

Decision for dispute CAC-UDRP-103911

Case number CAC-UDRP-103911

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Domain names contactavast.com

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization Avast Software s. r. o.

Complainant representative

Name Rudolf Leška

Respondent

Organization aaka infotech inc

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant claims rights on several trademark registrations, such as:

- The registered international word mark AVAST! no. 1011270 for goods and services in the classes 9, including software, protected in several countries and registered on April 15, 2009;
- The registered international word mark AVAST no. 839439 for goods and services in the classes 9 and 42, including software, protected in several countries and registered on June 22, 2004;
- The registered EU word trademark "AVAST" no. 010253672 for goods and services in the classes 9, 16, 42 with priority from August 25, 2011;
- The 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;

- The 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;
 - The registered international figurative trademark no. 1376117 for goods and services in the classes 9, 42 protected in several countries and registered on May 10, 2017;
 - The registered Indian national trademark avast! No. 1827321 for goods in class 9 with priority date June 9, 2009; and
 - The registered UK word trademark "AVAST" no. UK00910253672 for goods and services in the classes 9, 16, 42 with priority from August 25, 2011.
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FACTUAL BACKGROUND

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

The Complainant is Avast Software s.r.o., one of the largest security software companies in the world using next-gen technologies to fight cyber-attacks in real time.

It is well known on the market globally as a reliable company with a long tradition from 1988.

The Complainant is the owner of many trademarks, including International, European, US and Indian trademarks. The AVAST trademark is a globally known brand with reputation selling on the 7th rank among antivirus software globally. AVAST software has more than 400 million users. It has almost 4 million followers on Facebook and over 170,000 followers on Twitter. Its website has been visited by almost 12 million of Internet users in the last 6 months. In 2018, Avast Antivirus won a prestigious award-Product of the Year.

The Complainant is the holder of the domain name <avast.com> created on October 6, 1997. It explains that a customer can find product information and can directly download AVAST Software.

The disputed domain name <contactavast.com> was registered by the Respondent on January 23, 2019.

The website under this domain name offers paid service concerning the Complainant's software to the Complainant's customers. It is expressly stated by the Respondent on its website that: "Yes, it is true that there are different problems associated with Avast Antivirus. Some issues could be easily fixed through some demands the proper interference of Avast support. It is easy to contact Avast customer care number and seek help from the engineers. Avast Customer Service Number: 1-8441-340-9251".

The Respondent reproduced the trademark AVAST and its well-known logo on every page of the website, and used the orange color, which is the color of the complainant's trademark, passing of as the official website of AVAST. Furthermore, the Respondent amended the official logo of the complainant without the Complainant's consent by adding letter "C" before Letter "A" infringing the Complainant's copyright.

The Complainant did not grant any license or authorization to register or use the disputed domain name by the Respondent.

The relationship with the Complainant is only indicated in the disclaimer placed at the very bottom of the pages in small (hardly visible and readable) letters stating that: "contactavast is an independent provider of services for software, hardware, and peripherals. We provide a wide variety of technical solutions for many products. However, we are not affiliated with any 3rd party brand unless otherwise specified. The services we sell may be available directly from your product manufacturer or supplier".

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

Confusing similarity

The Complainant submits that the disputed domain name <contactavast.com> is confusingly similar to its AVAST trademarks.

The Complainant contends that the word "AVAST" has no specific meaning in modern English and that the Complainant's Trademarks are highly distinctive. It also adds that the word "AVAST" is automatically connected with the Complainant by an ordinary customer because of the large number of its software users.

The Complainant also contends that the disputed domain name reproduces the Complainant's AVAST trademark, and that addition of the term "contact-" after the word "Avast" does not reduce the high degree of similarity with the Complainant's trademarks AVAST. It claims that the combination of words "contact" and "Avast" evokes that the disputed domain name serves for contacting the complainant, which constitutes a service also provided by the Complainant, and is therefore undoubtedly confusingly similar. Plus, the Respondent reproduced the Complainant's logo and uses the same color which is the orange.

Right or legitimate interest

The Complainant contends that no evidence suggests that the Respondent has been commonly known by the disputed domain name or by the distinctive part "AVAST" 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 contested domain name.

It asserts that it did not grant any license or authorization to the Respondent and therefore, 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). It added that the Respondent illegally amended the official logo of the Complainant without the its consent by adding letter "C" before letter "A" thus infringing the Complainant's copyright.

The use of the trademark to bait Internet users and then switch them to his competing support service excludes any possibility of bona fide offering of goods or services. Plus, the use of the logo excludes any possibility of bona fide reference to the Complainant's services.

The Complainant contends that the Respondent intentionally tries to make impression of cooperation with the Complainant by placing the Complainant's trademark and logo on every page of the website, which does not constitute a legitimate non-commercial or fair use of the disputed domain name.

It also claims that the indication about the relationship with the Complainant is not 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. Therefore, the disclaimer is not effective.

Bad faith

The Complainant contends that the Respondent was clearly aware of the registration and the use of the Complainant's trademarks before the registration of the domain name as follows from the Respondent's explicit references on its website to the Complainant's trademark, Complainant's official website avast.com, AVAST Antivirus software and logo, which clearly implies that the domain name was registered and is being used in a bad faith.

