Decision for dispute CAC-UDRP-101059

Case number	CAC-UDRP-101059
Time of filing	2016-05-04 10:02:53
Domain names	dafa71888.com, dafa31888.com, dafa41888.com, dafa51888.com, dafa61888.com, dafa81888.com, dafa91888.com

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	Emphasis Services Limited

Respondent

Organization	yangqijie

OTHER LEGAL PROCEEDINGS

There are no other proceedings the Panel is aware of.

IDENTIFICATION OF RIGHTS

The Complainant relies on its registered national marks in Hong Kong (No. 302048148) and Malaysia (No.2011019075) for the word marks “Dafa” in class 41 for Casino services and its EU TM (No. 12067138) for a logo mark with a word element “Dafa” also in Class 41 for Casino services. It also relies on its common law rights arising from use in the UK and Asia and elsewhere.

FACTUAL BACKGROUND

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

The Complainant, through its subsidiaries and licensees, operates websites offering online gaming and betting with licenses issued in the Philippines, Isle of Man and the United Kingdom.

The Complainant owns and operates several gaming sites under the brand “Dafa” (i.e. dafabet.com & dafa888.com).

The Complainant has, for 13 years, used the name “Dafa” in varying combinations to designate its online gaming and betting offerings.

The Complainant has registered its rights over the brand “Dafa” in Malaysia and Hong Kong and has likewise secured an EU TM registration for the name and graphic representation (logo) for “Dafabet”.

“Dafabet” is a well-known mark and is currently the Official Main Club Sponsor for the Sunderland and Blackburn Rovers Football Clubs, Official International Betting Partners for Everton and Celtic Football Clubs (where the “Dafabet” mark and logo are prominently displayed). Further, “Dafabet” has also sponsored high level sporting events such as the World Snooker

Championship among others.

“Dafabet” was recently named by eGaming Review as 21st among the 50 most influential e-gaming operators in the world.

Respondent was sent a cease and desist letter by the Complainant but did not respond or desist.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

Identical or Confusingly Similar
The Respondent’s disputed domain names are confusingly similar to the “Dafa” mark owned by the Complainant. Essentially, Respondent has appropriated the trademark “Dafa” and added numbers after the mark. In Nintendo of America, Inc. vs. Garett N. Holland et al (WIPO Case No. D2000-1483) held that a user of a mark may not avoid likely confusion by appropriating another’s entire mark and adding descriptive or non-distinctive matter to it. It further added that a domain may be deemed as identical or similar if it incorporates the primary, distinctive element of the trademark. In this case, the Respondent copied the whole mark of “Dafa” and merely added numbers.

Rights or Legitimate Interests
The Complainant denies any connection with Respondent and says the Respondent’s use of the Complainant’s intellectual property in its domain names and on its website are unauthorized and illegal and infringing. The Respondent cannot show prior usage or any right or licence to use the mark “Dafa.”

Bad Faith
The Respondent’s infringing use of the Complainant’s intellectual property on its website is revealing as to its intention in using the Complainant’s mark “Dafa” in its domain name. The Respondent is making it appear that its and its gaming websites are affiliated with the Complainant by not only using the “Dafa” mark in its domain, but also making the website appear as that of Complainant.

The criteria for the determination of usage of domain name in bad faith is set forth in the Policy, paragraph 4(b)(iv) of which states:
“(iv) by using the domain name, (Respondent) ha(s) 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) web site or location or of a product or service on (Respondent’s) web site or location.”

The Respondent is clearly well aware that the Complainant is the owner of the mark “Dafa” because it has notice from the trade mark registrations in various jurisdictions and the international goodwill and repute of the trademarks.

Bad faith is most clearly demonstrated by the Respondent’s infringing use of the Complainant’s logo on its website. This is a blatant to attempt to deceive the public into thinking that the sites are associated with the Complainant and leverage that to transact business with them. It certainly negates any claim to innocence.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Names are 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 Domain Names (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the Domain Names have been registered and are 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 straightforward case of Bad Faith registration and use. No rights or legitimate interests are engaged and if the Respondent had any answer to the Complaint, we would have expected that it would have come forward with it. We can and do draw adverse inferences from its silence.

The Complainant's trademarks had been registered before the registration of the disputed domain names. In that regard, it should be noted that all the disputed domain names do incorporate the Complainant's mark "Dafa" merely adding numbers to it. Therefore, the Panel has finds the disputed domain names are confusingly similar to the trademarks in which the Complainant has rights, based on a visual and aural comparison of the disputed domain names and the Complainant's trademark.

The Complainant's assertions that the Respondent is not commonly known by the disputed domain name and is not affiliated with nor authorised by the Complainant are sufficient to constitute a prima facie showing of absence of rights or legitimate interest in the disputed domain name on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show by concrete evidence that it does have rights or legitimate interests in that name. The Respondent has made no attempt to do so. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

Finally, there is a strong consumer protection issue in this case given the Complainant has gaming licenses and is regulated and the Respondent is attempting to leverage that reputation with the gaming public. The risk is that the online gaming consumer may engage in financial transactions with the Respondent and provide personal financial data and funds to the Respondent. Given the reputation of the Complainant as well as content of the disputed domain names, the Panel finds the Respondent has registered and been using the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **DAFA71888.COM**: Transferred
2. **DAFA31888.COM**: Transferred
3. **DAFA41888.COM**: Transferred
4. **DAFA51888.COM**: Transferred
5. **DAFA61888.COM**: Transferred
6. **DAFA81888.COM**: Transferred
7. **DAFA91888.COM**: Transferred

PANELLISTS

Name	**Victoria McEvedy**

DATE OF PANEL DECISION 2016-06-08

DATE OF PANEL DECISION

Publish the Decision