration 1191333-7 and more than 66 additional national trademarks. The Complainant has registered several domain names comprising or consisting of AVK, including <avkvalves.com> which have been registered since 29 April 1998.

The disputed domain name was registered by the Respondent who also operates <bestweb.com> where a huge portfolio of domain names, acquired in stages since 1998, is being offered for rent or sale. The disputed domain name is in this portfolio and an opportunity to submit an offer to either purchase or rent the disputed domain name is provided. The Respondent does not offer any goods or services other than the above-mentioned. The disputed domain name was registered on 5 September 2003 without any activity in October 2003 according to <archive.org> and being offered for sale from November 2003 until approximately middle of 2019.

1. The Complainant submits that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. When the Respondent registered the disputed domain name, the Complainant had already begun using the trademark AVK and had filed several trademark applications for AVK and the Complainant had registered the domain name <avkvalves.com> and begun using it to promote its company. The disputed domain name incorporates the Complainant's AVK trademark in its entirety. AVK is not a generic or descriptive term; it is, however, a valid and distinctive trademark owned by the Complainant and it is identical to the registered and unregistered trademarks owned by the Complainant.
2. Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has not licensed or authorized the Respondent to register or use the disputed domain name, nor is the Respondent affiliated to the Complainant in any form and there is no evidence that the Respondent is known by the disputed domain name or owns any registered trademark including the term AVK or AVK.COM. There is no evidence showing that the Respondent has a history of using, or preparing to use, the disputed domain name in connection with a bona fide offering of goods and services, nor that it is making a legitimate, non-commercial or fair use of the disputed domain name. The disputed domain name might in the perception of the Respondent merely be a 3-letter combination, but in fact it qualifies as a trademark for the Complainant. Parking a domain name or pay-per-click pages does not confer rights or legitimate interests. For the foregoing reasons, the Respondent must be considered as having no rights or legitimate interests in respect of the disputed domain name. As shown above, the Respondent only registered the disputed domain name to resell and/or rent it to third-party and consequently has no legitimate interest in the disputed domain name.
3. The disputed domain name has been registered and is being used in bad faith. It is not necessary to prove both registration and use in bad faith, however, in this particular case, the Respondent's registration and use are clearly in bad faith. The disputed domain name was registered in bad faith. The Respondent is aware that registering domains names, of which there can be only one, is potentially a profitable business as Complainant's are often forced to buy back their apparent identity on the Internet, as follows from the Respondent's website "When you are conducting business on the Internet, your domain name plays a very important role in representing your business. It's very important to have a right domain name for your business." The disputed domain name is being used in bad faith. The only and sole use of the disputed domain name is to promote the sale or rent of the said domain name, and not to offer any bona fide goods or services. This is the text-book definition of use in bad faith, and the entire business model of the Respondent. In this case it has to be noted that "hiding" behind that fact that the Complainant's trademark is merely a 3-letter combination and that other business might be using the same 3-letter combination, does not legitimize the Respondent's claim to the trademark.

FACT ASSERTED BY THE RESPONDENT

Key contentions of the extensive Response may be summarized as follows:

AVK is a very commonly used acronym and in this case “A.V.K.” happens to be the initials of Complainant’s founder. However, the acronym AVK, is by no means singularly associated with Complainant. It is an acronym shared by countless others who adopted AVK as a brand both before and after Respondent registered the disputed domain name, demonstrating that the acronym appeals to both established businesses and to new entrants in the marketplace. The Respondent explicitly mentions 12 national trademark registrations or applications including the term AVK and 11 domain names registered within country-codes as well as the generic top level domains and containing the term AVK. Further, Canadian, US and UK entities with the term AVK within their name are have been noted by the Respondent. It is evident that the Complainant has no monopoly on AVK whatsoever and that there are numerous entities which have adopted AVK as a brand, thereby demonstrating that it has widespread and general appeal and is not solely of value to, or associated with, Complainant.

On or about September 8, 2003, Respondent’s sole shareholder and director, Murat Yikilmaz, a Turkish national and resident, registered the disputed domain name. The previous registrant had let the disputed domain name expire as it was “pending delete” immediately prior to Mr. Yikilmaz’s registration. Once Mr. Yikilmaz subsequently incorporated the Respondent corporation to manage his domain name investments in 2015, Mr. Yikilmaz updated the Whois details for the disputed domain name to reflect his corporation as the registrant.

