

## **ADMINISTRATIVE PANEL DECISION**

Z&V v. 黄海玲 (Hai Ling Huang)

Case No. D2022-3591

### **1. The Parties**

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

The Respondent is 黄海玲 (Hai Ling Huang), China.

### **2. The Domain Name and Registrar**

The disputed domain name <zadigvoltaireoutlet.com> (the “Domain Name”) is registered with Chengdu West Dimension Digital Technology Co., Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on September 28, 2022. On September 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On September 30, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on September 30, 2022, 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 September 30, 2022.

On September 30, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On September 30, 2022, the Complainant submitted a 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 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 in English and Chinese of the Complaint, and the proceedings commenced on October 6, 2022. In accordance with

the Rules, paragraph 5, the due date for Response was October 26, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 27, 2022.

The Center appointed Karen Fong as the sole panelist in this matter on November 2, 2022. 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 French fashion company established in 1997 which operates under the brand ZADIG & VOLTAIRE. The Complainant owns a number of ZADIG & VOLTAIRE trade marks including European Union trade mark registration number 005014171, registered on June 8, 2007 (individually and collectively, the "Trade Mark"). The Complainant's official website is at "www.zadig-et-voltaire.com".

The Domain Name was registered on September 21, 2022. The Domain Name resolves to a website which sells women's clothing and accessories under the brand AYC - ABRIGOS Y CHAQUETAS which is Spanish for AYC - Coats and Jackets (the "Website"). In the "About Us", "Terms and Conditions", and "Privacy" sections of the Website, "Zadigvoltaire Outlet" is stated as the entity operating the Website.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that the Domain Name is confusingly similar to the Trade Mark, that the Respondent has no rights or legitimate interests with respect to the Domain Name, and that the Domain Name was registered and is being used in bad faith. The Complainant requests transfer of the Domain Name.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

##### **A. General**

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the Domain Name, the Complainant must prove each of the following, namely that:

(i) the Domain Name is identical or confusingly similar to the trade marks or service marks 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 was registered and is being used in bad faith.

##### **B. Language of the Proceeding**

The Rules, paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement, the language of the proceeding shall be the language of the registration agreement, subject to the authority of the panel to determine otherwise, having regard to the circumstances of the administrative proceeding. According to the information received from the Registrar, the language of the

Registration Agreement for the Domain Name is Chinese.

The Complainant submits that the language of the proceeding should be English for the following reasons:

- the English language is the language most widely used in international relations and is one of the working languages of the Center;
- the Domain Name is formed by words in Roman characters (ASCII) and not in Chinese script; and
- in order to proceed in Chinese, the Complainant would have had to retain specialized translation services at a cost very likely to be higher than the overall cost of the proceeding. The use of Chinese in this case would therefore impose a burden on the Complainant which must be deemed significant in view of the low cost of the proceeding.

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.

The Panel accepts the submissions of the Complainant. Although the Center has sent the "Language of Proceedings" email and notified the Parties the commencement of the proceeding in both Chinese and English, the Respondent has not challenged the Complainant's language request and in fact has failed to file a response in either Chinese or English. The Panel is also mindful of the need to ensure the proceeding be conducted in a timely and cost effective manner. In this case, the Complainant may be unduly disadvantaged by having to conduct the proceeding in Chinese. In all the circumstances, the Panel determines that English be the language of the proceeding.

### **C. Identical or Confusingly Similar**

The Panel is satisfied that the Complainant has established that it has rights to the Trade Mark.

The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the trade mark and the domain name to determine whether the domain name is confusingly similar to the trade mark. The test involves a side-by-side comparison of the domain name and the textual components of the relevant trade mark to assess whether the mark is recognizable within the domain name.

In this case, the Domain Name consists of the combination of the two main elements of the Trade Mark, "zadig" and "voltaire" together with the descriptive word, "outlet". The Trade Mark remains clearly recognizable in the Domain Name.

For the purposes of assessing identity or confusing similarity under paragraph 4(a)(i) of the Policy, it is permissible for the Panel to ignore the generic Top-Level Domain ("gTLD") which in this case is ".com". It is viewed as a standard registration requirement under section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Panel finds that the Domain Name is confusingly similar to the Trade Mark in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy therefore are fulfilled.

### **D. Rights or Legitimate Interests**

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights or legitimate interests in the domain name by demonstrating any of the following:

(i) before any notice to it of the dispute, the respondent's 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) the respondent has been commonly known by the domain name, even if it has acquired no trade mark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers, or to tarnish the trade mark or service mark at issue.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a domain name, it is well established that, as it is put in section 2.1 of the [WIPO Overview 3.0](#), that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests. Once such a *prima facie* case is made out, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent does come forward with some allegations of evidence of relevant rights or legitimate interests, the panel weighs all the evidence, with the burden of proof always remaining on the complainant.

The Complainant contends that the Respondent is not commonly known by the Domain Name. It has not authorised, licensed, or otherwise permitted the Respondent to use the Trade Mark in the Domain Name or for any other purpose. Further, the offer for sale of products which compete directly with the Complainant, which is the case in respect of the Website, does not constitute a *bona fide* offering of goods or services or legitimate noncommercial or fair use of the Domain Name given the revenue the Respondent derives from Internet users misled by the confusingly similar Domain Name.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for a reply from the Respondent. The Respondent has not responded and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the Domain Name.

Moreover, the composition of the Domain Name, which incorporates the Trade Mark with an additional term referring to the Complainant's business, cannot constitute fair use because it effectively impersonates or suggests sponsorship or endorsement by the Complainant.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

#### **E. Registered and Used in Bad Faith**

To succeed under the Policy, the Complainant must show that the Domain Name has been both registered and used in bad faith. It is a double requirement.

The Panel is satisfied that the Respondent must have been aware of the Trade Mark when she registered the Domain Name. It is implausible that she was unaware of the Complainant when she registered the Domain Name given that the Trade Mark has no other meaning other than being the Complainant's Trade Mark, which was used and registered long before the Domain Name.

In the [WIPO Overview 3.0](#), section 3.2.2 states as follows:

"Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant's mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant's mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name,

or any respondent pattern, may obviate a respondent's claim not to have been aware of the complainant's mark."

The fact that there is a clear absence of rights or legitimate interests coupled with no explanation for the Respondent's choice of the Domain Name is also a significant factor to consider (as stated in section 3.2.1 of the [WIPO Overview 3.0](#)). In light of the above, the Panel finds that the registration is in bad faith.

The Domain Name is also being used in bad faith. The Respondent was clearly seeking to benefit from the Complainant's reputation and goodwill to attract traffic to the Website for commercial gain. It is highly likely that Internet users when typing the Domain Name into their browser, or finding them through a search engine would have been looking for a site operated by the Complainant rather than the Respondent. The Domain Name is likely to confuse Internet users trying to find the Complainant's website. Such confusion will inevitably result due to the fact that the Domain Name comprises the main elements of the Complainant's distinctive Trade Mark together with the term "outlet".

The Respondent employs the reputation of the Trade Mark to mislead Internet users into visiting the Website instead of the Complainant's. From the above, the Panel concludes that the Respondent intentionally attempted to attract for commercial gain, by misleading Internet users into believing that the Website is that of or authorised or endorsed by the Complainant. The Panel therefore concludes that the Domain Name was registered and is being used in bad faith under paragraph 4(b)(iv) 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 Domain Name, <zadigvoltaireoutlet.com>, be transferred to the Complainant.

*/Karen Fong/*

**Karen Fong**

Sole Panelist

Date: November 24, 2022