

## **ADMINISTRATIVE PANEL DECISION**

### **ZAG America, LLC v. Muhammet Kaya**

### **Case No. D2022-4466**

#### **1. The Parties**

The Complainant is ZAG America, LLC, United States of America (“United States”), internally represented.

The Respondent is Muhammet Kaya, Türkiye.

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

The disputed domain name <zagforce.com> is registered with Turkticaret.net Yazilim Hizmetleri Sanayi ve Ticaret A.S. (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 22, 2022. On November 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 24, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on the same day, 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 amendment to the Complaint on November 30, 2022.

The Center verified that the Complaint together with the amendment to 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”).

On November 24, 2022, the Center sent an email communicating in both English and Turkish regarding the language of the proceeding. The Complainant replied on November 28, 2022, asking English to be the language of the proceeding instead of Turkish. The Respondent did not reply, but sent an email communication on November 29, 2022, stating “thanks” in English language.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, both in English and in Turkish, and the proceedings commenced on December 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 28, 2022. The Respondent did not submit any formal response. Accordingly, the Center notified the commencement of panel appointment process on December 29, 2022.

The Center appointed Kaya Köklü as the sole panelist in this matter on January 5, 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 is a film, TV and digital production studio specializing in animation productions. It is also a marketer, licensor and developer of consumer entertainment products and operates offices in Paris, France and Los Angeles, United States.

Among others, the Complainant is the owner of the ZAG trademark, which is registered in various jurisdictions. For instance, the Complainant is the owner of the French Trademark No. 3892164, registered on January 27, 2012, for services in class 41 (Annex 4 to the Complaint), and the Turkish Trademark Registration No. 2019 86458, registered on December 18, 2020, for goods and services in class 9, 28 and 41.

The Complainant is further the owner of the GHOSTFORCE trademark, which is also registered in various jurisdictions. For instance, the Complainant is the owner of the European Union Trademark No. 17900449, registered on September 7, 2018, for goods and services in class 9, 16, 25, 28 and 41 (Annex 10 to the Complaint).

The Complainant further owns and operates various domain names, such as <zag.com>. For its business partners, the Complainant also provides a Salesforce online contract management platform comprising its trademark ZAG.

The Respondent is reportedly an individual from Türkiye.

The disputed domain name was registered on September 20, 2022.

The disputed domain name does not currently resolve to an active website. However, as evidenced by the Complainant, the disputed domain name has been used for sending out phishing emails to business partners of the Complainant pretending that these emails have been sent by employees of the Complainant (Annexes 13 to 17 to the Complaint).

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

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

The Complainant requests the transfer of the disputed domain name.

The Complainant is of the opinion that the disputed domain name is confusingly similar to its registered ZAG and GHOSTFORCE trademarks. Furthermore, the Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that that the Respondent has registered and is using the disputed domain name in bad faith.

## **B. Respondent**

The Respondent did not submit any formal response, however sent an informal communication email stating “thanks” on November 29, 2022.

## **6. Discussion and Findings**

### **6.1. Language of the Proceedings**

The Panel determines in accordance with the Complainant’s request and the Rules, paragraph 11(a), that the language of this administrative proceeding shall be English.

Although the language of the registration agreement is Turkish, the Panel finds that it would be inappropriate, given the circumstances of this case, to conduct the proceedings in Turkish and request a Turkish translation of the Complaint while the Respondent has failed to raise any objection or even to respond to the Center’s communication about the language of the proceedings, even though communicated in Turkish and in English. The Panel particularly notes that the Respondent was given the opportunity to respond in Turkish and that this opportunity remained unused by the Respondent. Furthermore, the Panel notes that the emails sent out to business contacts of the Complainant by using the disputed domain name were drafted in fluent English language (Annex 13 to 17 to the Complaint). The Panel, then, notes that the Respondent replied to the present proceedings in English, in its informal communication email mentioned under section 5B. The Panel therefore concludes that the Respondent is probably able to read, write and understand English.

Consequently, the Panel is convinced that the Respondent will not be prejudiced by a decision being rendered in English.

### **6.2. Substantive Issues**

According to paragraphs 14 and 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable and on the basis of the Complaint where no formal response has been submitted.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

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

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant’s contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See, section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

It is further noted that the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views captured therein.