The sole reason that Respondent registered the disputed domain name was because Respondent is in the business of investing in generic dictionary word and acronym domain names. As openly shown on Respondent’s website <bestweb.com>, Respondent owns dozens of three-letter acronym domain names, acquired both before and after it acquired the disputed domain name. Respondent registered the disputed domain name because such domain names are inherently rare and because it had become available for registration. The Respondent had no awareness of, or intention to target Complainant or its mark. Respondent was aware that virtually all three-letter acronyms (except perhaps the most famous and distinctive of acronyms, such as arguably IBM) are widely used by numerous parties for disparate goods and services and as such no one person has any monopoly on such terms. Registration of such domain names without intent to target a complainant is well supported by the Policy and associated case law.

It cannot be said that the disputed domain name was registered because of the Complainant. Respondent never once ever solicited Complainant. What Respondent did use the disputed domain name for, was as an investment and as part of its stock in trade of valuable and rare three-letter and generic domain names. Respondent previously but no longer, used the disputed domain name for very general advertising, although the revenue from it was paltry, with only € 3.06 being generated in the 12 month period. Respondent consistently used the disputed domain name for non-infringing and advertising of general categories of goods and services. At no time did Respondent ever configure the disputed domain name parking settings to display any advertisements targeting the Complainant.

Over the years, the Respondent received various unsolicited offers to purchase the disputed domain name. Respondent had previously turned down an offer for € 85,000. Several inquiries were made by eBrand Services who is, according to Respondent, connected to the Complainant, and who offered \$10,000 and ultimately \$15,000.00 for the domain name. This offer was countered with USD \$650,000.00, but the purchaser said that figure was “above her budget”.

Complainant claims that Respondent has no rights or legitimate interests in the disputed domain name because “Respondent only registered the disputed domain name to resell and/or rent it to a third party”. However, the Policy requires that the purpose must specifically be “to sell to Complainant or a competitor of Complainant”, not generally, and there is of course, no evidence of registering the disputed domain name to sell to the Complainant or a competitor of Complainant. Indeed, Complainant effectively admits that this is not the case, when it claims that the purpose was to sell to “a third party”, and not to Complainant.

UDRP Panels have ruled in favor of respondents when it comes to domain names corresponding to three-letter acronyms which are widely used, including by domain name investors. Respondent’s legitimate interest arises from Respondent’s business of investing in descriptive terms, and there is no evidence of any intention to register the disputed domain name because of Complainant or its trademarks.

Lastly, the Complainant makes no clear allegation nor provides any evidence of any use of the disputed domain name for infringing advertising. Respondent's prior use of the disputed domain name for general advertising was a lawful use of the disputed domain name constituting a legitimate interest.

The Complainant has failed to make any substantive allegations directed at bad faith registration. There is simply no evidence whatsoever of Respondent registering the disputed domain name because of Complainant. All the evidence points to Respondent registering the disputed domain name because of the inherent value in such three-letter acronyms.

The fact that the subject disputed domain name is composed solely of a common a three-letter acronym weighs heavily against a finding of bad faith registration. There is ample evidence of widespread third-party usage, interest and value in the disputed domain name that is wholly unrelated to Complainant. And there is no evidence provided that the Danish valve and fire hydrant manufacturer had any particular fame anywhere, let alone in Turkey where Respondent resides. It is therefore difficult to believe that the value of the disputed domain name has anything to do with Complainant. The considerable widespread usage of AVK by established and new entrants to the marketplace as amply demonstrated herein, makes it impossible to believe that Complainant was the "target" of the registration.

Complainant has not provided any evidence to contradict the fact that AVK is widely used and adopted by numerous existing and new entrants into the market, despite having had two opportunities to do so. It has not furnished any evidence of its reputation. There is not even an express inference in the case at hand – merely the bald allegations that Complainant has trademark rights and that Respondent sells domain names. Complainant has not provided any evidence of reputation whatsoever.

As the owner of an inherently valuable disputed domain name corresponding to a popular and attractive three-letter acronym, Respondent had every right to offer its disputed domain name for sale to the general public. If a registrant has a legitimate interest in a domain name, and indeed if it is in the business of investing in common three-letter acronyms as Respondent is, the registrant is even entitled to offer its business asset for sale at market price and this is not bad faith. An offer to sell a domain name that a party otherwise has rights to, is not bad faith; rather, it is nothing more than a legitimate effort to sell property properly owned by the party. As the lawful registrant, Respondent has the right to convey rights in the disputed domain name for whatever price it deems appropriate regardless of the value that Complainant or an appraiser may ascribe to the domain name.

Moreover, responding to an offer to purchase is not considered bad faith. Respondent did not solicit Complainant, ever. It was the other way around.

