

## **ADMINISTRATIVE PANEL DECISION**

Z&V v. Jian Qiu

Case No. D2022-2007

### **1. The Parties**

Complainant is Z&V, France, represented by Nameshield, France.

Respondent is Jian Qiu, China.

### **2. The Domain Name and Registrar**

The disputed domain name <zadig-voltaire.xyz> is registered with 1API GmbH (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 2, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 3, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint.

The Center sent an email communication to Complainant on June 14, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on June 14, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on June 23, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 13, 2022. Respondent did not submit any response. Accordingly, the Center notified the Parties of Respondent’s default on July 15, 2022.

The Center appointed Ingrīda Kariņa-Bērziņa as the sole panelist in this matter on July 19, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and

Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

Complainant is a French company operating in the fashion industry under the ZADIG & VOLTAIRE mark. Complainant is the proprietor of numerous trademark registrations, including the following:

- European trademark No. 005014171 for ZADIG & VOLTAIRE (word mark), registered on June 8, 2007 for goods in class 3;
- International trademark 907298 for ZADIG & VOLTAIRE (word mark), registered on September 15, 2006 for goods and services in classes 3, 14, 16, 18, 20 24, 25, 35, and 43.

Complainant has registered several domain names reflecting its ZADIG & VOLTAIRE mark, and operates its primary business and e-commerce website at <zadig-et-voltaire.com>.

The disputed domain name was registered on June 1, 2022. It resolves to a website offering “Zadig&Voltaire” goods for sale.

#### **5. Parties’ Contentions**

##### **A. Complainant**

Complainant’s contentions can be summarized as follows:

Under the first element, Complainant states that the disputed domain name is confusingly similar to Complainant’s ZADIG & VOLTAIRE mark, as it incorporates the entirety of that mark, except for the “&” symbol.

Under the second element, Complainant states that Respondent is not authorized to use Complainant’s ZADIG & VOLTAIRE mark in any way, and that Respondent is not known by this mark. The disputed domain name is used to host the website to impersonate Complainant and attempt to mislead consumers into thinking that the goods purportedly offered for sale on the website originate from Complainant.

Under the third element, Complainant states that the ZADIG & VOLTAIRE mark was registered several years before the registration of the disputed domain name. Complainant is a worldwide and well-known fashion company, and Respondent makes references to Complainant’s products and trademarks on its website. The expression “zadig voltaire” is closely associated with Complainant and its products. Respondent has registered and is using the disputed domain name to resolve to a website offering counterfeit or unauthorized versions of Complainant’s products in direct competition with Complainant.

Complainant requests transfer of the disputed domain name.

##### **B. Respondent**

Respondent did not reply to Complainant’s contentions.

#### **6. Discussion and Findings**

Paragraph 4(a) of the UDRP requires Complainant to make out all three of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) Respondent has registered and is using the disputed domain name in bad faith.

Under paragraph 15(a) of the Rules, “[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

#### **A. Identical or Confusingly Similar**

Complainant has provided evidence establishing that it has trademark rights in the ZADIG & VOLTAIRE mark through registrations in the European Union and other jurisdictions. Complainant thereby satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.2.1.

In comparing Complainant’s mark with the disputed domain name, the Panel finds that the disputed domain name is confusingly similar to this mark as the trademark is clearly recognizable within the disputed domain name, save for the omission of the “&” feature present in Complainant’s trademark.

It is the well-established view of UDRP panels that a generic Top-Level Domain such as “.xyz” is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See [WIPO Overview 3.0](#), section 1.11.1.

Accordingly, the Panel finds that Complainant has established the first element under paragraph 4(a) of the Policy in respect of all of the disputed domain names.

#### **B. Rights or Legitimate Interests**

The Panel finds that the evidence submitted by Complainant establishes a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name. Respondent is not authorized by Complainant and has no rights in the ZADIG & VOLTAIRE mark.

Pursuant to [WIPO Overview 3.0](#), section 2.1, and cases thereunder, where Complainant makes out a *prima facie* case that Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

Respondent has not provided any rebuttal of Complainant’s *prima facie* case and has therefore not proved rights or legitimate interests in the disputed domain name. There is no evidence that Respondent is commonly known by the disputed domain name, or that there are any circumstances or activities that would establish Respondent’s rights therein. The disputed domain name consists of Complainant’s ZADIG & VOLTAIRE mark, substituting a “-” for the ampersand. UDRP panels have held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. In this case, the Panel finds that the disputed domain name carries a risk of implied affiliation. See [WIPO Overview 3.0](#), section 2.5.1.

Moreover, the disputed domain name resolves to a website featuring Complainant’s mark and images of Complainant’s products for the purpose of offering fashion clothing for sale. Evidence of Respondent’s commercial activity using Complainant’s mark indicates a lack of rights or legitimate interests. See [WIPO Overview 3.0](#), section 2.5.3. Finally, Complainant provides evidence that Respondent is offering goods for sale disproportionately below market value. Respondent has not refuted this evidence. The Panel finds that

the circumstances indicate illegal activity, which would preclude a finding of rights or legitimate interests on the part of Respondent. See [WIPO Overview 3.0](#), section 2.13.1.

Accordingly, the Panel finds that Complainant has established the second element under paragraph 4(a) of the Policy.

### **C. Registered and Used in Bad Faith**

The Panel finds that Complainant has demonstrated Respondent's bad faith registration and use of the disputed domain name. Complainant provides uncontroverted evidence that its rights in the ZADIG & VOLTAIRE mark predates the registration of the disputed domain by more than a decade. Under such circumstances, UDRP panels have consistently found that the registration of a domain name that is identical or confusingly similar to a distinctive trademark by an unaffiliated entity can by itself create a presumption of bad faith on the part of Respondent. See [WIPO Overview 3.0](#), section 3.1.4. Respondent has not provided any information that would rebut this presumption.

The evidence provided by Complainant indicates that the disputed domain name resolves to a website through which Respondent offers unauthorized or counterfeit "Zadig & Voltaire" clothing for sale. There is no information that would allow the Panel to conclude that Respondent's intent in registering the disputed domain name was for any purpose other than attracting users to his website for commercial gain. Consistent with well-established UDRP practice, such circumstances indicate bad faith in registration and use of the disputed domain name. See [WIPO Overview 3.0](#), section 3.1.4. See also, for example, *Swarovski Aktiengesellschaft v. WhoisGuard Protected / Peter D. Person*, WIPO Case No. [D2014-1447](#), *Deloitte Société d'Avocats v. Domain Admin, Whoisprotection.cc / Dirk Eichmann*, WIPO Case No. [D2022-0818](#).

The Panel therefore finds that Complainant has established the third element under paragraph 4(a) of the Policy.

### **7. Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name, <zadig-voltaire.xyz> be transferred to Complainant.

*/Ingrīda Kariņa-Bērziņa/*

**Ingrīda Kariņa-Bērziņa**

Sole Panelist

Date: August 2, 2022