

ADMINISTRATIVE PANEL DECISION

Agfa-Gevaert N.V. v. cai fa
Case No. D2023-2323

1. The Parties

The Complainant is Agfa-Gevaert N.V., Belgium, represented by Novagraaf Belgium NV/SA, Belgium.

The Respondent is cai fa, Hong Kong, China.

2. The Domain Name and Registrar

The disputed domain name <agfaz.com> is registered with NamePal.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 30, 2023. On May 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 31, 2023, 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.

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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on June 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 22, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 23, 2023.

The Center appointed Adam Taylor as the sole panelist in this matter on June 30, 2023. 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 has trades worldwide in the photographic, medical imaging and medical software sectors under the mark AGFA. Historically, the Complainant was well-known as a manufacturer of cameras and film.

The Complainant owns many trade marks for AGFA including European Union Trade Mark number 003353463, registered on January 24, 2005, in classes 1, 2, 7, 9, 10 and 42.

On May 7, 2018, a UDRP panel ordered transfer of the disputed domain name to the Complainant in a case that it had brought against a different respondent – see *AGFA-Gevaert N.V. v. Ums United Medical System*, WIPO Case No. [D2018-0713](#).

The disputed domain name expired at some point, for reasons which are unclear, and it was subsequently registered on April 18, 2023.

As of May 26, 2023, the disputed domain name resolved to a Chinese-language pornography 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

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- the disputed domain name has been registered and is being used in bad faith.

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds 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 entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms (here, “Z”) 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 names 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.

While 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 often impossible 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. 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 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.

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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the absence of a plausible explanation from the Respondent as to why it has used the disputed domain name for pornography services that have no obvious connection with the disputed domain name, the Panel thinks it reasonable to conclude that most likely the Respondent was seeking to take unfair advantage by profiting from Internet users seeking the Complainant (which appears to have formerly owned the disputed domain name) and/or to damage the Complainant’s reputation.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 <agfaz.com> be transferred to the Complainant.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: July 14, 2023