It asserts that the Complainant's trademark has a considerable exposure and presence in the internet through tents of domains including the word AVAST, such as <Avast.com, Avast.io, avastmobilesecurity.com, avastsupport.com>, and that a simple search on the internet would reveal the presence of the Complainant's trademark and domain names. Therefore, it is not conceivable that the respondent would not have had an actual notice of the complainant's trademark rights at the time of the registration of the disputed domain name.

The Respondent uses the disputed domain name in bad faith by attempting to take advantage of an association with the businesses of complainant and its trademark, and by offering the Complainant's customers the identical service as is offered by the Complainant on its website and by the Complainant's official partners.

Its repetition of the word Avast such as "Avast phone number", "Avast help", "Avast Antivirus support" instead of using its own trade name to differentiate from the complainant's trademark implies its intention to mislead the internet users. It asserts that the use of this domain name gives misleading impression that the Respondent is certified by Complainant to provide the service and that such service can very easily harm good reputation built by the Complainant for years.

RIGHTS

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant has submitted evidence of its prior registered AVAST trademarks which are protected in several countries worldwide.

The disputed domain name entirely incorporates the Complainant's AVAST trademark.

The addition to the AVAST trademark of the word "contact-", which is a descriptive term meaning that this is domain name dedicated to communication with clients or prospects, does not exclude any likelihood of confusing similarity.

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).

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish rights or legitimate interests in the disputed Domain Name by demonstrating any of the following:

- (i) before any notice to it of the dispute, the Respondent's use of, or demonstrable preparations to 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; or
- (ii) the Respondent has been commonly known by the disputed domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain, to misleadingly divert consumers, or to tarnish the trademark or service mark at issue.

The Respondent did not respond to the Complaint to rebut Complainant's prima facie case. Consequently, it did not provide any evidence or allege any circumstance to establish that it has rights or legitimate interests in the disputed domain name.

The Respondent is not related in any way with the Complainant nor has ever been authorized by the Complainant to use the AVAST trademark to register the disputed domain name.

There is no indication that the Respondent is commonly known by the term “AVAST”, or that the Respondent is using the disputed domain name in connection with a bona fide offering of goods or services. There is also no indication that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain, to misleadingly divert consumers, or to tarnish the trademark or service mark at issue.

In the circumstances of this case, the Panel finds that the Complainant has established a prima facie case of the Respondent’s lack of rights or legitimate interests in relation to the disputed domain name, which the Respondent has not rebutted.

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).

Paragraph 4(b) of the Policy sets out examples of circumstances that will be considered by a Panel to be evidence of bad faith registration and use of the disputed domain name.

It provides that:

“For the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a Domain Name in bad faith:

- (i) circumstances indicating that the Respondent has registered or the respondent has 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 the respondent’s documented out-of-pocket costs directly related to the Domain Name; or
- (ii) the 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) the Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to your website 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 the respondent’s website or location or of a product or service on the respondent’s website or location.”

The Respondent started using the Complainant’s trademarks in January 23, 2019, which means years after the Complainant obtained its trademark registrations.

Given the Complainant’s long established and widespread use of its AVAST trademark in several countries of the world, its worldwide reputation in the sector of software, its reputation selling on the 7th rank among antivirus software globally, its presence on the Internet through its own websites such as www.avast.com, www.avast.io, www.avastmobilesecurity.com, www.avastsupport.com, and its 4 million followers on Facebook and over 170,000 followers on Twitter, the Panel finds that the Respondent was well aware of the worldwide well-known AVAST trademark when it registered the disputed domain name.

The Respondent’s website is dedicated to the AVAST Antivirus software. It reproduces the Complainant’s trademark and

logo, uses the orange color of the Complainant.

The Respondent uses the disputed domain name to take advantage of an association with the Complainant, offering the Complainant's customers a service which is the same as the service offered by the Complainant on its website and by the Complainant's official partners.

Given the circumstances of the case

Its repetition of the word Avast such as "Avast phone number", "Avast help", "Avast Antivirus support" instead of using its own trade name to differentiate from the complainant's trademark implies its intention to mislead the internet users.

The Panel finds that, according to Par. 4(b) (iv) of the Policy "by using the Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to your website 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 the respondent's website or location or of a product or service on the respondent's website or location."

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 incorporates the worldwide well-known AVAST trademark.

The addition of the descriptive term "contact -" does not avoid any likelihood of confusion.

It has been used to offer the AVAST's customers a service which is identical to the service offered by the Complainant on its website.

The Complainant has established a prima facie case of the Respondent's lack of rights or legitimate interests in relation to the disputed domain name, which the Respondent has not rebutted.

The Respondent was well aware of the AVAST trademark when it registered the disputed domain name, to take advantage of AVAST trademark.

Its use of the disputed domain name to give access to a page imitating the official AVAST website is a bad faith use, according to Par. 4(b) (iv) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. CONTACTAVAST.COM: Transferred

PANELLISTS

Name	Marie-Emmanuelle Haas, Avocat
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DATE OF PANEL DECISION 2021-07-28

Publish the Decision
