

Decision for dispute CAC-UDRP-106043

Case number CAC-UDRP-106043

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Domain names fastvat.com

Case administrator

Name Olga Dvořáková (Case admin)

Complainant

Organization FastVAT s.r.o.

Complainant representative

Organization GÜRLICH VÍTEK & PARTNERS

Respondent

Organization Cluesto OU

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 evidenced or at least indicated to be the registered owner of the following trademarks relating to its company name and brand FASTVAT:

- word/device trademark FASTVAT, Intellectual Property Office UK, registration No.: UK00913699855, registration date: June 2, 2015, status: active;
- word/device trademark FASTVAT, European Union Intellectual Property Office UK, registration No.: 013699855, registration date: June 2, 2015, status: active.

PARTIES CONTENTIONS

The Complainant contends in its Amended Complaint of February 2, 2024, and its subsequent response to the Response of February 22, 2024, that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

The Respondent contends in its Responses of February 22, 2024, and of February 29, 2024, to have legally acquired the disputed domain name and that, therefore, the Complaint should be dismissed in full.

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).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under the UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

First, and as an introductory procedural comment, the Panel confirms that it has taken notice of all submissions made by the Parties, namely the Amended Complaint of February 2, 2024, the first Response of February 22, 2024, the Complainant's response to such Response of February 26, 2024, and finally the second Response of February 29, 2024. Although the UDRP has been designed as a fast-track proceeding providing for a standard of just one complaint and one response (see paragraph 12 of the Rules), the Panel has still decided to accept all additional and even late submissions by both Parties in order to treat them with equality and to give each Party a fair opportunity to present its case (see paragraph 10 of the Rules).

Second, the Panel finds that the disputed domain name <fastvat.com> is identical to the Complainant's FASTVAT trademark, as it incorporates the latter entirely, with no further elements added except for the generic Top-Level Domain (TLD) .com, which is viewed by UDRP panels as a standing registration requirement and is as such disregarded under the first element confusing similarity test.

Therefore, the Complainant has established the first element under the Policy as set forth by paragraph 4(a)(i).

Third, under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name, while paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate such rights or legitimate interests. And fourth, according to paragraph 4(a)(iii) of the Policy, the Complainant needs to demonstrate that the Respondent has registered and, as a conjunctive requirement, is using the disputed domain name in bad faith, with paragraph 4(b) of the Policy establishing circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of the disputed domain name in bad faith.

Having carefully studied the various submissions made by the Parties between February 2, 2024, and February 29, 2024, the Panel finds before it a broad picture made up of a variety of issues which range from a controversial contractual relationship between the Complainant and a third party IT service provider, the alleged loss of technical control over the dispute domain name by the Complainant, as well as criminal proceedings conducted in relation to the above, to finally an acquisition of the disputed domain name by the Respondent from yet another third party.

In view of these particular circumstances, the Panel considers that the disputed domain name is part of a much wider and more complex dispute that involves typical issues of contractual relationships including alleged breach thereof, contested allegations of fraudulent behavior and various other open issues between the Parties, and, therefore, is not taking part in a typical straightforward domain name dispute under the UDRP. In this context, the Panel recalls that the Policy is not designed to adjudicate all types of disputes that relate in any way to domain names, but rather the Policy establishes a streamlined, inexpensive administrative dispute resolution procedure intended only for cases of "abusive cybersquatting" (see e.g.: Boku, Inc. v. Phuc To, WIPO Case No. D2023-1338). As such, the UDRP is not an appropriate process to adjudicate such a complex (and perhaps even criminal) dispute, given that UDRP panels e.g. do not have the powers granted to a competent court to first enlighten and finally resolve disputes, including e.g. witness testimony, disclosure of documents, or other procedural instruments (see: Symphony Holdings Limited v. Jaimie Fuller, Fuller Consultancy F.Z.E., WIPO Case No. D2019-2887, Paradise International General Trading LLC v. Suwanna Mayeux, WIPO Case No. D2023-1569).

Consequently, the Panel considers this dispute brought before it to exceed the typical "cybersquatting" scope of the UDRP and would be more appropriately addressed by a court of competent jurisdiction, or perhaps in mediation. Therefore, this Decision does not prevent either the Complainant or the Respondent from pursuing this dispute in relation to the specific and obviously yet unanswered question of who should own the disputed domain name in a competent ordinary court proceeding.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **fastvat.com**: Remaining with the Respondent

PANELLISTS

Name **Stephanie Hartung**

DATE OF PANEL DECISION **2024-03-06**

Publish the Decision
