

ADMINISTRATIVE PANEL DECISION

Z&V v. Mecara Untech
Case No. D2023-5040

1. The Parties

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

The Respondent is Mecara Untech, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <outletzadig.com> is registered with Hello Internet Corp (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 4, 2023. On December 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 6, 2023, 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 (Not Identified) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 6, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed amended Complaint on December 7, 2023.

The Center verified that the Complaint together with 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 the Respondent of the Complaint, and the proceedings commenced on December 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 4, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 11, 2024.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on January 17, 2024. 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

It results from the Complainant's documented allegations, which remained undisputed, that it is a company based in France which manufactures and sells since 1997 ready-to-wear fashion, accessories and perfumes.

Further, it is the registered owner of international trademark n°907298 ZADIG & VOLTAIRE registered on September 15, 2006, for goods in classes 3, 14, 16, 18, 20, 24, 25, 35 and 43 and designating numerous countries worldwide including the United States, where the Respondent is located.

The Respondent registered the disputed domain name on November 30, 2023. According to the Registrar Verification response, the language of the registration agreement used by the Respondent for the disputed domain name is English.

Finally, the Complainant has provided – undisputed – evidence demonstrating that the disputed domain name resolves to a website which mimics the Complainant's website by offering the Complainant's products under the trademark ZADIG & VOLTAIRE without the Complainant's authorization and for allegedly significantly discounted prices. In addition, in the imprint the Respondent identifies itself as ZV France by using the Complainant's company and address data.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that:

- (i) the disputed domain name is confusingly similar to its trademark ZADIG & VOLTAIRE since the disputed domain name incorporates the first and main part "ZADIG" of said trademark in its entirety. The addition of the term "outlet", which is related to the Complainant's activities, does not prevent a finding of confusing similarity as the first and main part (ZADIG) of the ZADIG & VOLTAIRE trademark remains clearly recognizable;
- (ii) the Respondent has no rights or legitimate interests in the disputed domain name. In particular, the Respondent is not commonly known by the disputed domain name. Furthermore, the Complainant contends that the Respondent is not one of his licensees or distributors and is not related in any way with the Complainant. Finally, the Respondent used the disputed domain name to disrupt Complainant's business and to attract users by impersonating the Complainant, as the Respondent identified itself as "ZV FRANCE", the operator of the Complainant's official website. Impersonation of a complainant, by using its trademark in a disputed domain name and seeking to defraud or confuse users, indicates a lack of rights or legitimate interests by a Respondent;
- (iii) the Respondent's registration and use of the disputed domain name constitutes bad faith. According to the Complainant, Respondent makes references to the Complainant and its trademark and logo on the website, as it attempts to pass off as the company who managed the Complainant's official website. It is therefore reasonable, so the Complainant, to infer that the Respondent has registered and used the disputed domain name with full knowledge of the Complainant's trademark. Furthermore, the disputed domain name redirected to an online store which competed with the products offered by the Complainant. Using a domain name in order to offer competing services is often held to disrupt the business of the owner of the relevant mark is bad faith. Consequently, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the respondent's website or location.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to “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”.

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements in order to obtain an order that the disputed domain name should be transferred or cancelled:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainants have rights; 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.

The Panel is satisfied that the registrant of record for the disputed domain name is the Respondent and will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“WIPO Overview 3.0”](#)), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy, [WIPO Overview 3.0](#), section 1.2.1., i.e. international trademark n°907298 ZADIG & VOLTAIRE registered on September 15, 2006. However, the disputed domain name <outletzadig.com> only includes the first verbal element “ZADIG” of said mark, preceded by the further term “OUTLET”.

This test similarity test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. (This may also include recognizability by technological means such as search engine algorithms.) In some cases, such assessment may also entail a more holistic aural or phonetic comparison of the complainant's trademark and the disputed domain name to ascertain confusing similarity.

While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing. In the Panel's view both verbal elements “ZADIG” and “VOLTAIRE” co-dominate the Complainant's trademark. Therefore, and in the light of the above quoted principles, the Panel finds this mark is recognizable within the disputed domain name.

