

ADMINISTRATIVE PANEL DECISION

Disabled American Veterans v. xiansheng chen, chenxiansheng
Case No. D2022-3805

1. The Parties

The Complainant is Disabled American Veterans, United States of America (“United States” or “U.S.”), represented by Williams Mullen, P.C., United States (the “Complainant”).

The Respondent is xiansheng chen, chenxiansheng, Singapore (the “Respondent”).

2. The Domain Name and Registrar

The disputed domain name <the-dav.com> (the “Domain Name”) is registered with GMO Internet, Inc. d/b/a Discount-Domain.com and Onamae.com (the “Registrar”).

3. Procedural History

On October 11, 2022, the Complainant filed its complaint in English (the “Complaint”) with the WIPO Arbitration and Mediation Center (the “Center”). On October 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On October 16, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

On October 18, 2022, the Center transmitted an email communication to the parties in English and Japanese regarding the language of the proceeding. On October 20, 2022, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

The Center verified that 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”).

October 24, 2022, in accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced. In accordance with the Rules, paragraph 5, the due date for Response was November 13, 2022. The Respondent did not submit any response. Accordingly, on November 14, 2022, the Center notified the Respondent’s default.

On November 23, 2022, the Center appointed Haig Oghigian as the sole panelist in this matter. 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 federally incorporated veterans services organization in the United States. The Complainant is known by the acronym “DAV”, which stands for the “DISABLED AMERICAN VETERANS”.

The Complaint is a nonprofit charity that provides support to veterans and their families, assisting more than a million veterans in positive, life-changing ways each year.

The Respondent is xiansheng chen or chenxiansheng.

Since 2002, the Complainant has held the following U.S. federal trademark registrations for DAV (the “Trademarks”):

| Trademark | U.S. Registration No. | Registration Date | International Classes |
|---|-----------------------|--------------------|-----------------------|
| DAV | 2620088 | September 17, 2002 | 42 |
| DAV | 5090835 | November 29, 2016 | 36 |
| DAV (& Design)  | 4542786 | June 3, 2014 | 35 |
| DAV (& Design)  | 6118955 | August 4, 2020 | 36 |

The Complainant also owns U.S. federal trademark registrations for DISABLED AMERICAN VETERANS, including U.S. Registration Nos. 6157153 and 2920426, registered on September 22, 2020 and January 25, 2005.

The Complainant has been using the mark DAV since 1921.

The Complainant also owns the <dav.com> and <dav.org> domain names and operates its website at the <dav.org> domain. The Complainant registered the <dav.com> domain name on November 2, 1997 and the <dav.org> on May 18, 1995.

The Domain Name was registered on August 17, 2022. The Domain Name resolves to a parked page featuring pornographic and online gambling advertisements and content.

The Registrar confirmed that according to Whois, the Domain Name is registered with chenxiansheng in Singapore and that the Domain Name expires on August 16, 2023. The Registrar confirmed that a lock of the Domain Name was applied and that such lock status will remain in place through the remaining pendency of the proceeding.

5. Parties' Contentions

A. Complainant

The following information has been taken from the Complaint and the attached Annexes.

The Complainant submits that the dispute is properly within the scope of the Policy and that this Panel has the jurisdiction to decide the dispute because the registration agreement, pursuant to which the Domain Name that is the subject of the Complaint is registered, incorporates the Policy.

The Complainant says its trademarks, including the DAV Trademarks, are well-known globally and that the word mark DAV has been used by the Complainant for over a century. The Complainant has an extensive network of local offices across the United States, including its territories. The Complainant says it has used, promoted and advertised the Trademarks for decades. Last year, the Complainant provided more than 163,000 rides to veterans attending medical appointments and assisted in filing over 151,000 claims for benefits. The Complainant says that in 2021, it helped veterans receive more than USD 25 billion in earned benefits.

The Complainant submits that where the complainant holds a nationally or regionally registered trademark or service mark, this *prima facie* satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), Section 1.2.1) because a registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner (*Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#)). The Complainant says it has established that it owns rights in its Marks based on its U.S. Patent and Trademark Office ("USPTO") registrations.

