# Decision for dispute CAC-UDRP-104347

| | |
|---|---|
| Case number | **CAC-UDRP-104347** |
| Time of filing | **2022-02-10 09:29:09** |
| Domain names | **zadig-etvoltaire.com** |

## Case administrator

| | |
|---|---|
| Organization | **Iveta Špiclová (Czech Arbitration Court) (Case admin)** |

## Complainant

| | |
|---|---|
| Organization | **Z&V** |

Complainant representative

| | |
|---|---|
| Organization | **NAMESHIELD S.A.S.** |

## Respondent

| | |
|---|---|
| Organization | **Above.com Domain Privacy** |

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 has supplied evidence that it is the owner of the international trade mark registration No. 907298 "ZADIG & VOLTAIRE", registered on 15 September 2006 (hereinafter referred to as the "Trade Mark").

FACTUAL BACKGROUND

Founded in 1997, the Complainant is a French company in the fashion industry, notably ready-to-wear fashion, accessories and perfume.

The Complainant's official domain name <zadig-et-voltaire.com> was registered and has been used for its official website since 16 May 2002.

The disputed domain name <zadig-etvoltaire.com> was registered on 2 February 2022 through a privacy registration service and is used to point to a parking page with pay-per-click (PPC) links related to the Complainant's activities.

The Respondent did not respond to the Complaint.

## Parties' Contentions

### Complainant

#### Identical or confusingly similar

The Complainant evidences the trade mark rights listed in the "Identification of Rights" section above. The Complainant submits that the disputed domain name is confusingly similar to its Trade Mark. The Complainant further contends that the substitution of the ampersand in the Trade Mark by the term “ET”, meaning “AND”, does not prevent the likelihood of confusion between the disputed domain name and its Trade Mark. As such, the Complainant argues that the disputed domain name contains an obvious misspelling of its Trade Mark.

#### No rights or legitimate interests

The Complainant underlines that a complainant is required to make out a prima facie case that a respondent lacks rights or legitimate interests and the burden of proof then shifts to the respondent to rebut the complainant’s prima facie case.

The Complainant submits that the Respondent is not commonly known by the disputed domain name as the registrant information in the WHOIS database is not similar to the disputed domain name.

The Complainant further highlights that the Respondent has no rights or legitimate interests in respect of the disputed domain name as it is not related in any way to the Complainant, nor is it licensed or authorised by the Complainant to make any use of its ZADIG & VOLTAIRE Trade Mark.

Finally, since the disputed domain name is used to point to a parking page with commercial links, the Complainant contends that such use cannot be considered as a bona fide offering of goods or services, nor can it constitute legitimate non-commercial or fair use.

#### Registered and used in bad faith

As far as registration in bad faith is concerned, the Complainant argues that the Respondent should have known of its ZADIG & VOLTAIRE Trade Mark at the time of registration of the disputed domain name, notably given the distinctiveness and reputation of the Complainant's Trade Mark.

The Complainant submits that the Respondent registered the disputed domain name <zadig-etvoltaire.com> as a misspelling of the Complainant’s Trade Mark ZADIG & VOLTAIRE and that such misspelling was intentionally designed to be confusingly similar to the Complainant’s Trade Mark.

With regard to use in bad faith, the Complainant contends that the Respondent's use of the disputed domain name to point to a parking page with commercial links highlights the Respondent's attempt to attract Internet users to its website for its own commercial gain.

### Respondent

The Respondent did not respond to the Complaint.

The Complainant has shown, to the satisfaction of the Panel, that the disputed domain name is confusingly similar to a trade 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 shown, to the satisfaction of the Panel, that the Respondent has 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 shown, to the satisfaction of the Panel, that 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

Paragraph 15 of the Rules states that the Panel shall decide a Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law deemed applicable.

In the case of default by a Party, Rule 14 states that if a Party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under the Rules, the Panel shall draw such inferences therefrom as appropriate.

In this case the Respondent has not submitted any Response and consequently has not contested any of the contentions made by the Complainant. The Panel is therefore obliged to make its decision on the basis of the factual statements contained in the Complaint and the documents made available by the Complainant to support its contentions.

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following for a panel to order a transfer of the domain name at issue:

(i) the domain name registered by the respondent is identical or confusingly similar to a trade mark or service mark in which Complainant has rights; and

(ii) the respondent has no rights or legitimate interests in the domain name; and

(iii) the domain name has been registered and is being used in bad faith.

