

ADMINISTRATIVE PANEL DECISION

Avantax, Inc. v. Zac Chen, Jeffrey Rush, sfwvsd vsdvqw, Emilio Sandoval
Case No. D2024-1255

1. The Parties

The Complainant is Avantax, Inc., United States of America (“United States”), represented by Pryor Cashman, LLP, United States.

The Respondent is Zac Chen, Jeffrey Rush, sfwvsd vsdvqw, and Emilio Sandoval, United Kingdom.

2. The Domain Names and Registrar

The disputed domain names <avantaxadvisory.com>, <avantax-advisory-platform.xyz>, <avantaxadvisorys.com>, and <avantaxplatform.com> are registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 22, 2024. On March 25, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On March 25, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 27, 2024, providing the registrant and contact information of nominally multiple underlying registrants disclosed by the Registrar, requesting the Complainant to either file separate complaints for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity and/or that all domain names are under common control. The Complainant filed an amended Complaint on March 28, 2024.

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 proceedings commenced on April 10, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 30, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 2, 2024.

The Center appointed Anne-Virginie La Spada as the sole panelist in this matter on May 7, 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 an investment management company, based in the United States, which provides comprehensive financial services.

The Complainant owns inter alia the following registration for AVANTAX:

- United States trademark registration no. 6398089 registered on June 22, 2021, in classes 16, 35, 36, 41 and 42.

The Complainant operates an official website under the domain name <avantax.com>.

The disputed domain names were registered on:

- June 6, 2023, for <avantaxplatform.com>
- June 6, 2023, for <avantaxadvisory.com>
- June 19, 2023, for <avantax-advisory-platform.xyz>
- August 11, 2023, for <avantaxadvisorys.com>

The disputed domain names <avantaxadvisory.com> and <avantaxadvisorys.com> resolved to websites with the same content, displaying the trademark AVANTAX, and purportedly offering financial advisory services. The disputed domain name <avantaxplatform.com> resolved to a sign-in page without material content but displayed in the browser tap the terms "Avantax Advisory platform" and the same logo as the one used in the websites operated under the disputed domain names <avantaxadvisory.com> and <avantaxadvisorys.com>. The disputed domain name <avantax-advisory-platform.xyz> did not appear to resolve to an active website.

Websites operated under and/or use of the disputed domain names <avantaxadvisory.com>, <avantaxplatform.com>, and <avantax-advisory-platform.xyz> have been referred to as suspected scams by third-party scam assessment websites.

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 names.

Notably, the Complainant contends that the disputed domain names are confusingly similar to its well-known AVANTAX trademark as they identically reproduce the denomination "AVANTAX" with the addition of generic terms in its field of activity, which is insufficient to dispel the likelihood of confusion.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain names for the following reasons: (i) the Respondent has no trademarks rights in the term AVANTAX neither has the Respondent received any license or authorization from the Complainant to use any domain names featuring its trademark; (ii) the Respondent is not commonly known by the distinctive term AVANTAX, or any similar term; (iii) the Respondent has not used, nor prepared to use the disputed domain name in connection with a bona fide offering of goods or services. The Complainant submits that the disputed domain names carry a risk of implied affiliation with the Complainant.

Finally, the Complainant contends that the Respondent has used and registered the disputed domain names in bad faith. Given that the Complainant's rights predate the registration of the disputed domain names and given the Complainant's online presence, it is highly likely, according to the Complainant, that the Respondent was aware of the Complainant's trademark rights at the time of registration of the disputed domain names. The Complainant asserts that the Respondent is intentionally creating confusion in order to divert consumers from the Complainant's websites for commercial gain, a behavior which amounts to use in bad faith.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, a complainant must assert and prove each of the following:

- (i) the 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 domain name; and
- (iii) the domain name registered by the respondent has been registered and is being used in bad faith.

6.1 Consolidation: Multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. The Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The disputed domain name registrants did not comment on the Complainant's request.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2.