Furthermore, as will be addressed under the second and the third element here below, that the website content explicitly depicts the entire trademark ZADIG & VOLTAIRE together with the Complainant's original products. With this content, the Respondent is therefore trading off and targeting the Complainant's trademarks and products. In the Panel's view, this behaviour supports a finding of confusing similarity ([WIPO Overview 3.0](#), section 1.7).

Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

(i) First, it results from the Complainant’s uncontested evidence that the disputed domain name resolves to a website which mimics the Complainant’s website by offering the Complainant’s products under the trademark ZADIG & VOLTAIRE without the Complainant’s authorization and for allegedly significantly discounted prices. In addition, in the imprint the Respondent identifies itself as ZV France by using the Complainant’s company and address data. In the Panel’s view, such use cannot be qualified as a bona fide offering of goods or services in accordance with paragraph 4(c)(i) of the Policy, since such use is likely to mislead Internet users. In addition, the Respondent did not submit any evidence of bona fide pre-Complaint preparations to use the disputed domain name. In particular, the Complainant’s uncontested allegations demonstrate that it has not authorized or licensed the Respondent’s use of the ZADIG & VOLTAIRE trademark for registering the disputed domain name which is confusingly similar to said trademark.

(ii) Furthermore, the Panel notes that there is no evidence in the record or Whois information showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

(iii) Finally, the Panel notes that there is no evidence in the record either showing that the Respondent might be making a noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark at issue pursuant to paragraph 4(c)(iii) of the Policy. In particular, the Panel considers it obvious that the Respondent wanted to mimic the Complainant’s original website (which consistently uses the Complainant’s trademark ZADIG & VOLTAIRE) available under the disputed domain name. Noting the absence of any disclaimer, the disputed domain name’s content exacerbates the confusion caused by the incorporation of one of the co-dominant elements of the Complainant’s trademark in the construction of the disputed domain name by further impersonating the Complainant. Accordingly, further to section 2.8 of the [WIPO Overview 3.0](#), the Respondent’s use of the disputed domain name to host an impersonating webstore excludes any bona fide offering, noncommercial, or fair use of the disputed domain name from the outset.

Since the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1. In the present case, the Panel notes that the Respondent by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy).

It is the view of this Panel that these circumstances are met in the case at hand:

It results from the documented and undisputed evidence provided by the Complainant that the disputed domain name resolves to a website which mimics the Complainant's website by offering the Complainant's products under the trademark ZADIG & VOLTAIRE without the Complainant's authorization and for allegedly significantly discounted prices. In addition, in the imprint the Respondent identifies itself as ZV France by using the Complainant's company and address data. However, the Complainant has not given any authorization for such use and is not linked to the Respondent or its website. For the Panel, it is therefore evident that the Respondent positively knew the Complainant's trademarks and products. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent also knew that the disputed domain name included one of the co-dominant elements of the Complainant's trademark ZADIG & VOLTAIRE when it registered the disputed domain name. Registration of a domain name which is confusingly similar to a third party's trademark, in awareness of said trademark and in the absence of rights or legitimate interests is suggestive of registration in bad faith (see e.g. *Vorwerk International AG v. ayoub Lagnadi, Lagnadi LTD*, WIPO Case No. [D2022-1592](#) with further references). While the ability to purchase the goods is not known to the Panel, the alleged commercial offering and impersonation of the Complainant is sufficient to establish the Respondent's bad faith intent to mislead Internet users.

In addition, the finding of bad faith registration and use is supported by the following further circumstances resulting from the case at hand:

- (i) at the date the Respondent registered the disputed domain name, the trademark ZADIG & VOLTAIRE existed and had been used for more than 15 years and the brand had been used since 1997;
- (ii) the Respondent's failure to provide any evidence of actual or contemplated good-faith use;
- (iii) the implausibility of any good faith use to which the disputed domain name may be put, and

The Panel finds that the Complainant has established the third element 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 <outletzadig.com> be transferred to the Complainant. .

/Tobias Malte Müller/

Tobias Malte Müller

Sole Panelist

Date: January 31, 2024