Taking each of these issues in turn, the Panel decides as follows:

A. Identical or Confusingly Similar

Based on the evidence put forward by the Complainant, the Panel finds that the Complainant has trade mark rights in the term ZADIG & VOLTAIRE.

The Panel notes that the disputed domain name reproduces the two dominant textual elements of the Complainant's Trade Mark: "ZADIG" and "VOLTAIRE". The substitution of the ampersand by the term “ET”, meaning “AND” in French, does not prevent the likelihood of confusion between the disputed domain name and the Complainant's Trade Mark. In addition, the hyphen is, in the present context, insufficient to distinguish the disputed domain name from the Complainant's Trade Mark.

In addition, it is widely accepted that the .COM generic Top-Level Domain (gTLD) is generally irrelevant for the purpose of

assessing identity or confusing similarity between a trade mark and a domain name.

On the basis of these considerations, the Panel finds that the disputed domain name is confusingly similar to a trade mark in which the Complainant has rights, in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The second element that the Complainant must prove is that the Respondent has no rights or legitimate interests in respect of the disputed domain name in accordance with paragraph 4(a)(ii) of the Policy.

Paragraph 4(c) of the Policy sets out various ways in which a respondent may demonstrate rights or legitimate interests in the domain name at issue, as follows:

"Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):

(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trade mark or service mark rights; or

(iii) you are making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue."

The Panel has considered the evidence put forward by the Complainant and is of the view that the Complainant has presented a prima facie showing of the Respondent's lack of rights or legitimate interests in the disputed domain name. As a result of its default, the Respondent has failed to rebut that showing.

The fact that the disputed domain name is used to point to a parking page with PPC links targeting the Complainant's activities cannot be considered a bona fide offering of goods and services within the meaning of paragraph 4(c)(i) of the Policy.

Likewise, such use of the disputed domain name cannot constitute a legitimate non-commercial or fair use within the meaning of paragraph 4(c)(iii) as it demonstrates that the Respondent is seeking to unfairly exploit the Complainant's reputation and goodwill for its own profit.

Finally, no evidence has been supplied that the Respondent is commonly known by the disputed domain name, as per paragraph 4(c)(ii).

Given the above, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name and that paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

The third element that the Complainant must prove on the balance of probabilities is that the disputed domain name has been registered and is being used in bad faith (Policy, paragraph 4(a)(iii)).

Paragraph 4(b) of the Policy sets out various non-exhaustive circumstances that may be treated by the Panel as evidence of the registration and use of a domain name in bad faith, as follows:

"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 you have registered or you have 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 trade mark 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) you have registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

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

(iv) by using the domain name, you have 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 your website or location or of a product or service on your website or location."

Given the distinctiveness of the ZADIG & VOLTAIRE Trade Mark, it would be inconceivable for the Respondent to argue that it did not have knowledge of the Complainant's rights at the time of registration of the disputed domain name, particularly as the Complainant's trade mark rights significantly predate the registration date of the disputed domain name. The fact that the disputed domain name is used to point to a parking page with PPC links related to the Complainant's activities also constitutes a strong indication of the Respondent's prior knowledge of the Complainant. There appears no reason why the Respondent would register the disputed domain name other than to create a likelihood of confusion with the Complainant and its Trade Mark. The Panel therefore finds that the disputed domain name was registered in bad faith.

In addition, the fact that the Respondent has deliberately chosen to conceal its identity by means of a privacy registration service is another indication of the Respondent's intent to use the disputed domain name in a way which may be abusive or otherwise detrimental to the Complainant and its rights.

Turning to use in bad faith, it is clear that the disputed domain name was used in bad faith by the Respondent to intentionally attract, for commercial gain, internet users to its website by creating a likelihood of confusion with the Complainant's Trade Mark as to the source, sponsorship, affiliation or endorsement of its website, in accordance with paragraph 4(b)(iv).

The Panel therefore finds that the disputed domain name was registered and is being used in bad faith and that paragraph 4(a)(iii) of the Policy is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ZADIG-ETVOLTAIRE.COM**: Transferred

## PANELLISTS

| | |
|---|---|
| Name | **Jane Seager** |

DATE OF PANEL DECISION 2022-03-25