The Complainant says that it markets its services through various advertising media, including without limitation in print media, and on the Internet at the Complainant's websites and social media. By virtue of its promotion efforts and longstanding use of the DAV mark, the Complainant's Trademarks have become incredibly well recognized by consumers as designating the Complainant as the exclusive source of the Complainant's charitable services. Further, as mentioned above, the Complainant owns the domain names <dav.com> and <dav.org>, which have been registered since November 2, 1997 and May 18, 1995, respectively.

The Complainant says it has spent considerable money, time, and effort promoting its Trademarks and, through such investments, the Complainant's organization has become widely recognized as offering charitable services under the Trademarks.

The Complainant says that their Trademarks and domain names are extremely valuable to them and that they have demonstrated longtime common law use of the Trademarks (*Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#)).

On August 17, 2022, the Respondent registered the Domain Name. The Domain Name fully incorporates the Complainant's Trademarks, namely the DAV mark.

The website at the Domain Name appears to be used to feature a parked page with pornographic and online gaming content by the Respondent for its financial gain.

The Complainant submits that the URL for the Domain Name incorporates the Complainant's DAV Trademarks in their entirety, and is identical to such Trademarks and substantially identical to the Complainant's domain names <dav.org> and <dav.com>. The Domain Name's addition of a generic term "the" with a dash "-" does nothing to obviate the confusion. The Complainant says that adding the article "the" to the Complainant's Trademark demonstrates that the Respondent is attempting to capitalize on the Complainant's well-known and established Trademark.

The Complainant says that it bears the initial burden to establish a *prima facie* case that the Respondent does not have rights or legitimate interests in the Domain Name. However, if the Complainant successfully establishes such a case, the burden shifts to the Respondent to show that it does have rights or a legitimate interest in the Domain Name (*Betsson Malta Ltd. v. Droker*, WIPO Case No. [D2010-0883](#)).

The Respondent has no license, permission, or authorization from the Complainant to use the DAV Trademark, or any of the Complainant's marks, that are used and clearly recognizable in the Domain Name. In the absence of any authorization, the Respondent has no right or legitimate interest in the Domain Name for the following additional reasons: (1) the Respondent does not utilize the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services; (2) the Respondent makes no legitimate noncommercial or fair use of the Domain Name; and (3) to the best of the Complainant's knowledge, the Respondent is not commonly known by the Domain Name.

The mere registration of a domain name is not sufficient to establish rights or legitimate interests (*SembCorp Industries Limited v. Huan Xin*, WIPO Case No. [D2001-1092](#)). Further, the Complainant submits that the Respondent's use of the Domain Name consisting solely of a page with the aforementioned materials confers "no public benefits" but rather is "replete with public costs" (*Dr. Martens International Trading GmbH, Dr. Maertens Marketing GmbH v. Private Whois Service*, WIPO Case No. [D2011-1753](#)).

Additionally, no rights or legitimate interests derive from the tarnishment of another's trademark by using it to divert Internet users to pornographic websites (*Andrey Ternovskiy dba Chatroulette v. Protection of Private Person / Aleksandr Katkov*, WIPO Case No. [D2017-0381](#); *Neste Oil Oyj v. Nesin Dmitry / Privacy Protection Service INC*, WIPO Case No. [D2014-0883](#)).

The Complainant submits that UDRP panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of illegal products or services) can never confer rights or legitimate interests on a respondent and that "use which intentionally trades on the fame of another cannot constitute a *bona fide* offering of goods or services. To conclude otherwise would mean that a Respondent could rely on intentional infringement to demonstrate a legitimate interest, an interpretation that is obviously contrary to the intent of the Policy" (*Advance Magazine Publishers, Inc. v. Lisa Whaley*, WIPO Case No. [D2001-0248](#)).

The Complainant submits that the Domain Name clearly features unauthorized use of the Complainant's Trademarks and therefore the Respondent is not making a legitimate, noncommercial or fair use of the Domain Name without intent for commercial gain. The Respondent's use of the Domain Name solely to generate income from illicit advertisements clearly indicates that. The Respondent's purpose in using the Domain Name is to yield financial gain through deceptively diverting Internet users, which does not confer legitimate rights or interests that arise from a *bona fide* offering of goods or services, or a legitimate noncommercial or fair use (*Donald J. Trump v. Mediaking LLC*, WIPO Case No. [D2010-1404](#)). The Respondent may not use the Complainant's Marks as a domain name to entice Internet users to its website (*Chanel, Inc. v. Estco Technology Group*, WIPO Case No. [D2000-0413](#)).

