

ADMINISTRATIVE PANEL DECISION

ZAPA v. Gever, Sharon
Case No. D2024-2522

1. The Parties

The Complainant is ZAPA, France, represented by SafeBrands, France.

The Respondent is Gever, Sharon, Israel.

2. The Domain Name and Registrar

The disputed domain name <zapa.com> is registered with Network Solutions, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 20, 2024. On June 20, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 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 (PERFECT PRIVACY, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 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 amended Complaint on July 3, 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 July 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 25, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 31, 2024.

The Center appointed Assen Alexiev as the sole panelist in this matter on August 5, 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 ZAPA describes itself as a French textile trademark created in 1972.

The Complainant is the owner of a number of trademark registrations for “ZAPA”, including the International trademark ZAPA with registration No. 494843, registered on July 10, 1985 for goods in international classes 18 and 25 (the “ZAPA trademark”). The Complainant is also the owner of the domain name <zapa.fr>, registered on June 29, 1997, which resolves to its official website.

There is no information about the activities of the Respondent. The disputed domain name was registered on February 3, 1996, and the record shows it has been inactive.

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 Complainant submits that the disputed domain name is identical to the ZAPA trademark.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because he has not been authorized by the Complainant to use the ZAPA trademark as a domain name, and “zapa” is not a dictionary word that describes products, services, or activities. The Complainant points out that the disputed domain name is not linked to any website or any email services, and is not being used in connection with a bona fide offering of goods or services.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. It states that the disputed domain name reproduces the Complainant’s ZAPA trademark, and notes that if the Respondent had carried out a simple Internet search for “zapa”, he would have been informed of the Complainant’s prior trademark rights.

The Complainant submits that the disputed domain name was registered in 1996, but there was an ownership change on June 18, 2014. The Complainant notes that at that time in 2014, the ZAPA trademark already enjoyed an undeniable reputation within the European Union and more widely on the Internet, so a simple search at this time could have informed the Respondent of the Complainant’s notoriety and prior trademark rights. The Complainant adds that the Respondent has been the registrant of the disputed domain name since 2014 and has voluntarily renewed its registration for several years, despite the Complainant’s reputation in 2014 and today.

According to the Complainant, taking into account the continuous use of its ZAPA trademark over the years and the reputation it has achieved, the Respondent could not have ignored the existence of this trademark which is identical to the disputed domain name when registering the same. The Complainant points out that the disputed domain name is not effectively used since there is no website or email addresses linked to the disputed domain name. The Complainant adds that it had contacted the Respondent in order to resolve this matter in an amicable way, as several times, proposing a financial compensation, but the Respondent did not respond.

In the Complainant’s view, by renewing the disputed domain name without using it, the Respondent is passively holding it and is preventing the Complainant to register and use it. According to the Complainant, the passive holding of the disputed domain name by the Respondent amounts to use of it in bad faith, because the disputed domain name reproduces a well-known trademark, has been registered through a proxy, is not being used in good faith, and the Respondent did not respond to the Complainant’s emails.

B. Respondent

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

6. Discussion and Findings

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 the ZAPA trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the ZAPA trademark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the ZAPA trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Given the finding below, it is not necessary to consider this element.

C. Registered and Used in Bad Faith

The evidence in the case file as presented does not establish that the Respondent's aim in registering the disputed domain name was to profit from or exploit the Complainant's trademark.

The Complainant maintains that the Respondent acquired the disputed domain name in 2014, and submits as evidence a DomainTools printout of the Whois records for the disputed domain name for May 21, 2014 and June 18, 2014, where the former lists the Respondent as its registrant, while the latter lists as registrant a privacy service. The Panel notes that some random sampling of the Internet Archive shows that the disputed domain name seems to have redirected to a "gizmoz" site until 2010 but there are no records after that; this is not enough to support an inference that a change in content also followed a change in registrant. This however does not prove that the Respondent acquired the disputed domain name on May 21, 2014, as there is no evidence that the registrant of the disputed domain name was a different person before that date. In view of this, there is no basis to conclude that the Respondent acquired the disputed domain name in 2014, and in the lack of any contrary evidence, the Panel accepts that the Respondent has been the registrant of the disputed domain name since 1996, when it was originally registered. Therefore, the Respondent's conduct in 1996 has to be analyzed for the purposes of the finding whether the disputed domain name has been registered in bad faith.

The Panel notes however that none of the present assessment would be any different if the acquisition date was seen as 2014.

According to the Complainant, its ZAPA trademark is a fanciful word and not a generic term that describes products or services. The Complainant also submits that the ZAPA trademark is well-known and that in 2014, it already had reputation within the European Union and more widely on the Internet, and the Respondent could not have ignored its existence, since the disputed domain name is identical to it. The Complainant has however not submitted any evidence about the actual public recognition of its ZAPA trademark at any point in time, and in particular in 1996, when the Respondent registered the disputed

domain name. The printout of Google search results of the term “zapa.com” as of December 31, 2014, submitted by the Complainant as the only piece of evidence in support of its claim that its trademark had gained reputation by that time, does not prove this, although most of the results of this search refer to the Complainant. What this document proves is that as of 2014, the algorithms used by Google identified as most relevant to this search term the online content related to the Complainant. This is not evidence that in 2014 the public recognized “zapa” as the Complainant’s brand. Even if it is accepted that the ZAPA trademark had reputation in 2014, there is no evidence that it had such reputation in 1996, when the Respondent registered the disputed domain name. For these reasons, it cannot be concluded that the Respondent must have known the Complainant’s trademark in 1996, when it registered the disputed domain name. And even if looked at in 2014, there are no indicia of targeting the Complainant; there is no offer for sale, no communications, no website, and it cannot be overlooked that this is a 4-letter “.com” domain name which may have value independent of the Complainant.

Since the disputed domain name has remained inactive for many years and there is no information about the activities of the Respondent, there is also nothing to support a conclusion that the Respondent has somehow targeted the Complainant’s ZAPA trademark with the registration and use of the disputed domain name.

The Complainant also refers in the Complaint to the doctrine of passive holding, and maintains that the passive holding of the disputed domain name by the Respondent should be considered as use in bad faith. As discussed in section 3.3 of the [WIPO Overview 3.0](#), Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.

A simple Google search of the term “zapa” returns results not only related to the Complainant, but shows that it has other uses. In light of these other uses of the term “zapa”, which are unrelated to the Complainant’s trademark, it is not possible to conclude that the disputed domain name cannot be legitimately used for purposes unrelated to the Complainant’s trademark, i.e., that there is no plausible non-infringing use to which the disputed domain name may be put. Therefore, also considering the lack of evidence in the case about the public recognition of the Complainant’s trademark to permit an inference of targeting, the doctrine of passive holding cannot be applied to the present dispute.

On this basis, the Panel finds that the third element of the Policy has not been established.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: August 19, 2024