ARBITRATION
AND
MEDIATION CENTER

WIPO
WORLD
INTELLECTUAL PROPERTY
ORGANIZATION

ADMINISTRATIVE PANEL DECISION
Z&V v. 杨惜海 (rwref efsfd)
Case No. D2024-1002

1. The Parties

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

The Respondent is 杨惜海 (rwref efsfd), China.

2. The Domain Name and Registrar

The disputed domain name <zadig-eu.shop> is registered with West263 International Limited (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on March 6, 2024. On March 7, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 8, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 15, 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 the same day.

On March 15, 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 language of the proceeding.

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 of the Complaint, and the proceeding commenced on March 26, 2024. In accordance with the Rules, paragraph 5,

the due date for Response was April 15, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 17, 2024.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on April 19, 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

A. Complainant

The Complainant is a French fashion company founded in 1997, and marketing and selling its fashion, accessories and perfumes under the trade mark ZADIG & VOLTAIRE (the "Trade Mark").

The Complainant is the owner of European Union registration No. 005014171 for the Trade Mark, with a registration date of June 8, 2007.

B. Respondent

The Respondent is an individual located in China.

C. The Disputed Domain Name

The disputed domain name was registered on March 3, 2024. .

D. Use of the Disputed Domain Name

The disputed domain name previously resolved to an English language website, impersonating the Complainant's official website, and purporting to be offering for sale, in Euro, heavily discounted fashion, accessories and perfumes under the Trade Mark.

As at the date of this Decision, the disputed domain name is no longer resolved 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.

B. Respondent

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

6. Discussion and Findings

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, in order to proceed in Chinese, the Complainant would have to retain specialised translation services at a cost very likely to be higher than the overall cost of this proceeding.

The Respondent did not file any response in this proceeding and did not make any submissions with respect to the language of the proceeding.

The Panel notes that the English-language content of the website associated with the disputed domain name demonstrates the Respondent's likely proficiency in English.

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.

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 trade mark and the disputed domain name. WIPO Overview 3.0, section 1.7.

The Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. WIPO Overview 3.0, section 1.2.1.

The Panel finds the mark is recognisable within the disputed domain name. Notably, it contains the entirety of the first word in the Trade Mark, ZADIG. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. WIPO Overview 3.0, section 1.7.

Although the addition of other terms (here, "eu" – the commonly used abbreviation for European Union) 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.

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.

Panels have held that the use of a domain name for illegal activity (here, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. WIPO Overview 3.0, section 2.13.1.

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's use of the disputed domain name in respect of the Website clearly amounts to bad faith registration and use under paragraph 4(b)(iv) of the Policy.

In addition, Panels have held that the use of a domain name for illegal activity (here, impersonation/passing off, or other types of fraud) 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 <zadig-eu.shop> be transferred to the Complainant.

/Sebastian M.W. Hughes/
Sebastian M.W. Hughes
Sole Panelist
Date: May 3, 2024