Decision for dispute CAC-UDRP-106346

Case number	CAC-UDRP-106346
Time of filing	2024-03-13 10:04:06
Domain names	zadig-outlet.com

Case administrator

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

Complainant

Organization	Z&V

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Organization	Zadig & Voltaire

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 EU trademark registration no. 005014171 "ZADIG & VOLTAIRE", registered on June 8, 2007, in class 3 (hereinafter referred to as the "Trademark"). The Trademark clearly predates the registration date of the disputed domain name.

FACTUAL BACKGROUND

The Complainant is a French company in the fashion industry, which was established in 1997. It owns several domain names, including <zadig-et-voltaire.com>, registered on May 16, 2002.

The disputed domain name was registered on March 9, 2024, and redirects to a website purporting to be an online store selling the Complainant’s products at discounted prices.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant alleges that the disputed domain name is confusingly similar to the Trademark as it includes the first and main part "ZADIG" and because the addition of the generic term “OUTLET" does not prevent a finding of confusing similarity.

The Complainant further submits that the Respondent has no rights or legitimate interests in the disputed domain name. In particular, the Complainant asserts that the Respondent is not affiliated with nor authorized by the Complainant in any way, that the Complainant does not carry out any activity for, nor has any business with the Respondent, that the Complainant has not licensed nor authorized the Respondent to use the Trademark or apply for registration of the disputed domain name, and that the disputed domain name resolves to a website on which the Respondent impersonates the Complainant and attempts to mislead consumers into believing that the goods purportedly offered for sale on the websites are those of the Complainant. The Complainant further alleges that the Respondent is attempting to impersonate the Complainant by using the name "Zadig & Voltaire" in the Whois database and by copying the legal notices from the Complainant's official website onto its website. Finally, the Complainant alleges that the Respondent's website is also not a legitimate reseller website because the Respondent does not accurately and prominently disclose its relationship with the Complainant and therefore fails at least one element of the Oki Data test.

Finally, the Complainant alleges that the disputed domain name was registered and is being used in bad faith. It argues that the website accessible under the disputed domain name prominently displays the well-known Trademark and purports to be an online store selling the Complainant’s products at discounted prices, which clearly demonstrates that the Respondent deliberately targeted the Trademark and registered the disputed domain name in bad faith. As to bad faith use, the Complainant alleges that the Respondent is using the disputed domain name in bad faith under paragraph 4(b)(iv) of the Policy to cause confusion with Trademark for commercial gain by using the confusingly similar domain name to resolve to a website offering counterfeit or unauthorized versions of Complainant’s products in direct competition with the Complainant’s products.

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).

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

Paragraph 4(a) of the Policy requires the Complainant to establish each of the following three elements:

(i) the disputed domain name is identical or confusingly similar to the Complainant's trademark; 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.

1. The Panel accepts that the disputed domain name is confusingly similar to the Trademark because it incorporates a dominant feature of the Trademark, namely the first word "ZADIG", which is sufficient to establish a likelihood of confusion with the Trademark. Furthermore, it is well established that a domain name may be confusingly similar to a trademark within the meaning of the Policy despite the addition of generic terms such as "outlet".

2. The Complainant has substantiated that the Respondent has no rights or legitimate interests in the disputed domain name. The Panel finds that the Complainant has fulfilled its obligations under paragraph 4(a)(ii) of the Policy. The Respondent has not denied these allegations and has therefore failed to establish any rights or legitimate interests in the disputed domain name.

Based on the evidence on file, the Panel cannot find any rights or legitimate interests of the Respondent either. In particular, the Panel finds that the Respondent's website does not meet the Oki Data criteria as the Respondent, at least, has not disclosed its total lack of relationship or connection to the Complainant but rather prominently featured the Trademark, which gives the false impression that the pages were at least authorized by the Complainant. Accordingly, the Panel finds that the Complainant has proven that the Respondent has no rights or legitimate interests in respect of the disputed domain name under paragraphs 4(a)(ii) and 4(c) of the Policy.

3. The Panel is also satisfied that the Respondent registered the disputed domain name with full knowledge of the Complainant and its rights in the Trademark, as the Respondent uses the disputed domain name to direct Internet users to a website purporting to be an online store selling the Complainant’s products at discounted prices.

As to bad faith use, by using the disputed domain name in connection with the website mentioned above, the Respondent was, in all likelihood, trying to divert traffic intended for the Complainant’s website to its own for commercial gain as set out under paragraph 4(b)(iv) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

PANELLISTS

Name	**Peter Müller**

DATE OF PANEL DECISION 2024-04-11

Publish the Decision