It has long been held that speculating in and trading in generic domain names, including acronyms, can be perfectly permissible under the Policy. That is precisely what Respondent was lawfully engaged in and this constitutes good faith use of the disputed domain name. Ultimately all that Complainant proves is that it is one of many who are or could be interested in a common acronym domain name, and that Complainant wants it for itself for free after failing to have its \$15,000 offer accepted.

Reverse Domain Name Hijacking

The Panel should make a finding that the Complainant has engaged in Reverse Domain Name Hijacking.

Proceedings must not be commenced in a brash and totally unjustifiable attempt to pressure, bully, or intimidate a domain name owner into releasing a legitimately held domain name, particularly where a complainant is sophisticated and represented by able intellectual property counsel and the domain name corresponds to a common acronym. Complainant has used this procedure (twice) to exert undue pressure on the Respondent to sell its disputed domain name at the price Complainant wants.

Complainant's only real gripe is the price Respondent demanded for the disputed domain name. Use of the Policy to increase leverage in negotiations to purchase a domain name, "a highly improper purpose," contradicts the Complainant's undertaking that "the information contained in this Complaint is to the best of Complainant's knowledge complete and accurate, that this Complaint is not being presented for any improper purpose, such as to harass".

Where a complainant has misled the Panel by mischaracterizing its trademark rights as conferring some sort of exclusivity over a common term, along with having made unsupported arguments under the second and third factors of the UDRP Policy, it may be sufficient to show that a complaint was filed in a bad faith attempt to deprive Respondent of a domain name to which it is entitled and Reverse Domain Name Hijacking may be found.

This is a classic “Plan B” case using the Policy after failing in the marketplace to acquire the disputed domain name. Complainant wanted to buy the disputed domain name for \$15,000, and it was only after that didn’t work, that it launched this Complaint, and still wants to negotiate the price while Respondent is under pressure of this second meritless UDRP.

Given Complainant’s misconduct in bringing the first Complaint and then forcing the Panel to dismiss it due to Complainant’s willful noncompliance despite several warnings beforehand, and then bringing this second Complaint without even addressing the issues raised by Respondent the first time around, Complainant’s abuse of the procedure is evidence, as is its intent to use the Policy for a collateral purpose.

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 not, 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 not, 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 Complainants claimed the language of the proceeding should be English as the only available language option on the disputed domain name is English and the “about-page” on the disputed domain name is in English as well, even if the language of the registration agreement is different. According to the registrar verification the language of the registration agreement is English and thus the Panel has not to decide whether it is appropriate to change the language of the proceeding.

The Panel further considered, that this case is the second dispute between the parties related to the same disputed domain name. The first dispute (CAC case No. 102513) was dismissed due to procedural reasons as the Complainant failed to specify the Mutual Jurisdiction. As the merits had not been discussed in the first dispute due to the procedural reasons, the new Complaint is admissible even if the substantial circumstances of the case have not been changed.

The Panel further considered the establishing of the three-member Panel. The Response contained the sentence (in the Panellists Section) "The Complainant selected a three-member Panel in his Complaint" whereas the Complainant requested the case to be decided by a Single Panel. The Case Administrator confirmed that this was an error of the online platform. The Complainant really requested the case to be decided by the single Panel, it was noted in the Response form, but when the Respondent requested the case to be decided by the three-member Panel, it was changed by the online platform and the above mentioned sentence has been included into the Response form. Nevertheless, the three-member Panel has been established on the basis of the Respondent’s request and all relevant fees have been paid by both the Complainant and Respondent.

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

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

- (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.

First of all, the Panel cannot agree with the Complainant that it is not necessary to prove both registration and use in bad faith. UDRP proceedings are based on the three equal elements mentioned above that have to be fulfilled simultaneously. It is therefore necessary not only to prove that the domain name is identical or confusingly similar to a trademark or service mark, but it has to be proved that the respondent has no rights or legitimate interests in respect of the domain name as well and last but not least, that the domain name has been registered and is being used in bad faith.

I. Identical or Confusingly Similar

The Complainant has established the fact that the Complainant has valid rights for the international trademarks No 624473A, 624473B and 624473C AVK, all registered since 1994 and No 971496A AVK registered since 2008, and Chinese trademark AVK registered since 1997.

When a domain name wholly incorporates a complainant's registered trademark, it is generally sufficient to establish identity or confusing similarity for the purposes of the Policy. See *Oki Data Americas, Inc. v. ASD, Inc*, WIPO Case No. D2001-0902.

The only element of the disputed domain name (AVK) fully corresponds to the only word element of all of the above-mentioned Complainant's trademarks, while the generic top-level domain ".com" does not change the overall impression of the designation AVK as being connected to Complainant's trademarks, because gTLDs are only required for functionality of a website. See *Proactiva Medio Ambiente, S.A. v. Proactiva*, WIPO Case No. D 2012-0182.

