

ADMINISTRATIVE PANEL DECISION

Z&V v. Wo mikey

Case No. D2024-0084

1. The Parties

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

The Respondent is Wo mikey, Taiwan Province of China.

2. The Domain Name and Registrar

The disputed domain name <zadigvoltairebags.com> is registered with Gname.com Pte. Ltd. (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on January 10, 2024. On January 10, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 12, 2024, 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 January 12, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint in English on January 12, 2024.

On January 12, 2024, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the disputed domain name is Chinese. On the same day, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant's submission.

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 the Respondent in Chinese and English of the Complaint, and the proceedings commenced on January 18, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 7, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 9, 2024.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on February 15, 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

The Complainant is a French company established in 1997, active in the fashion industry and trading under the brand name Zadig & Voltaire and in particular ready-to-wear fashion, accessories, and perfumes.

The Complainant is the owner of, inter alia, the International trademark registration No. 907298 ZADIG & VOLTAIRE (word), registered on September 15, 2006 for goods and services in International Classes 3, 14, 16, 18, 20, 24, 25, 35, and 43 and of the European Union Trade Mark registration no. 005014171 ZADIG & VOLTAIRE (word), registered on June 8, 2007 for goods in International Class 3. The Complainant also has a strong online presence and owns domain name registrations incorporating the ZADIG & VOLTAIRE mark, such as the domain name <zadig-et-voltaire.com> registered and used for its official website since May 2002.

The disputed domain name was registered on December 27, 2023 and is therefore of a later date than the Complainant's abovementioned trademark registrations. The Complainant provides evidence that the disputed domain name redirects to a website displaying the trademark ZADIG & VOLTAIRE and offering allegedly counterfeited ZADIG & VOLTAIRE goods at discounted prices.

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 it is the owner of a number of registered trademarks consisting of ZADIG & VOLTAIRE (word marks and logo marks) and that it has a strong reputation for the products under this trademark. The Complainant asserts that the disputed domain name is confusingly similar to the abovementioned trademarks since it incorporates such marks in their entirety, adding only the descriptive term "bags". The Complainant essentially contends that the Respondent has linked the disputed domain name to an imposter website and offers counterfeit products via such website, and that the Respondent is impersonating the Complainant for undue commercial gain. The Complainant alleges that the Respondent has no rights or legitimate interests in the disputed domain name, and that such use made of the disputed domain name does not confer any rights or legitimate interests and that it proves that the Respondent is using it in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that the English language is the language most widely used in international relations and is one of the working languages of the Center; the fact that the disputed domain name is formed by words in Roman characters (ASCII) and not in Chinese script and the fact that in order to proceed in Chinese, the Complainant would have had to retain specialized translation services at a cost very likely to be higher than the overall cost of these proceedings.

The Respondent did not make any specific submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2 Substantive Issues

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 3.0](#), section 1.7.

Based on the available record, the Panel finds 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.

The Panel finds that the Complainant's marks ZADIG & VOLTAIRE are clearly recognizable within the disputed domain name, since the disputed domain name fully incorporates these marks. Accordingly, the disputed domain name is confusingly similar to these marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of another term, here "bags", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, 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 domain names 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.

Moreover, upon review of the facts and evidence, the Panel notes that the Respondent has not provided any evidence of the use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services. Instead, upon review of the facts and the evidence submitted in this proceeding, the Panel notes that the disputed domain name directs to an active website which shows a clear intent on the part of the Respondent to misleadingly pass it off as the Complainant’s website for commercial gain. In fact, said website prominently displays the Complainant’s trademarks thereby misleading consumers into believing that the Respondent may be licensed by, or affiliated with the Complainant and/or its trademarks. Moreover, the Panel also accepts that, given the unclear origin, and the products sold on the Respondent’s website, compared to those on the Complainant’s website, appear to disproportionately below market value, it is likely that the products offered by the Respondent on such website are counterfeit products. Moreover, even if the products were legitimate products, the Respondent’s website does not display any accurate and prominent disclaimer regarding the relationship between the Complainant and the Respondent. Therefore, it is clear to the Panel that the Respondent is not a good faith provider of goods or services under the disputed domain name, see also *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#). Given the abovementioned elements, the Panel concludes that the Respondent’s use of the disputed domain name does not constitute a bona fide offering of goods or services, nor a legitimate noncommercial or fair use of the disputed domain name.

Panels have held that the use of a domain name for illegal activity here, claimed sale of counterfeit goods, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Finally, the Panel finds that the nature of the disputed domain name, being confusingly similar to the Complainant’s trademarks and containing the descriptive term “bags”, which clearly refers to the Complainant’s products, carries a risk of implied affiliation and cannot constitute fair use, as it effectively impersonates the Complainant and its products or suggests sponsorship or endorsement by the Complainant (see [WIPO Overview 3.0](#), section 2.5.1).

Based on the available record, 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.

In the present case, the Panel notes that the Respondent has registered a domain name which is confusingly similar to the Complainant’s well-known, intensely used and distinctive trademarks (see in this regard also previous decisions under the Policy such as *Z&V v. Jian Qiu*, WIPO Case No. [D2022-2007](#)). The Panel deducts from this fact that by registering the disputed domain name, the Respondent deliberately

and consciously targeted the Complainant's prior trademarks for ZADIG & VOLTAIRE. The Panel finds that this creates a presumption of bad faith. In this regard, the Panel refers to the [WIPO Overview 3.0](#), section 3.1.4, which states "[p]anelists have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith." The Panel also notes that the Complainant's trademarks in this case predate the registration date of the disputed domain name by several years and the Respondent has used the Complainant's trademarks on the website at the disputed domain name. In the Panel's view, it clearly indicates bad faith on the part of the Respondent, and the Panel therefore finds that it has been demonstrated that the Respondent registered the disputed domain name in bad faith.

As to use of the disputed domain name in bad faith, the Complainant provides evidence that the disputed domain name directs to an active website which shows a clear intent on the part of the Respondent to misleadingly pass it off as the Complainant's website, displaying the Complainant's trademarks and offering products for sale that are likely counterfeit products. The Panel concludes from these facts that the Respondent is intentionally attracting Internet users for commercial gain to such website, by creating consumer confusion between the website associated with the disputed domain name and the Complainant's trademarks. This constitutes direct evidence of the Respondent's bad faith under paragraph 4(b)(iv) of the Policy.

Panels have held that the use of a domain name for illegal activity here, claimed sale of counterfeit goods, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

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 <zadigvoltairebags.com> be transferred to the Complainant.

/Deanna Wong Wai Man/

Deanna Wong Wai Man

Sole Panelist

Date: February 29, 2024