

Decision for dispute CAC-UDRP-105243

Case number	CAC-UDRP-105243
Time of filing	2023-03-01 10:25:26
Domain names	newzadigvoltaire.com

Case administrator

Name	Olga Dvořáková (Case admin)
------	-----------------------------

Complainant

Organization	Z&V
--------------	-----

Complainant representative

Organization	NAMESHIELD S.A.S.
--------------	-------------------

Respondent

Organization	GNN
--------------	-----

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 owns - among others - the following trademarks:

- EUTM ZADIG & VOLTAIRE® n°005014171 registered since March 17, 2006;
- International trademark ZADIG & VOLTAIRE® n°907298 registered on September 15, 2006.

In addition, the Complainant also owns the domain name <zadig-et-voltaire.com> since 2002.

FACTUAL BACKGROUND

The Complainant is a renown French company operating under the brand ZADIG & VOLTAIRE in the fashion industry since 1997.

The disputed domain name <newzadigvoltaire.com> was registered on February 17, 2023 and it currently redirects internet users to an online store bearing the ZADIG & VOLTAIRE trademark and selling apparel denoted by such brand.

PARTIES CONTENTIONS

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

No administratively compliant Response has been filed.

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, 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).

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 IS IDENTICAL OR CONFUSINGLY SIMILAR TO THE COMPLAINANT'S TRADEMARK

The Panel finds that the disputed domain name <newzadigvoltaire.com> is confusingly similar to the trademark ZADIG & VOLTAIRE and to the relative domain name registered by the Complainant, which has proven to have prior rights since early '00.

In particular, the Panel agrees that <newzadigvoltaire.com> is almost identical to ZADIG & VOLTAIRE, as the only difference is the absence of the ampersand, a circumstance which - according to relevant case-law - does not eliminate the likelihood of confusion with the earlier trademark (see Forum Case No. FA 1764056, Deutsche Lufthansa AG v. Milen Radumilo).

THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

According to the information provided by the Complainant, the Respondent is not affiliated nor authorized by the Complainant in any way. Likewise, the Complainant neither licensed nor authorized the Respondent to make any use of its trademark ZADIG & VOLTAIRE, or to apply for registration of the disputed domain name on behalf of the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent.

It is undeniable that Complainant is only required to make out a prima facie case that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. Once such prima facie case is made, respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a) (ii) of the Policy.

Given all the above and taken into account the fact that the Respondent did not provide any response within the present proceeding, the Panel accepts the contentions of the Complainant that the Respondent has no such rights or legitimate interests in the disputed domain name.

THE DISPUTED DOMAIN NAME HAS BEEN REGISTERED AND IS BEING USED IN BAD FAITH

The Panel finds that the Complainant successfully submitted prima facie evidence that the Respondent has made no use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services, nor is making a legitimate non-commercial or fair use of the disputed domain name. This prima facie evidence was not challenged by the Respondent.

It is widely known that - in some cases - panelists have recognized that resellers, distributors, or service providers using a domain name containing the complainant's trademark to undertake sales or repairs related to the complainant's goods or services may be making a bona fide offering of goods and services and thus have a legitimate interest in such domain name.

However, one of the cumulative requirements of the "Oki Data test" cannot be found in the present case, since the site connected with <newzadigvoltaire.com> definitely does not "accurately and prominently disclose the registrant's relationship with the trademark holder".

Taking into account the distinctiveness of the Complainant's trademark and its reputation in the fashion business, it is hard not to believe that the Respondent has registered the domain name with full knowledge of the Complainant's trademark ZADIG & VOLTAIRE.

Given also the absence of a Response from the Respondent, the Panel infers that the disputed domain name was registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **newzadigvoltaire.com**: Transferred

PANELLISTS

Name	Tommaso La Scala
------	-------------------------

DATE OF PANEL DECISION **2023-03-28**

Publish the Decision
