

ADMINISTRATIVE PANEL DECISION

ZAG America, LLC v. Gazali Çelik
Case No. D2024-0796

1. The Parties

The Complainant is ZAG America, LLC, United States of America (“US”), internally represented.

The Respondent is Gazali Çelik, Türkiye.

2. The Domain Names and Registrar

The disputed domain name <zagmysite.com> is registered with Turkticaret.net Yazilim Hizmetleri Sanayi ve Ticaret A.S. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on February 21, 2024. On February 22, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 26, 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 (GDPR Masked) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 28, 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 amendment to the Complaint on February 29, 2024.

On February 28, 2024, the Center informed the Parties in Turkish and English, that the language of the registration agreement for the disputed domain name is Turkish. On February 29, 2024, 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 amendment to the 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 March 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 25, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 26, 2024.

The Center appointed Ugur G. Yalçiner as the sole panelist in this matter on March 28, 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 global independent entertainment studio specializing in world-class storytelling across TV, film, and digital platform intended for kids and family entertainment with offices in Paris, France and Los Angeles, California.

The Complainant, and its wholly owned subsidiary, are the owners of trademark registrations in various jurisdictions, some of which are listed below:

- French trademark ZAG with registration No. 3892164, registered on January 27, 2012,
- Turkish trademark ZAG with registration No. 2019 86458, registered on December 18, 2020,
- US trademark ZAG HEROEZ with registration No. 5753187, registered on May 14, 2019,
- European Union trademark ZAG HEROEZ with registration No. 017878541, registered on July 24, 2018,

The Complainant also owns the domain name <zag.com> since September 18, 2020.

The disputed domain name was registered on October 7, 2023. At the time of filing of the Complaint the disputed domain name resolved to a website where the landing page was confusingly similar with the landing page of the Complainant's Salesforce contract management platform, which is proven by the Complainant with the screenshot of the website submitted as an Annex-12 to the Complaint. At the time of this Decision, the disputed domain name no longer resolves to any active website.

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. The Complaint includes the following contentions:

(i) Identical or Confusingly Similar

The Complainant contends that the disputed domain name incorporates the Complainant's registered ZAG trademark in its entirety, part of its ZAG HEROEZ trademark, and the entirety of its domain name <zag.com>, the addition of the words ("mysite") does not prevent a finding of confusing similarity.

The Complainant also claims that the Complainant uses Salesforce as its contract management platform and the Respondent has programmed the disputed domain name to display a confusingly similar login page when that the disputed domain name is accessed, in an attempt to confuse the Complainant's licensees and agents into believing that the website is affiliated with the Complainant's Salesforce login page, the bona fide

website appears as <zag.my.salesforce.com> while the disputed domain appears as <zagmysite.com>, there are also two references to ZAG on its landing page namely “Zag Product Development Community” and “Zag employee? Log in” that are intended to confuse visitors as to who owns and operates the site.

(ii) Rights or legitimate interests

The Complainant asserts that the Respondent has no rights or legitimate interests with respect to the disputed domain name, the Respondent is not affiliated with the Complainant in any way, the Complainant has not authorized the Respondent either as an agent, licensee, vendor, supplier, distributor, or customer relations agent for the Complainant’s services, there can be no justifiable use that the Respondent may have with the disputed domain name.

The Complainant contends that the Respondent has published a parking page linked to the disputed domain name, in an attempt to (a) gain access to the Complainant’s confidential and proprietary information, by misleadingly diverting agents, partners, and licensees to a confusingly similar website that asks for credentials to access the Complainant’s contract management platform and (b) deceive social media platforms in order to take down legitimate social media posts that have been duly created between the Complainant and its partners, licensees, and agents.

The Complainant alleges that the Respondent has used the disputed domain name to establish email ID’s for the purpose of launching phishing attacks against the Complainant’s agents, partners, and licensees using the names of the Complainant’s employees and using these same false email ID’s to send takedown notices to social media platforms; the use of a disputed domain name to send deceptive emails impersonating the Complainant’s employees clearly fails to establish rights or legitimate interests.

(iii) Registration and Use in Bad Faith

The Complainant contends that the disputed domain name was registered and is being used in bad faith, the Complainant’s property “ZAG Heroez – Miraculous” is popular worldwide, ZAG Heroez – Miraculous® is in its fifth season and had a motion picture released last year, the disputed domain name was registered and is being used by the Respondent in bad faith, aiming to cause confusion and mislead the Complainant’s agents and licensees as well as social media platforms, all in an attempt to phish for credentials in order to access the Complainant’s contract management platform; to find sensitive information that can be exploited online by the Respondent; and disrupt the Complainant’s regular business activities, the registration of the disputed domain name was made with full knowledge of the existence of the Complainant and its well-known trademarks, as the Respondent’s takedown notices and phishing emails are designed to indicate that he is fully familiar with the Complainant’s business, and in fact, the Respondent poses as employees of the Complainant.

The Complainant states that the Respondent has registered multiple email ID’s patterned on employees of the Complainant and used those emails to phish for credentials of licensees, agents, and partners and send takedown notices to Instagram in order to bring down authorized posts credentials of licensees, agents, and partners; the Respondent’s actions were an attempt to purposefully interrupt the Complainant’s ordinary course of business and fraudulently obtain credentials for the ultimate purpose of gaining access to the Complainant’s confidential and proprietary content in order to “spoil” episodes via the Respondent’s online social media platforms with the effect of disrupting the business of a “competitor” or misdirecting Internet users to another site for commercial gain.

