

Decision for dispute CAC-UDRP-105608

Case number **CAC-UDRP-105608**

Time of filing **2023-07-10 08:59:40**

Domain names **zadigetvoltaire.com**

Case administrator

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

Complainant

Organization **Z&V**

Complainant representative

Organization **NAMESHIELD S.A.S.**

Respondent

Name **Eldon Adams**

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 is the registered owner of European trademark ZADIG & VOLTAIRE, reg. no. 005014171, registered on 8 June 2007 for goods and services in class 3 ("Complainant's Trademark").

The disputed domain name <zadigetvoltaire.com> was registered on 27 June 2023.

FACTUAL BACKGROUND

As the Respondent did not file any response to the complaint, the Panel took into account the following facts asserted by the Complainant (and supported by the documentary evidence submitted by the Complainant) and unchallenged by the Respondent:

(a) Z&V (the Complainant), using the trading name ZADIG & VOLTAIRE, is a French company in the fashion industry. Established in 1997 by Thierry Gillier, the brand ZADIG & VOLTAIRE stands for ready-to-wear fashion, accessories and perfumes;

(b) The Complainant is the owner of the Complainant's Trademark and also owns an important domain names portfolio, including the same distinctive wording ZADIG & VOLTAIRE®, such as the domain name <zadig-et-voltaire.com> registered and used for its official website since 16 May 2002;

- (c) The disputed domain name was registered on 27 June 2023;
- (d) Under the disputed domain name there is just an inactive page.

The Complainant seeks transfer of the disputed domain name to the Complainant.

PARTIES CONTENTIONS

In addition to the above factual assertions, the Complainant also contends the following:

- (i) The disputed domain name is confusingly similar to Complainant's Trademark as it contains obvious misspelling of the Complainant's Trademark and replacement of an ampersand "&" with its French equivalent "et". These variations in the disputed domain name are not sufficient to exclude the likelihood of confusion with Complainant's Trademark and registration of disputed domain name is a clear example of "typosquatting";
- (ii) The Respondent has no right or legitimate interests in respect of the disputed domain name. He has not been permitted or licensed to use Complainant's Trademark. Respondent is not affiliated with the Complainant nor authorized by it in any way to use its trademarks in a domain name or on a website. The Complainant does not carry out any activity for, nor has any business with the Respondent; and
- (iii) The disputed domain name has been registered and is being used in bad faith. Given the distinctiveness of the Complainant's Trademark and its reputation, the Complainant contends that it is inconceivable that the Respondent could have registered the disputed domain name without actual knowledge of Complainant's rights in the Complainant's Trademark and it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law.

The Respondent did not file any response during the administrative proceeding.

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 Uniform Domain Name Dispute Resolution Policy ("UDRP" or "Policy").

For details, please see "Principal Reasons for the Decision".

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).

For details, please see "Principal Reasons for the Decision".

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).

For details, please see "Principal Reasons for the Decision".

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 4(a) of the Policy requires that the Complainant proves each of the following three elements to obtain an order that the disputed domain name should be transferred or revoked:

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

The Panel will proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied in this proceeding.

RIGHTS

The disputed domain name is confusingly similar to the Complainant's Trademark. As the Complainant correctly pointed out, disputed domain name contains an obvious misspelling of the Complainant's Trademark and replacement of an ampersand "&" with its French equivalent "et". These slight variations in the disputed domain name are not sufficient to exclude the likelihood of confusion with Complainant's Trademark sufficient to exclude the likelihood of confusion with Complainant's Trademark. It is an obvious, and in the opinion of the Panel also deliberate misspelling of Complainant's Trademark and thus a clear case of typosquatting.

For sake of completeness, the Panel asserts that the top-level suffix in the domain name (i.e. the ".com") must be disregarded under the identity / confusing similarity test as it is a necessary technical requirement of registration.

Therefore, the Panel concludes that the Complainant satisfied the requirement under paragraph 4(a)(i) of the UDRP.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the 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 UDRP (please see, for example, WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

The disputed domain name points to an inactive website. As asserted by the Complainant (and unchallenged by the Respondent), the Respondent is not commonly known by the disputed domain name. Neither is the Respondent in any way related to the Complainant. The Respondent failed to provide any information and evidence that it has relevant rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a) (ii) of the Policy).

Therefore, the Panel concludes that the Respondent did not establish any 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 Panel agrees with the Complainant that given the distinctiveness of the Complainant's Trademark and its reputation, it is inconceivable that the Respondent could have registered the disputed domain name without actual knowledge of Complainant's rights in the Complainant's Trademark. The Panel believes that this case is a prima facie example of typosquatting which is one of the model situations of bad faith registration / use of a domain name (paragraph 4(b)(iv) of the Policy). As numerous previous decisions have held, typosquatting as such is evidence of bad faith in registration and use of a domain name (please see, for example, WIPO Case No. D2011-1079 bwin.party services (Austria) GmbH v. Interagentur AG; WIPO Case No. D2002-0568, Go Daddy Software, Inc. v. Daniel Hadani; WIPO Case No. D2002-0423 Dell Computer Corporation v. Clinical Evaluations, or WIPO Case No. D2001-0970, Briefing.com Inc v. Cost Net Domain Manager). Under these circumstances it is not possible to conceive any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **zadigetvotlaire.com**: Transferred

PANELLISTS

| | |
|------|-----------------------|
| Name | Michal Matějka |
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DATE OF PANEL DECISION 2023-08-15

Publish the Decision
