Decision for dispute CAC-UDRP-107026

Case number	**CAC-UDRP-107026**
Time of filing	**2024-11-07 09:34:23**
Domain names	**davidoffonline.shop**

Case administrator

Name	**Olga Slanařová (Case admin)**

Complainant

Organization	**Zino Davidoff SA**

Complainant representative

Organization	**Abion GmbH**

Respondent

Name	**KathleenCarter KathleenCarter**

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 various trademark registrations for “DAVIDOFF” and “COOL WATER”, including the following:

- Switzerland trademark registration No. 2P-313368 for DAVIDOFF, registered on January 27, 1982;

- Switzerland trademark registration No. P-537896 for DAVIDOFF, registered on September 20, 2005;

- International trademark registration No. 467510 for DAVIDOFF, registered on January 27, 1982;

- International trademark registration No. 876874 for DAVIDOFF, registered on November 7, 2005;

- United States trademark registration No. 2609218 for DAVIDOFF, registered on August 20, 2002;

- International trademark registration No. 761286 for COOL WATER, registered on April 6, 2001;

- International trademark registration No. 615313 for COOL WATER (stylized) registered on February 4, 1994; and

- United States trademark registration No. 1735965 for COOL WATER, registered on December 1, 1992.

The Complainant owns and operates its official domain names:-

- <zinodavidoff.com>, registered on April 20, 1998; and
- <coolwater.com>, registered on December 22, 1995.

The disputed domain name was registered on July 31, 2024, and at the time of filing the Complaint, resolved to a website displaying the Complainants DAVIDOFF and COOL WATER trademarks.

FACTUAL BACKGROUND

The Complainant is a family business based in Switzerland, retailing luxury goods such as leather goods, writing instruments, fragrances, watches, eyewear, fashion accessories, coffee and cognac. The Complainant enjoys a strong online presence through its websites and social media platforms.

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.

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

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a complainant to show that a domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

The Complainant has provided evidence that it owns registered trademark rights in the DAVIDOFF and COOL WATER marks.

In this case, the disputed domain name consists of the Complainant's DAVIDOFF trademark in its entirety with the addition of the suffix "online". It is well-established that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements. (see WIPO Overview 3.0, section 1.8).

In addition, the disputed domain name comprises the Complainant's DAVIDOFF trademark and the generic Top-Level Domain ("gTLD") ".shop". It is well established that the addition of a gTLD ".shop" does not avoid confusing similarity between the Complainant's trademark and the disputed domain name (see WIPO Overview 3.0, section 1.11.1).

Consequently, the Panel finds that the Complainant has shown that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

Once the complainant establishes a prima facie case that the respondent lacks rights or legitimate interests in the domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the domain name (see WIPO Overview 3.0, section 2.1).

In the present case, the Complainant has demonstrated a prima facie case that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant has provided evidence that it has been the registered owner of the DAVIDOFF and COOL WATER marks long before the date that the disputed domain name was registered and that it has not authorised the Respondent to use any of the Complainant's trademarks. There is no evidence that the Respondent is commonly known by the disputed domain name.

It is noted that the disputed domain name resolves to a webpage displaying the Complainant's DAVIDOFF and COOL WATER marks, and offering for sale, products bearing, or sold under, the Complainant's DAVIDOFF and/or COOL WATER trademarks, which appear to be competing with the offerings of the Complainant.

The Respondent did not submit a Response and did not provide any explanation for its choice of the disputed domain name nor evidence to show rights or legitimate interests in the disputed domain name which would be sufficient to rebut the Complainant's prima facie case.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The complainant must also show that the respondent registered and is using the disputed domain name in bad faith (see Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant's trademarks were registered some years before the registration of the disputed domain name. In addition, the disputed domain name resolves to a website that displays the Complainant's trademarks and sells goods which appear to be competing with the offerings of the Complainant. It is the Panel's view that the Respondent was aware of the Complainant and its trademarks when it registered the disputed domain name and is targeting the Complainant and its trademarks.

Further, the Panel cannot conceive any plausible good faith use to which the disputed domain name may be put. The Respondent failed to submit a response and provided no evidence to rebut the Complainant's case. The Respondent also did not register his name or other details when registering the disputed domain name. This is also an indication of bad faith.

Accordingly, having regard to the circumstances of this case, the Panel finds that the Complainant has met its burden under paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **davidoffonline.shop**: Transferred

PANELLISTS

Name	**Jonathan Agmon**

DATE OF PANEL DECISION 2024-12-09

Publish the Decision