Decision for dispute CAC-UDRP-106407

Case number	CAC-UDRP-106407
Time of filing	2024-04-03 14:08:14
Domain names	zadigeu.top

Case administrator

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

Complainant

Organization	Z&V

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	Baswvad Wild

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

The Complainant also owns a domain names portfolio, including the same 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 Complainant owns the European trademark n°005014171 ZADIG & VOLTAIRE registered since June 8, 2007.

The Complainant also owns a domain names portfolio, including the same wording ZADIG & VOLTAIRE, such as the domain name <zadig-et-voltaire.com> registered and used for its official website since May 16, 2002.

The disputed domain name <zadigeu.top> was registered on March 22, 2024, and resolves to a website purporting to be an online store selling the Complainant's ZADIG & VOLTAIRE products at discounted prices.

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

The addition of the geographic term "EU" (short for European Union) does not, in the view of the Complainant, prevent a finding of confusing similarity as the first and main part (ZADIG) of the ZADIG & VOLTAIRE trademark remains clearly recognizable.

Besides, the Complainant contends that the addition of the new TLD ".TOP" does not change the overall impression of the designation as being connected to the 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.

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 Complainant states that the Respondent is not known as the disputed domain name.

The Complainant contends that the Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant contends that the 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 domain name is used to host the website to impersonate the Complainant and attempt to mislead consumers into thinking that the goods purportedly offered for sale on the website originate from the Complainant. Such use demonstrates neither a bona fide offering of goods nor a legitimate interest of the Respondent. Furthermore, there is no information/disclaimer on the page of the website to identify its owner.

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.

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

The Complainant finds that Respondent registered and uses the disputed 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 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.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it. The summary of Complainant´s contentions is provided above.

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

A. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

The Complainant's rights over the term "ZADIG & VOLTAIRE" have been confirmed by previous panels (WIPO Case No. D2022-3591, Z&V v. (Hai Ling Huang) <zadigvoltaireoutlet.com>; WIPO Case No. D2022-2007, Z&V v. Jian Qiu <zadig-voltaire.xyz>).

The Panel agrees with the Complainant 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 at the beginning of the domain name in its entirety.

The addition of the geographic term "EU" (short for European Union) does not prevent a finding of confusing similarity as the first and main part (ZADIG) of the ZADIG & VOLTAIRE trademark remains clearly recognizable.

The addition of the new TLD ".TOP" does not change the overall impression of the designation as being connected to the 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.

Thus, the disputed domain name is confusingly similar to the Complainant's trademark ZADIG & VOLTAIRE.

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

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 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, is not affiliated with, or authorized by the Complainant in any way, has no rights or legitimate interests in respect of the disputed domain name, and does not carry out any activity for or have 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 domain name is used to host the website to impersonate the Complainant and attempt to mislead consumers into thinking that the goods purportedly offered for sale on the website originate from the Complainant. Such use demonstrates neither a bona fide offering of goods nor a legitimate interest of Respondent.

Therefore, the Respondent failed at least in one of the elements of the Oki Data test, i.e. the website linked to the disputed domain name does not disclose accurately and prominently the registrant's relationship with the trademark holder.

Accordingly, Respondent has no rights or legitimate interests in the disputed domain name.

C. The disputed domain names were registered and are being used in bad faith.

The disputed domain name is confusingly similar to its trademark ZADIG & VOLTAIRE, which was registered several years before the registration of the disputed domain name. Prior UDRP panels have established that the trademark is well-known. Given the distinctiveness of the Complainant's trademarks and reputation and considering the website's content displaying the trademarks of the Complainant, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark. The Panel finds that Respondent registered and used the disputed domain name in bad faith to create confusion with Complainant's trademarks for commercial gain by using the confusingly similar disputed domain name to resolve to a 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 in this case is evidence of bad faith under Policy paragraph 4(b)(iv).

Based on the above, the Panel finds that the Respondent acquired the disputed domain name with the only intention of attracting for commercial gain internet users to the Respondent's website as mentioned in CAC Case N° 104392, ZV HOLDING v. Luis Alberto

Fernandez Garcia.

Based on these factors, the Panel concludes that the Respondent registered and is using the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **zadigeu.top**: Transferred

PANELLISTS

Name	**Jan Schnedler**

DATE OF PANEL DECISION 2024-04-30

Publish the Decision