The Complainant says that Internet users could easily arrive at the Respondent's website at the Domain Name when attempting to find the Complainant's services and its legitimate website offered at the domain name <dav.org>. The Respondent's use of the Complainant's Trademarks in the Domain Name therefore tarnishes the Complainant's Marks and damages the Complainant's reputation. The Respondent either knew or ought to have known about the Complainant's mark given that the Complainant had: 1) been using the mark DAV for over a century; 2) federally registered numerous DAV marks in the U.S.; 3) registered the domain names <dav.org> and <dav.com> over a decade ago; and 4) been operating its website at <dav.org>.

The Complainant draws the Panel's attention to the case *Educational Testing Service v. Whois Privacy Protection Service by onamae.com / Xiansheng Chen, chenxianshengthe*, WIPO Case No. [D2021-4103](#), with the same Respondent who was similarly operating an infringing website with obscene and pornographic content. In that case, the panel held that the "tarnishment of another's trademark by using it to divert Internet users to pornographic websites cannot be the ground for justifying the Respondent's rights or legitimate interests."

The Complainant therefore submits that the Domain Name is confusingly similar to the Trademark in which it has rights, the Respondent has no rights or legitimate interests in respect of the Domain Name, and both the registration and use of the Domain Name have been done in bad faith. The Complainant asks that the Domain Name be transferred to the Complainant.

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 Registrar confirmed that the language of the Registration Agreement of the Domain Name is Japanese. The Complainant sets forth a number of arguments as to why the proceeding should be held in English, including that the Domain Name itself features Latin characters and that the Respondent is located in Singapore where English is the main official language. The Respondent did not comment on the Complainant's request.

In accordance with paragraph 11(a) of the Rules, the Panel determines that the language of the proceeding should be English.

6.2 Substantive Issues

A. Identical or Confusingly Similar

Where a complainant holds a nationally or regionally registered trademark or service mark, this *prima facie* satisfies the threshold of having trademark rights for the purposes of standing.

The Complainant holds a number of registered Trademarks for the DAV term. The Complainant moreover relies on the goodwill and recognition that it has attained under the DAV brand, which has become a distinctive identifier of its offerings.

The Panel is of the view that the Complainant has demonstrated to the Panel's satisfaction that it has the rights to the Trademarks as per the registration of the Trademarks and also of its commercial use.

The Domain Name incorporates the Complainant's Trademarks. UDRP panels have established that where the relevant trademark is recognizable, the addition of other terms within a domain name would not prevent a finding of confusing similarity. The mere addition of a non-significant element such as the article "the" does not render the domain name not to be confusingly similar to the registered trademark (*Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#); *Britannia Building Society v. Britannia Fraud Prevention*, WIPO Case No. [D2001-0505](#)). The Panel agrees with the Complainant that a side-by-side comparison of the Complainant's Trademarks and the Domain Name leads to the conclusion that they are confusingly similar.

The Panel agrees with the Complainant that the Domain Name is confusingly similar to its Trademarks in which the Complainant has rights pursuant to paragraph 4(a)(i) of the Policy for the following reasons: (1) it fully subsumes the Complainant's DAV mark; (2) it adds only the article "the" and a non-significant dash does not render Domain Name not confusingly similar to the Trademark.

B. Rights or Legitimate Interests

The Complainant has presented a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name for the purposes of paragraph 4(a)(ii) of the Policy. The burden of production therefore shifts to the Respondent to show that it has rights or legitimate interests in the Domain Name.

In accordance with paragraph 4(c) of the Policy, the Respondent, in order to demonstrate its rights or legitimate interests can, without limitation, refer to the following circumstances:

- (i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

No evidence was adduced by the Respondent to demonstrate any rights or legitimate interests in the Domain Name. The Respondent, having been duly notified of the Complaint and the present proceeding, has chosen not to reply to the contentions of the Complainant nor otherwise participated in this proceeding.

