Decision for dispute CAC-UDRP-106222

Case number	CAC-UDRP-106222
Time of filing	2024-02-05 09:44:30
Domain names	zadigoutlet.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Z&V

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Organization	Mecara Untech

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 trademark n°005014171 ZADIG & VOLTAIRE registered since June 8, 2007.

The Complainant 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 May 16, 2002.

FACTUAL BACKGROUND

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.

The disputed domain name <zadigoutlet.com> was registered on January 25, 2024 and redirects to a website purporting to be an online store selling the Complainant's ZADIG & VOLTAIRE products at discounted prices.

PARTIES CONTENTIONS

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The Complainant states that the disputed domain name is confusingly similar to its trademark ZADIG & VOLTAIRE. Indeed, the disputed domain name incorporates the first and main part (ZADIG) of Complainant's ZADIG & VOLTAIRE trademark in its entirety.

The addition of the word "outlet", which is related to the Complainant's activities, does not prevent a finding of confusing similarity as the first and main part (ZADIG) of the ZADIG & VOLTAIRE trademark remains clearly recognizable. Please see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.8.

Furthermore, Complainant contends that the addition of the GTLD ".COM" does not change the overall impression of the designation as being connected to Complainant's trademark. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated.

B. The Respondent has no rights or legitimate interests in respect of the disputed domain name

According to the WIPO Case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd., 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.

The Complainant asserts that the Respondent is not identified in the Whois database as the disputed domain name. Past panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name. Thus, the Respondent is not known as the disputed domain name.

The Respondent is not known by the Complainant. The Complainant contends that Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant contends that Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark ZADIG & VOLTAIRE, or apply for registration of the disputed domain name by the Complainant.

Furthermore, the disputed domain name resolves to a website where the Respondent impersonates the Complainant and attempts to mislead consumers into thinking that the goods purportedly offered for sale on the websites originate from the Complainant.

In the section "MENTIONS LEGALES" ("LEGAL MENTIONS"), the Respondent attempts to pass of as the Complainant by copying the legal mentions of the Complainant's official website. Such use demonstrates neither a bona fide offering of goods nor a legitimate interest of Respondent ("Arkema France v. Aaron Blaine, WIPO Case No. D2015-0502").

C. The domain name was registered and is being used in bad faith

The Complainant contends that the disputed domain name is confusingly similar to its trademark ZADIG & VOLTAIRE, registered several years before the registration of the disputed domain name. Prior UDRP panels have established that the trademark is well-known.

Besides, the trademark "ZADIG & VOLTAIRE" is displayed on the website of the disputed domain name.

Given the distinctiveness of the Complainant's trademarks and reputation, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademark.

Moreover, the disputed domain name redirects to a website purporting to be an online store selling the Complainant's ZADIG & VOLTAIRE products at discounted prices.

The Complainant asserts that Respondent registered and uses the domain name in bad faith to create confusion with Complainant's trademarks for commercial gain by using the confusingly similar domain name to resolve to website offering counterfeit or unauthorized versions of Complainant's products in direct competition with the Complainant's products. Using a confusingly similar domain name to trade upon the goodwill of a complainant can evince bad faith under Policy paragraph 4(b)(iv).

Based on the above, the Complainant contends that Respondent acquired the disputed domain name with the only intention to attract for commercial gain internet users to the Respondent's website as mentioned on CAC Case N° 104392, ZV HOLDING v. Luis Alberto Fernandez Garcia, or in CAC Case No. 104561, IM PRODUCTION v. Guilan Wei.

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).

This is a case of adding a generic term - in this case "outlet" - to a well-known trademark and in respect of the well-established practice that the specific top level of a domain name such as ".com" does not affect the domain name for the purpose of

determining whether it is identical or confusingly similar, it is found that the disputed domain name is confusingly similar to Complainants well-known trademark ZADIG & VOLTAIRE.

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).

Given the circumstances of the case, including the provided information of the use and reputation of the Complainant's trademark ZADIG & VOLTAIRE and the distinctive nature of this mark, it is inconceivable to the Panel in the current circumstances that the Respondent registered the disputed domain names without prior knowledge of the Complainant and the Complainant's mark.

The Panel therefore finds that the disputed domain name was registered in bad faith.

The disputed domain name currently resolves to an active website selling counterfeit goods and it is indisputable that the disputed domain name uses Complainant's trademark to facilitate the sales of these counterfeit products or the low prices of the products as bait to obtain personal data or payments from internet users without actually providing the goods offered for sale. Furthermore, the Panel finds it is not possible to conceive of any plausible actual or contemplated active use of the disputed 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 Panel finds that the mere registration of a domain name that is identical or confusingly similar to a well-known or widely-known trademark by an unaffiliated entity is sufficient to create a presumption of bad faith. The Panel finds that the Respondent has intentionally attempted to attract for commercial gain internet users to its websites by creating a likelihood of confusion with Complainant's mark as to Complainant as a source, sponsor, affiliate or endorser of Respondent's websites.

.

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 three essential issues under the paragraph 4(a) of the Policy are whether:

   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 with respect to the disputed domain name; and

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

   2. The Panel reviewed carefully all documents provided by the Complainant. The Respondent did not provide the Panel with any documents or statements. The Panel also visited all available websites and public information concerning the disputed domain name, namely the WHOIS databases.

   3. The UDRP Rules clearly say in its Article 3 that any person or entity may initiate an administrative proceeding by submitting a complaint in accordance with the Policy and these Rules.

4. The Panel therefore came to the following conclusions:

a) The Complainant states and proves that the disputed domain name is confusingly similar to its trademarks and its domain names. Indeed, the trademark is partially incorporated in the disputed domain name.

The disputed domain name is therefore deemed confusingly similar.

b) The Respondent is not generally known by the disputed domain name and have not acquired any trademark or service mark rights in the name or mark, nor is there any authorization for the Respondent by the Complainant to use or register the disputed domain name. The Panel therefore finds that the Respondent does not have rights or legitimate interest with respect to the disputed domain name.

c) It is clear that the Complainant's trademarks and website(s) were used by the Complainant long time before the disputed domain name was registered.
The disputed domain name resolves to websites offering counterfeit goods. It is concluded that the Respondent by attempting to attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the Respondent's website to which the disputed domain name resolves and which makes bad faith use of the disputed domain name.

The Panel therefore finds that the disputed domain name has been registered and is being used in bad faith.

For the reasons stated above, it is the decision of this Panel that the Complainant has satisfied all three elements of paragraph 4(a) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **zadigoutlet.com**: Transferred

PANELLISTS

Name	**Lars Karnoe**

DATE OF PANEL DECISION 2024-02-27

Publish the Decision