Decision for dispute CAC-UDRP-106231

Case number	CAC-UDRP-106231
Time of filing	2024-02-06 11:16:16
Domain names	zadig-et-voltaire.top

Case administrator

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

Complainant

Organization	Z&V

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	adqdwq afqfq

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

In these proceedings, the Complainant relies on the following trademark:

- ZADIG & VOLTAIRE (word), EU Trade Mark No. 005014171, registered as of March 17, 2006, in the name of Z&V (the Complainant), and duly renewed;

- ZADIG & VOLTAIRE (word), International Registration No. 907298, registered as of September 15, 2006, also in the USA where the Respondent is apparently located, in the name of Z&V (the Complainant), and duly renewed.

It is worth noting that, the Complainant owns many similar trademarks in various countries, which have not been cited in these proceedings.

FACTUAL BACKGROUND

According to information provided by the Complainant and not refuted by the Respondent, the Complainant, “operating under the brand 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”. Ever since, the Complainant has acquired commercial

presence all around the world.

The Complainant owns a large-sized portfolio of trademarks including the wording "ZADIG & VOLTAIRE", among which an EU registration dating back to 2006. It also owns a multitude of related domain names (according to the Complainant), such as <zadig-et-voltaire.com> since May 16, 2002.

The disputed domain name <zadig-et-voltaire.top> was registered on January 31, 2024 by the Respondent.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to its ZADIG & VOLTAIRE trademark, as it is substantially identical to this wholly incorporated trademark. This last element is sufficient to support the finding that the disputed domain name is confusingly similar to the Complainant's trademark. Indeed, the mere replacement of the “&” sign by the French synonym word “et” and the addition of two hyphens to the Complainant’s trademark do not change the overall impression of a most likely connection with the trademark ZADIG & VOLTAIRE of the Complainant. As to the gTLD “.top”, the Complainant suggests that it should be disregarded, as per the usual practice.

The Complainant maintains that the Respondent lacks rights or legitimate interests in the disputed domain name because the Respondent is not known by the disputed domain name, the Complainant is not affiliated with nor has it ever authorised the Respondent to register its trademark as a domain name and the Complainant has no business with the Respondent.

According to the Complainant, given the distinctiveness and reputation of the ZADIG & VOLTAIRE trademark, the Respondent registered the disputed domain name with full knowledge of the Complainant's trademark in an intentionally designed way with the aim to create a likelihood of confusion with the Complainant’s trademarks and domain names, and this is evidence of the fact that the disputed domain name was registered in bad faith.

With respect to use in bad faith, the Complainant points out that the Respondent has used the disputed domain name as a page that copies the Complainant’s official website, a fact that -in combination with the incorporation of a famous trademark in a domain name- proves use in bad faith.

For all these reasons, the Complainant concludes that the Respondent registered and used the disputed domain name in bad faith.

RESPONDENT:

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).

The disputed domain name consists of the Complainant's trademark (ZADIG & VOLTAIRE), spelled without the sign “&” in the middle, as it is replaced by the French synonym word “et”. Neither this nor the further addition of two hyphens in the disputed domain name is sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark of the Complainant.

As far as the gTLD ".top" is concerned, it is generally recognized that top level domains do not have any bearing in the assessment of identity or confusing similarity, according to paragraph 4(a)(i) of the Policy.

Hence, the Panel is satisfied that the first requirement under the Policy is met.

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).

Since proving a negative fact is almost impossible, panelists in UDRP proceedings have generally agreed that it is sufficient for the Complainant to establish a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name to shift the burden of proof to the Respondent.

In the case at issue, the Complainant argued that it had never authorised the Respondent to register the ZADIG & VOLTAIRE trademark in a domain name, and that it had never licensed its trademark to the Respondent.

Furthermore, the Respondent has not demonstrated any use of the disputed domain name in connection with a bona fide offering of goods and services or a legitimate non-commercial or fair use of the disputed domain name.

Finally, there is no other evidence in the case file that could demonstrate that the Respondent has been commonly known by the disputed domain name.

In view of the foregoing, the Panel is satisfied that the Complainant has established a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name. In order to rebut the Complainant's arguments, the Respondent had the possibility to make his own defense. However, the Respondent has chosen not to file a Response.

Therefore, the Panel is satisfied that also the second requirement under the Policy is met.

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).

As far as registration in bad faith is concerned, given the reputation of the Complainant's trademark and the fact that the disputed domain name substantially incorporates this trademark as a whole (even with the replacement of the “&” sign by the French synonym word “et” and the addition of two hyphens), it is evident that, at the time of the registration of the disputed domain name, the Respondent was well aware of the Complainant's trademark. The registration as domain name of a third party's well-known trademark with full knowledge of the fact that the rights over this trademark belong to a third party amounts to registration in bad faith.

With respect to use in bad faith, the disputed domain name resolves to a page that copies the Complainant’s official website. This fact is to be combined with the substantial incorporation of the Complainant’s reputable trademark in the disputed domain name. For this Panel, same as for many previous panels, such misleading behaviour clearly amounts to use in bad faith. Therefore, it is impossible to conceive any plausible active use of the disputed domain name that would be legitimate.

Therefore, the Panel finds it clear that the disputed domain name was used in bad faith.

For all circumstances mentioned above, the Panel is satisfied that also the third requirement under the Policy is satisfied.

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 substantially incorporates as a whole the Complainant's trademark, written with the replacement of the “&” sign by the French synonym word “et” and the mere addition of two hyphens. The disputed domain name is therefore confusingly similar to the Complainant's trademark.

The Respondent was not authorised to include the Complainant's trademark in the disputed domain name, and the Complainant never licensed its trademarks to the Respondent. The Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services, or a legitimate non-commercial or fair use.

The Respondent registered the disputed domain name with full knowledge of the Complainant's reputable trademark. His use of the disputed domain name is in bad faith as there is no conceivable use of the disputed domain name that could amount to a legitimate use.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **zadig-et-voltaire.top**: Transferred

PANELLISTS

Name	**Sozos-Christos Theodoulou**

DATE OF PANEL DECISION 2024-03-12

Publish the Decision