It does not appear that the Respondent has registered any Trademarks for DAV or anything similar. It does not appear that the Respondent holds any unregistered rights to any such term either. The Respondent has not been licensed by the Complainant to use domain names that feature its Trademark.

The Complainant first registered the Trademarks in 2002. The Respondent registered the Domain Name in 2022.

No evidence was adduced that would demonstrate that the Respondent has used any trademarks similar to the one used in the Domain Name nor that the Respondent has been authorized to register any domain names including the Trademark. It does not appear from the evidence that the Respondent is not connected or affiliated with the Complainant. Mere ownership of a domain name does not confer rights or legitimate interests on a respondent.

There is no evidence that would show that the Respondent was acting in accordance of any rights or legitimate interests upon registration of the Domain Name.

There is also no evidence that would show that the Respondent had “use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services”, as per paragraph 4(c) of the Policy referred above.

The Respondent has clearly used the Domain Name to attract and misleadingly divert Internet users website that capitalizes on the Complainant's reputable Trademark. The Domain Name is not being used in connection with any *bona fide* offering of goods or services, nor any legitimate commercial use. Rather, the Domain Name is not being used for legitimate purposes and appears to be used as a parked page featuring pornographic material and advertisements for online gambling activities.

The Complainant's customers that are looking for more information and/or to utilize the Complainant's services but arrive at the Domain Name instead will be diverted to the Respondent's page featuring such pornographic and online gambling materials.

Therefore, the Panel concludes that the Respondent has neither rights nor legitimate interests in the Domain Name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that if the following circumstances in particular but without limitation, are present, they shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

Under the Policy, bad faith is understood to occur where a respondent has taken unfair advantage of or has otherwise abused a complainant's mark.

The Complainant's earliest Trademarks predate the registration of the Domain Name by 20 years. The Complainant has also accrued substantial goodwill and international recognition in its Trademarks.

The Complainant has been using the mark DAV since 1921. The simplest of Internet searches would have unequivocally brought the Complainant's established rights in the Trademarks. The Respondent should have been aware of the Complainant's Trademarks at the time of registration. A simple trademark search or a web browser search for the Domain Name would have revealed the Complainant's rights in the Trademarks. The Complainant has registered its Trademarks since 2002. The Complainant has owned the domain names <dav.com> and <dav.org> since the mid to late 1990s.

The Respondent should have been aware of the Complainant's Trademarks at the time of registration in 2022. The Panel sees no reason for the Respondent to have registered the Domain Name. This supports a finding of bad faith.

The Respondent's use of the Domain Name, by fully adopting the Complainant's Trademarks, diverts customers from the Complainant and thus disrupts the Complainant's business, tarnishes its well-known and incontestable DAV marks, and damages its business reputation. The Complainant has taken measures to ensure that others do not infringe its valuable Trademarks.

The Respondent is using the Domain Name for commercial gain by deceiving consumers and appearing to offer a parked page featuring pornographic and online gambling advertisements and content, which could potentially be illegal or dangerous for consumers to click on. Customers will be deceived by the Domain Name and believe they are arriving at a website that offers information regarding the Complainant's charitable services, but instead will arrive at a website showing illicit content. The use of a domain name to tarnish a complainant's trademark, including for commercial purposes in connection with pornographic content, constitutes evidence of a respondent's bad faith (*Red Bull GmbH v. Whois Agent, Domain Protection Services, Inc. / esco escortlar, escort sitesi*, WIPO Case No. [D2017-1639](#); *Bank of Jerusalem Ltd. v. Shek Cheung Chung*, WIPO Case No. [D2017-1153](#); *Centre National D'art et de Culture Georges Pompidou v. Whois Privacy Protection Service by onamae.com / xiansheng chen, chenxiansheng*, WIPO Case No. [D2022-1207](#)).

For the reasons above, the Panel finds that both the registration and use of the Domain Name have been done 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 Domain Name <the-dav.com> be transferred to the Complainant.

/Haig Oghigian/

Haig Oghigian

Sole Panelist

Date: December 16, 2022