There is no doubt that the disputed domain name is identical to the Complainant's trademarks and the Respondent acknowledged this in its Response as well. The Panel therefore finds the disputed domain name to be identical to Complainant's AVK trademarks in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

II. Rights or Legitimate Interests

The Complainant contends that the Respondent has no rights nor legitimate interests in the disputed domain name. The Respondent contends that the disputed domain name was registered by the Respondent as a three-letter acronym as are dozens of others of the Respondent's domain names that are inherently rare and which have value for numerous parties.

The disputed domain name (which appears to have been first created on March 12, 1997) was acquired by the Respondent in 2003 from a previous owner and there is no evidence presented by the Complainant to suggest that the disputed domain name was created by the first owner or purchased or acquired by the Respondent with a view of targeting the Complainant or its competitors. Moreover, the Respondent has owned the disputed domain name continuously for at least 16 years. There is also no evidence adduced by the Complainant to prove that the Respondent had acted intentionally with knowledge of the Complainant's trademarks at the time of its acquisition of the disputed domain name from the original owner. The bare allegation that the Complainant registered its trademark(s) before the registration of the disputed domain name does not establish knowledge of such trademark(s) by the Respondent.

The ultimate question is whether the three letter characters in the trademark, AVK, have become so exclusively associated with the Complainant that knowledge can be inferred. While the Complainant has adduced evidence of the nature of its business globally and its reputation, it is not persuasive that the three letter character AVK trademark is especially distinctive such that at the time when the Respondent acquired the disputed domain name, knowledge of the Complainant's trademarks should be inferred. This is particularly so, given the evidence adduced about other registrations of the three letter characters AVK by third parties unrelated to the Complainant either prior to the registration of the Complainant's trademarks or thereafter.

Further, since the creation of the disputed domain name there is no evidence adduced to suggest that the Complainant had challenged the registration of the disputed domain name either against the first owner or the subsequent owner(s), i.e. the Respondent. Given that the Complainant's device mark was registered in 1994, and the word mark AVK was registered in 2008, there is no explanation by the Complainant of the reason for the inordinate delay in challenging the disputed domain name.

The Respondent states that it is in the business of buying and selling domain names, including three letters domain names, which it considers as valuable investments. It is now accepted by UDRP Panels that short strings are "inherently valuable in themselves precisely because they are (a) short and (b) can reflect a wide range of different uses." See *Dynamic Visual Technologies (Pty) Ltd v. Direct Privacy, Savvy Investments, LLC* Privacy ID# 14448338, D2018-0738 (WIPO June 6, 2018) (<dvt.com>).

The Respondent has adduced evidence of the nature of its business and the history of its previous sales of domain names including offers to buy the disputed domain name. The Panel agrees that "sale of domain names for profit is not proscribed by the Policy". See *Advanced Analytical Technologies, Inc. v. Hare, Myles / URL Enterprises Ltd.*, FA161100 1701430 (Forum January 1, 2017) (<aati.com>).

As stated in the WIPO Jurisprudential Overview 3.0 at Section 2.10.2, "for a respondent to have rights or legitimate interests in a domain name comprising an acronym, the respondent's evidence supporting its explanation for its registration (and any use) of the domain name should indicate a credible and legitimate intent which does not capitalize on the reputation and goodwill inherent in the complainant's mark". Also at Section 2.1, the WIPO Jurisprudential Overview 3.0 states as follows: "Over the course of many UDRP cases, panels have acknowledged further grounds which, while not codified in the UDRP as such, would establish respondent rights or legitimate interests in a domain name. For example, generally speaking, panels have accepted that aggregating and holding domain names (usually for resale) consisting of acronyms, dictionary words, or common phrases can be bona fide and is not per se illegitimate under the UDRP".

The Panel concludes, that the Respondent's evidence supports its right or legitimate interest in the disputed domain name as part of its business. The Panel therefore finds that the Respondent has rights and legitimate interests in the disputed domain name and within the meaning of paragraph 4(a)(ii) of the Policy.

III. Registered and Used in Bad Faith

The Complainant must prove under paragraph 4(a)(iii) of the Policy that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy lists four alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent:

"(i) circumstances indicating that respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, respondent has intentionally attempted to attract, for commercial gain, Internet users to respondent's web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of respondent's website or location or of a product or service on respondent's website or location".