B. Respondent

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

6. Discussion and Findings

6.1. Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is English. 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 Respondent is able to read and write in English as the Respondent has sent multiple emails to the Complainant's partners, licensees, and agents in English, pretending to be an employee of the Complainant.

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 Proceedings

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three elements are present:

- (i) the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has 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.

A. Identical or Confusingly Similar

The Complainant submits sufficient evidence for its registered trademarks in various jurisdictions namely, in France, the US, Türkiye, and European Union. Accordingly, the Panel is satisfied that the Complainant is the owner of the trademarks ZAG, ZAG HEROES, and others containing the term "zag".

The disputed domain name incorporates the Complainant's trademark ZAG, with the additional terms "mysite". Panel notes that the trademark ZAG is recognizable within the disputed domain name, referring to the section 1.7 of the [WIPO Overview 3.0](#). In this regard, the Panel considers mere addition of the terms "mysite" does not avoid the confusing similarity with the Complainant's trademarks. (See also [WIPO Overview 3.0](#), section 1.8 and the cases cited therein, finding 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.)

It is an accepted principle that generic Top-Level Domains (“gTLDs”), in this case “.com”, are to be typically disregarded in the consideration of the issue of whether a domain name is identical or confusingly similar to a Complainant’s trademarks. Disregarding the gTLD “.com”, the Panel notes that the disputed domain name is confusingly similar to the Complainant’s trademark.

In the light of the above, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s registered trademarks and that the requirements in paragraph 4(a)(i) of the Policy are fulfilled.

B. Rights or Legitimate Interests

Once the Complainant makes out a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

([WIPO Overview 3.0](#), section 2.1.)

The Panel confirms that the Complainant has made out a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has neither replied to the Complainant’s contentions formally nor presented any evidence to support his rights or legitimate interests in the disputed domain name. As the Respondent has failed to rebut this case, the Panel concluded that the Complainant has established the second element of paragraph 4(a) of the Policy. See *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#); *Spenco Medical Corporation v. Transure Enterprise Ltd*, WIPO Case No. [D2009-1765](#); *Swarovski Aktiengesellschaft v. blue crystal*, WIPO Case No. [D2012-0630](#); *Pomellato S.p.A v. Richard Tonetti*, WIPO Case No. [D2000-0493](#).

The Panel notes that the Respondent does not have any registered trademarks or trade names and no license or authorization of any other kind has been given to the Respondent by the Complainant to use its registered trademark.

According to the Complainant’s assertion and provided screenshot of the website which the disputed domain name resolved to, the landing page was confusingly similar with the Complainant’s login page of the Salesforce contract management platform comprising its trademark ZAG for use of its business partners. While drafting this decision the Panel determined that the disputed domain name no longer resolves to an active website. Besides it is proven that the Respondent had registered email addresses in the name of the employees of the Complainant and used them for not only phishing for credentials of licensees, agents, and partners and but also sending takedown notices to Instagram related to the legitimate posts of the licensees and partners of the Complainant. The Respondent’s use of the disputed domain name therefore does not support a finding of rights or legitimate interests in the disputed domain name on the part of the Respondent. (See [WIPO Overview 3.0](#), section 2.13.1, “Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent.”)

As a result, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names, and the requirements of paragraph 4(a)(ii) of the Policy are therefore fulfilled by the Complainant.

C. Registered and Used in Bad Faith

The Panel is satisfied with the relevant evidence filed by the Complainant showing that it owns trademark registrations for ZAG and ZAG HEROES, which have been registered and in use long before the registration of the disputed domain name.

The Panel is of the opinion that it is not possible for the Respondent to be unaware of the Complainant and its trademark when the disputed domain name was registered, and the Respondent’s aim of the registration was to take an unfair advantage of the Complainant’s trademark considering that the Respondent has registered email addresses with the same username of the Complainant’s employees, which are also

confusingly similar with their actual email addresses, and sent out phishing emails to the licensees, agents, and partners of the Complainant by pretending to be an employee of the Complainant. Panels have held that the use of a domain name for purposes namely sending email, phishing, identity theft other than to host a website constitutes bad faith. See [WIPO Overview 3.0](#), section 3.4. Nevertheless, apparently at the time of filing the Complaint, the Respondent was using the website as designed confusingly similar to the Complainant's login page of the Salesforce contract management platform comprising its trademark ZAG. Moreover, based on the evidence submitted by the Complainant, it appears that the Respondent sent takedown notices against the Complainant's business partners' authorized posts on Instagram. The Panel is convinced that the purpose of these illegal activities of the Respondent is to mislead the business partners of the Complainant, to damage and interrupt the Complainant's commercial activities, and to obtain confidential information for potential commercial gain. The current passive holding of the disputed domain name does not release the Respondent of bad faith registration and use, and in fact, under the circumstances of this case reinforces the lack of any good faith explanation for the registration and use of the disputed domain name. See [WIPO Overview 3.0](#), section 3.3.

Having considered all the facts in this case, the Panel finds that the Complainant has sustained its burden of proof in showing that the disputed domain name was registered and used in bad faith.

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 <zagmysite.com> be transferred to the Complainant.

/Ugur G. Yalçiner/

Ugur G. Yalçiner

Sole Panelist

Date: April 11, 2024