As regards common control, the Panel notes the following factors that strongly suggest common control in the present case: (i) the disputed domain names display the same building pattern: they combine the trademark AVANTAX with the terms "advisory", "platform" or a combination thereof, under the generic extensions ".com" or ".xyz"; (ii) they have been registered within a span of approximately three months, namely from June 6, 2023 and August 11, 2023; (iii) they are all registered with the same registrar Namecheap and three of them are hosted by Cloudflare Inc.; (iv) all the named Respondents have indicated United Kingdom as the country of residence and three of them the city of "baxley", which does not seem to exist; (v) the disputed domain name for which a different (but apparently equally fabricated) street address in the United Kingdom is mentioned (namely <avantaxadvisorys.com>) resolves to a website with the same content as the website operated under one of the three other disputed domain names.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as "the Respondent") in a single proceeding.

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 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.

The entirety of the mark is reproduced within the disputed domain names. Accordingly, the disputed domain names are 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, the terms "advisory(s)" and/or "platform or a combination of both") may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names 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 names. 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 names such as those enumerated in the Policy or otherwise.

In the present case, the Panel observes that the disputed domain names carry a risk of implied affiliation with the Complainant, as they combine the Complainant's trademark with terms likely to be used in the field of activity of the Complainant, thus suggesting sponsorship, affiliation or endorsement by the trademark owner and/or that the disputed domain name in question corresponds to an official website. See [WIPO Overview 3.0](#), section 2.5.1.

Furthermore, while the Respondent appears to have used the disputed domain names <avantaxadvisory.com> and <avantaxadvisorys.com>, and possibly <avantaxplatform.com> in connection with a commercial website purporting to offer financial advisory services such websites do not display any disclaimer concerning the relationship between the Respondent and the Complainant but directly refer to the AVANTAX trademarks. For example, the website operated under the disputed domain name <avantaxadvisory.com> displays the mention "this website operates under the Avantax Advisory platform

brand in the American Economic Area". In the Panel's view, this demonstrates an obvious attempt on the part of the Respondent to mislead Internet users seeking the Complainant's services and website. Such being the case, the Respondent cannot be considered to be making a bona fide commercial use of the disputed domain names. In addition, websites operated under and/or use of the disputed domain names <avantaxadvisory.com>, <avantaxplatform.com>, and <avantax-advisory-platform.xyz> are referred to as suspected scams by scam assessment websites.

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

Accordingly, the Respondent's use of the disputed domain name does not constitute bona fide offering of goods and services.

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 reproduced the Complainant's trademark on its websites and that the trademark AVANTAX, which is distinctive, has been widely used before the registration of the disputed domain names. The Panel finds it therefore unlikely that the disputed domain names were chosen independently without reference to the Complainant's trademark. The Panel therefore accepts that the Respondent was aware of the existence of the Complainant and of its trademarks at the time of the registration of the disputed domain names and registered them to take unfair advantage of the Complainant's trademarks. The Panel finds accordingly that the disputed domain names were registered in bad faith.

Panels have held that the use of a domain name for illegal activity, here claimed impersonation/passing off, 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 names constitutes bad faith under the Policy.

Indeed, the Respondent used the disputed domain names <avantaxadvisory.com> and <avantaxadvisorys.com>, and possibly <avantaxplatform.com> in connection with active websites reproducing the Complainant's trademark. By using the disputed domain names in such manner, the Respondent tried to pass off as the Complainant. The Panel finds that in acting so, the Respondent intentionally attempted to attract, for the purposes of commercial gain, Internet users looking for the Complainant's official websites, by creating a likelihood of confusion with the Complainant's mark as to the source and affiliation of these websites. Such behaviour constitutes use in bad faith under paragraph 4(b)(iv) of the Policy.

The disputed domain name <avantax-advisory-platform.xyz> does not seem to have been used in connection to an active website. However, given that this disputed domain name was registered six days after the disputed domain names <avantaxplatform.com> and <avantaxadvisory.com> (which were used in connection with active websites reproducing the AVANTAX trademark and creating confusion with the Complainant's services), and that it was registered under the same false Whois contact details, it is likely that this disputed domain name was registered for the same unlawful purpose. Therefore, the holding of this disputed domain name amounts to passive holding in bad faith in the Panel's view.

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 names <avantaxplatform.com>, <avantaxadvisory.com>, <avantax-advisory-platform.xyz>, and <avantaxadvisorys.com> be transferred to the Complainant.

/Anne-Virginie La Spada/

Anne-Virginie La Spada

Sole Panelist

Date: May 21, 2024