## **A. Identical or Confusingly Similar**

To begin with, the Panel confirms that the Complainant has satisfied the threshold requirement of having trademark rights in ZAG and GHOSTFORCE. The Complainant's ZAG trademark is even registered in Türkiye, where the Respondent is reportedly located.

The Panel further finds that the disputed domain name is confusingly similar to the Complainant's registered trademarks, as it is fully incorporating the Complainant's ZAG trademark in combination with significant parts of its GHOSTFORCE trademark.

As stated at section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms would generally not prevent a finding of confusing similarity. The addition of the term "force" does not, in view of the Panel, serve to prevent a finding of confusing similarity between the disputed domain name and the Complainant's ZAG trademark.

Accordingly, the Panel finds that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

## **B. Rights or Legitimate Interests**

While the burden of proof remains with the Complainant, the Panel recognizes that this would often result in the impossible task of proving a negative, in particular as the evidence needed to show the Respondent's rights or legitimate interests is primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name to meet the requirements of paragraph 4(a)(ii) of the Policy. *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

With its Complaint, the Complainant has provided *prima facie* evidence that the Respondent has no rights or legitimate interests, particularly no license to use the Complainant's trademarks within the disputed domain name.

Further, the Panel finds that the disputed domain name, which is confusingly similar to the Complainant's trademarks, carries a risk of implied affiliation or association, as stated in section 2.5.1 of the [WIPO Overview 3.0](#). The disputed domain name incorporates the ZAG trademark in its entirety together with the term "force", which is also very close to the Complainant's GHOSTFORCE trademark and to its 'salesforce' contract management platform offered by the Complainant for its business partners.

In the absence of a Response, the Respondent has also failed to demonstrate any of the nonexclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c) or provide any other evidence of a right or legitimate interest in the disputed domain name. On the contrary, the Panel finds on the available record (Annexes 13 to 17 to the Complaint) that the disputed domain name was already used for sending out phishing emails to business contacts of the Complainant, falsely pretending that these emails originate from employees of the Complainant.

Taking into consideration the undisputed phishing attempts (Annexes 13 to 17 to the Complaint), the Panel does not see any basis for assessing a *bona fide* offering of goods or services by the Respondent

Hence, the Panel concludes that the Respondent does not have rights or legitimate interests in the disputed domain name according to the Policy, paragraph 4(a)(ii) and 4(c).

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

In the Panel's view, the Respondent has registered and is using the disputed domain name in bad faith.

The composition of the disputed domain name makes it quite obvious to the Panel that the Respondent had the Complainant and its trademarks in mind when registering the disputed domain name. The Panel further believes that the Respondent deliberately attempted to create a likelihood of confusion particularly among business contacts of the Complainant, likely for commercial gain and/or to disrupt the Complainant's business.

Consequently, the Panel has no doubt that the Respondent has registered the disputed domain name in bad faith.

Furthermore, the Panel has no doubt that by using the disputed domain name for sending out phishing emails to business contacts of the Complainant, the Respondent tries to misrepresent itself as the trademark owner for apparently fraudulent, at least illegitimate purposes (Annexes 13 to 17 to the Complaint). The Panel concludes that the Respondent is also using the disputed domain name in bad faith.

Additionally, the Panel notes that the Respondent failed to submit a substantive response to the Complainant's contentions or to at least rebut any of the Complainant's contentions. The Panel assesses this as an additional indication for bad faith. The Panel is convinced that, if the Respondent had legitimate purposes in registering and using the disputed domain name, it would have substantially responded.

Actually, the Panel cannot conceive of any plausible and legitimate use of the inherently misleading disputed domain name that would be in good faith, except with an authorization of the Complainant.

The fact that the disputed domain name does not currently resolve to an active website does not change the Panel's findings in this respect.

Taking all facts of the case into consideration, the Panel is convinced that this is a typical cybersquatting case, which the UDRP was designed to stop.

The Panel therefore concludes that the disputed domain name was registered and is being used in bad faith and that the Complainant consequently has satisfied the third element of the Policy, namely, paragraph 4(a)(iii) 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 name, <zagforce.com>, be transferred to the Complainant.

*/Kaya Köklü/*

**Kaya Köklü**

Sole Panelist

Date: January 19, 2023