

Decision for dispute CAC-UDRP-105767

Case number	CAC-UDRP-105767
Time of filing	2023-09-06 10:51:40
Domain names	zadigetvoltaire-outlet.com

Case administrator

Name	Olga Dvořáková (Case admin)
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Complainant

Organization	Z&V
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Name	Stephen Terrell
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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 owner of the European Union trademark reg. no, 005014171 for ZADIG & VOLTAIRE®, filed on March 17th, 2006 and registered on June 8th, 2007 in class 3.

The Complainant also owns the domain name <zadig-et-voltaire.com> registered and used for its official website since May 16th, 2002.

FACTUAL BACKGROUND

The Complainant is the French company Z&V active in the fashion field.

The disputed domain name <zadigetvoltaire-outlet.com> was registered on August 31st, 2023 by Stephen Terrell. It directs to an inactive website.

PARTIES CONTENTIONS

COMPLAINANT:

As regards the First element of the Policy, the Complainant states that the disputed domain name <zadigetvoltaire-outlet.com> is confusingly similar to its trademark ZADIG & VOLTAIRE® and to its domain name <zadig-et-voltaire.com>. In particular the disputed domain name incorporates the Complainant's trademark, without the "&" which according to the Complainant does not eliminate the likelihood of confusion with the trademark. According to the Complainant, the addition of the element "outlet" does not affect the confusing similarity assessment.

As regards the Second element of the Policy, the Complainant supports that the Respondent is not commonly known by the disputed domain name and that the use of the domain name does not amount to a bona fide offering of goods and services nor to a legitimate non commercial use.

As regards the Third element of the Policy, the Complainant supports that, given the distinctiveness of the Complainant's trademark the Respondent was reasonably aware about the Complainant's rights on the "ZADIG & VOLTAIRE" trademark. Moreover the fact that the disputed domain name is not used does not exclude a finding of bad faith given the circumstances of the case.

RESPONDENT:

The Respondent did not reply to the Complaint.

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

1. The disputed domain name is confusingly similar to a trademark in which the Complainant has rights

The Panel agrees that the disputed domain name (zadigetvoltaire-outlet.com) is confusingly similar to the trademarks "ZADIG&VOLTAIRE". As a matter of fact the distinctive elements ("ZADIG" and "VOLTAIRE") composing the Complainant's trademarks are entirely included in the disputed domain name. The addition of the element "et" has no impact in the confusing similarity assessment. Moreover the addition of the generic word "outlet" rather than excluding the likelihood of confusion it increases the chances that the disputed domain name could be associated to the Complainant's trademark since this word relates to the Complainant's business.

The Panel agrees that the ".gTLD" have no impact in the assessment of the first element of the Policy in view of their technical function.

As a consequence, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks, for the purposes of the First Element of the Policy.

2. The Respondent lacks rights or legitimate interests in the disputed domain name

Pursuant to paragraph 4(a)(ii) of the Policy, a complainant is required to make out a prima facie case that a respondent lacks rights or legitimate interests in the domain name. Once such a prima facie case is made, the respondent carries the burden of demonstrating its 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.

In this case, the Panel finds that the Complainant’s submitted evidence and allegations are sufficient to establish a prima facie case of Respondent’s lack of rights and legitimate interests in the disputed domain name.

The Respondent filed no evidence that could support its right or legitimate interest in registering and using the disputed domain name. The Whois information does not provide any element that could give to the Respondent a right or legitimate interest for the purpose of the second element of the policy.

In addition, the disputed domain name redirects to an inactive page. The Panel agrees that such use is not a legitimate use nor amounts to a bona fide offering of goods and services for the purpose of the second element of the policy.

For the foregoing reasons, it shall be concluded that the Respondent has no right nor legitimate interest in respect of the disputed domain name, and that it has not been using the disputed domain name for any bona fide offering of goods or services for the purposes of the Policy.

3. The disputed domain name has been registered and is being used in bad faith

In the Panel's view, the following elements prove the registration in bad faith of the disputed domain name:

- i. the disputed domain name was registered well after the Complainant acquired rights on its trademarks;
- ii. the disputed domain name contains all the distinctive elements of the Complainant's trademarks (i.e. ZADIG and VOLTAIRE) which are combined with the descriptive word "OUTLET". This combination suggests that the Respondent was well aware of the business conducted by the Complainant under the ZADIG&VOLTAIRE trademark.

As regards use in bad faith, the Panels notes that the disputed domain name is not actively used. Previous Panels found that passive use of a domain name does not prevent a finding of bad faith. In this case the Panel does not see a possible use of the disputed domain name that will not infringe the Complainant's rights on the ZADIG&VOLTAIRE trademark given the distinctiveness of these elements.

All above considered the Panel finds that the disputed domain name was registered and is used in bad faith for the purposes of the policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **zadigetvoltaire-outlet.com**: Transferred

PANELLISTS

Name	Andrea Mascetti
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DATE OF PANEL DECISION 2023-10-13

Publish the Decision