The Complainant contends that the disputed domain name was registered in bad faith as the Respondent was aware that registering domain names, of which there can be only one, is potentially a profitable business as complainants are often forced to buy back their apparent identity on the Internet. The Complainant further contends that the disputed domain name was used in bad faith as the only and sole use of the disputed domain name was to promote the sale or rent of the said domain name, and not to offer any bona fide goods or services.

The fact, that the Respondent was aware that registering domains names is potentially a profitable business as complainants are often forced to buy back their apparent identity on the Internet, could hardly be considered bad faith registration. The Panel is convinced that every registrant of domain names knows that domain names are important and are limited due their nature and technical limitations. But there is a long way between such knowledge and the bad faith registration or use of domain names specified by the Policy. If the registration of the domain name identical to the trademark should be considered as bad faith, as the registrant of such domain name knows that the trademark owner is pushed to buy such domain name to protect its trademark, the assessment of the conditions stated in paragraph 4(a)(iii) of the Policy would be redundant. The Policy is based on the fact that even if the domain name is identical to the trademark, bad faith must be proven.

The Policy clearly defines what kind of behavior that could be considered as bad faith. The Complaint refers to particularly paragraph 4(b)(i) of the Policy, which would require the Complainant to prove that the disputed domain name was acquired primarily for the purpose of selling or renting, in this instance to the Complainant, or in other words, that the Complainant was specifically targeted by the Respondent. The Complainant submits in effect that the disputed domain name matches the Complainant's trademark, over which the Complainant asserts considerable exclusivity. However, the Respondent in its evidence and submissions has demonstrated that the acronym AVK is far from being associated exclusively with the Complainant.

The Complainant did not present any evidence that the Respondent made an unsolicited offer to the Complainant or that the Complainant registered or used the disputed domain name for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant or to a specific competitor of the Complainant. The fact that the Respondent responded to third parties' requests with an expected price for the sale of the disputed domain names is not relevant, as paragraph 4(b)(i) of the Policy regulates the infringement of the Complainant's rights and that of no one else.

The Complainant further did not present any evidence that the Respondent has registered the disputed domain name in order to prevent the Complainant from reflecting the mark in a corresponding domain name, as there are dozens of other parties using the common three-letter acronym AVK and the Complainant is not the only or primary user of such designation.

And there has not been presented any evidence that the Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor, nor has intentionally attempted to attract, for commercial gain, Internet users to Respondent's web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark.

The Panel therefore finds that the Complainant has not proved that the disputed domain name has been registered and used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

IV. Reverse Domain Name Hijacking

Paragraph 1 of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") states: "Reverse Domain Name Hijacking means using the Policy in bad faith to attempt to deprive a registered domain-name holder of a domain name." Paragraph 15(e) of the Rules states in part: "If after considering the submissions the Panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the Panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding."

The Complainant attempted to acquire the disputed domain name by using the UDRP proceedings twice, while the first dispute

(CAC case No. 102513) was dismissed due to the non-compliance of the first complaint. However, the Respondent, represented by the counsel, responded to the first complaint and explained why the complaint should be dismissed. Although the Complainant, represented by counsel as well, was informed about the Respondent's arguments and previous UDRP decisions related to the circumstances described in paragraphs 4(a)(ii) and 4(a)(iii) of the Policy, the second Complaint has been brought without addressing the issues raised by Respondent during the first proceeding.

Bringing two UDRP actions 16 years after the registration of the disputed domain name and failing to conform to the simple UDRP requirements within the first proceeding has cost the Respondent substantial sums to be paid for the legal advice of his counsel, when there was very small chance of proving that the Respondent had acted in bad faith and without having any rights or legitimate interests in the disputed domain name (because of the existence of the previous decisions of the UDRP Panels and the lack of the evidence proving the existence of Respondent's bad faith).

The UDRP was intended to serve as an efficient means of redress against cybersquatters, not a cheap alternative to commercial negotiation with legitimate domain name holders. The Panel therefore finds and declare that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding, and accordingly that the Complainant attempted Reverse Domain Name Hijacking within the meaning of the Policy.

The Panel considers that the Complainant has shown that the disputed domain name is identical to trademarks in which the Complainant has rights, but failed to prove that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the disputed domain name has been registered and is being used in bad faith. The Complainants has thus established only the first element of paragraph 4(a) of the Policy and the Complaint should be rejected.

The Panel therefore orders that the disputed domain name remains with the Respondent.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **AVK.COM**: Remaining with the Respondent

PANELLISTS

Name **JUDr. Petr Hostaš, The Hon. Neil Brown, QC, Professor William Lye, OAM QC**

DATE OF PANEL DECISION 2020-02-21

Publish the Decision