Decision for dispute CAC-UDRP-106339

Case number	CAC-UDRP-106339
Time of filing	2024-03-11 11:36:25
Domain names	zadig-eu.top

Case administrator

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

Complainant

Organization	Z&V

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Organization	Baswvad Wild

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant has adduced evidence showing that it is the owner of the EU trademark No. 005014171 for ZADIG & VOLTAIRE, registered on 8 June 2007 in Nice Classification List class 3.

The Complainant also adduced evidence to show it is the registrant of the domain name <Zadig-Et-Voltaire.com>, registered on 15 May 2002.

The Respondent registered the disputed domain name <zadig-eu.top> on 5 March 2024, according to the Registrar Verification performed by the CAC Case Administrator.

FACTUAL BACKGROUND

The Complainant, Z&V, which trades under the brand ZADIG & VOLTAIRE, is a French company in the fashion industry. It was established in 1997 by Thierry Gillier and markets ready-to-wear fashion, accessories and perfumes as its business.

The Complainant has adduced screenshots of its own website and promotional offers made on it for comparison with other screenshots it provided from the website that resolves to the disputed domain name. Such comparison shows use of the Complainant's protected brand and reveals a similar style of presenting promotional offers of products displayed to that employed

by the Complainant as well as use on the Respondent's website of a copyright symbol in the name of the Complainant.

PARTIES CONTENTIONS

COMPLAINANT

The Complainant contends that the requirements of the Policy have been met by reason of:

- the demonstration of its own rights through the evidence of them that it has adduced;
- the confusing similarity of the disputed domain name to the Complainant's protected brand (the disputed domain name incorporates the first and main part -- ZADIG -- of the Complainant's ZADIG & VOLTAIRE trademark in its entirety, while its other geographical and TLD elements do not alter the impression of similarity thereby created);
- the clear lack of any right or interest on the Respondent's part in the Complainant's protected brand, the absence of any authorization by the Complainant to use it, and the fact that the Respondent is not known by the disputed domain name; and
- the necessity of a finding of both bad faith registration and use, by virtue of the Respondent's impersonation of the Complainant, of whose well-known existence it must have been aware at registration, the evident aim then being to attract consumers to the Respondent's website for illegitimate commercial gain by reason of consumers being misled into thinking that the goods purportedly offered for sale on the Respondent's website originate from Complainant, since it is widely known for the kind of products purportedly being sold.

The Complainant therefore claims that the disputed domain name should be transferred to it.

RESPONDENT

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to trademarks 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 that 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 the UDRP were met and that there is no other reason why it would be inappropriate to provide a decision.

The Panel notes that its résumé of the Parties' contentions includes for the Complainant only its arguments pertinent to reaching a decision in this proceeding; it omits in particular several references to past ADR Panels' decisions. The Panel equally finds it unnecessary to consider a contention based on decisions of some previous Panels regarding prima facie proof since this contention does not affect evaluation of the evidence that the Panel has before it in this proceeding.

PRINCIPAL REASONS FOR THE DECISION

The Panel, having reviewed the evidence adduced and related circumstances determined pursuant to exercise of its own powers, finds that:

(1) the Respondent’s inclusion in the disputed domain name’s stem of the same first term as in the Complainant's trademark has

produced a partial identicality with the Complainant's trademark, whose cognitive effect is undiminished by its being followed in the disputed domain name by a hyphen and generic geographic indicator, <eu>. Thus far, the stem's confusing similarity with the Complainant's protected brand is, for the purposes of the Policy, not sufficiently established for the Panel's satisfaction, given that the "zadig" fragment of the brand might in fact be susceptible of more connotations than only reference to the Complainant's brand. However, confusing similarity does become clearly established when one regards the disputed domain name as a whole. This is due to the additional semantic factor that arises from the Respondent's choice of registration through a gTLD, <.top>, that is specifically directed at promoting short-form domain name branding (see Factual Background). The content of the website associated with the disputed domain name then attests to its being premised on confusion having been sown in consumers' minds between the Complainant's brand and the disputed domain name;

(2) there is no question of the Respondent having rights or legitimate interests in the disputed domain name in this case, which, in the circumstances indicated under (1), plainly involves the illegitimate conduct of the Respondent seeking to impersonate the Complainant;

(3) the distinctive and well-known brand of the Complainant make the Respondent's registration of the disputed domain name clearly deliberate and abusive, and thus in bad faith, due to the manner of its design as found under (1), while the use of the disputed domain name in conjunction with the Respondent's website is equally in bad faith to a degree that the evidence suggests that a scam is in effect being perpetrated upon consumers.

In view of these findings, the Panel finds that the Complainant has surpassed the UDRP cumulative three-part test in all regards and ORDERS the transfer of the disputed domain name to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **zadig-eu.top**: Transferred

PANELLISTS

Name	**Kevin Madders**

DATE OF PANEL DECISION 2024-04-18

Publish the Decision