

ADMINISTRATIVE PANEL DECISION

Z&V v. Web Commerce Communications Limited, Client Care
Case No. D2024-1543

1. The Parties

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

The Respondent is Web Commerce Communications Limited, Client Care, Malaysia.

2. The Domain Name and Registrar

The disputed domain name <zadigandvoltaireperu.com> (the “Domain Name”) is registered with Alibaba.com Singapore E-Commerce Private Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 11, 2024. On April 11, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 12, 2024, 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 (Not Identified) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 12, 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 April 15, 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 April 17, 2024. In accordance with the Rules, paragraph 5, the due date for the Respondent to file a response was May 7, 2024. The Respondent did not submit any response. Accordingly, the Center notified the parties of the Respondent’s default on May 10, 2024.

The Center appointed Marylee Jenkins as the sole panelist in this matter on May 21, 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

Based on a review of the uncontested evidence submitted by the Complainant in the Amended Complaint, the Panel finds that the Complainant is the owner of trademark registrations for ZADIG & VOLTAIRE, including, inter alia:

Mark	Reg. No.	Jurisdiction	Reg. Date	Class(es)
ZADIG & VOLTAIRE	005014171	European Union	June 8, 2007	3
ZADIG & VOLTAIRE	907298	International Registration	September 15, 2006	3, 14, 16, 18, 20, 24, 25, 35, and 43

(individually and collectively referred to as the “Complainant’s Mark”).

The Complainant also owns the domain name <zadig-et-voltaire.com>, which incorporates the Complainant’s Mark. The Complainant’s domain name <zadig-et-voltaire.com> has been registered since May 16, 2002, and directs to the Complainant’s official website offering the sale of the Complainant’s products, including, inter alia, clothing, bags, and perfumes.

The Respondent registered the Domain Name <zadigandvoltaireperu.com> on March 27, 2024. The undisputed evidence indicates that the Domain Name had resolved to a website purporting to offer the sale of counterfeit or unauthorized versions of the Complainant’s products, including clothing and bags. The Domain Name currently does not resolve to an active web page.

5. Parties’ Contentions

A. Complainant

The Complainant states that it is the owner of the Complainant’s Mark, as established via the submitted evidence of its trademark registrations for the Complainant’s Mark. The Complainant further asserts that it has satisfied each of the elements required under the Policy to warrant transfer of the Domain Name, summarized as follows:

The Domain Name is confusingly similar to the Complainant’s Mark (ZADIG & VOLTAIRE) because the Domain Name incorporates the Complainant’s Mark in its entirety. The Complainant sets forth that the addition of the geographic term “Peru” in the Domain Name and the “.com” generic Top-Level Domain (“gTLD”) are not sufficient to escape a finding of confusing similarity.

The Complainant further states that the Respondent has no rights or legitimate interests in respect of the Domain Name because there is no association with the Domain Name per the WHOIS record, no connection with the Complainant’s business, and no authorization to use the Complainant’s Mark. The Complainant also asserts that the Respondent is using the Domain Name to deceive consumers via hosting a website that impersonates the Complainant and neither discloses the Respondent’s own identity nor the Respondent’s relationship with the Complainant.

The Complainant alleges that the Respondent has registered and is using the Domain Name in bad faith because the Domain Name is confusingly similar to the Complainant’s Mark, a well-recognized mark that

was registered before the Domain Name. Further, the website, to which the Domain Name resolves, displays the Complainant's Mark and purports to offer counterfeit or unauthorized versions of the Complainant's products. Thus, the Respondent intended to exploit the Complainant's goodwill to create confusion and moreover, to gain commercially by selling counterfeit or unauthorized versions of the Complainant's products via the confusingly similar Domain Name.

The Complainant requests the transfer of the Domain Name.

B. Respondent

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

6. Discussion and Findings

A. General

Paragraph 4(a) of the Policy provides that a domain name holder is to submit to a mandatory administrative proceeding in the event that a third party (i.e., complainant) asserts to an ICANN-approved dispute resolution service provider that:

(i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

(ii) the domain name holder has no rights or legitimate interests in respect of the domain name; and

(iii) the domain name has been registered and is being used in bad faith.

The burden of proof of each element is borne by the Complainant. The Respondent's default does not by itself mean that the Complainant is deemed to have prevailed. Under paragraph 14(b) of the Rules, the Panel shall draw such inferences from the Respondent's default as the Panel considers appropriate. Nevertheless, the Panel may rule in the Complainant's favor only after the Complainant has proven that the above elements are present.

B. Identical or Confusingly Similar

The Panel finds that the Complainant has provided sufficient evidence demonstrating ownership of and rights in and to the Complainant's Mark for the purposes of the Policy.

The entirety of the Complainant's Mark (or a recognizable equivalent thereof) is reproduced within the Domain Name (i.e., ZADIG AND VOLTAIRE is equivalent to ZADIG & VOLTAIRE, with the ampersand symbol "&" representing the word "and"). Although the addition of other terms in general may influence the assessment of the second and third elements under the Policy, the Panel finds that the addition of a term that appears merely geographical in nature, namely, the term "peru", does not prevent a finding of confusing similarity between the Domain Name and the Complainant's Mark for the purposes of the Policy.

Based on the above and submitted evidence, the Panel finds that the Domain Name is confusingly similar to the Complainant's Mark in which the Complainant has rights. Paragraph 4(a)(i) of the Policy has been satisfied.

C. 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 the Domain Name.

Although the overall burden of proof in UDRP proceedings is on a complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

Having reviewed the available record, the Panel finds that the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the 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 Domain Name, such as those enumerated in the Policy or otherwise.

Specifically, there is no evidence that the Complainant has at any time ever licensed, sponsored, endorsed, or authorized the Respondent to use the Complainant’s Mark in any form.

Furthermore, there is no evidence of record indicating, before notice to the Respondent of the dispute, that the Respondent was using or was making demonstrable preparations to use the Domain Name in connection with any type of bona fide offering of goods or services or that the Respondent is commonly known by the Domain Name, as an individual, business, or otherwise. Rather, the uncontested evidence shows, inter alia, that the Domain Name resolved to a website that appeared to impersonate or otherwise mimic the Complainant’s website, featured unauthorized uses of the Complainant’s Mark, and falsely purported to sell authentic versions of the Complainant’s products at discounted prices. Given the composition of the Domain Name, which combines the Complainant’s Mark with the geographical term “peru”, it is apparent that the Respondent sought to mislead Internet users that the disputed Domain Name was somehow affiliated or endorsed by the Complainant and further suggesting a possible location in Peru.

Based on the above, the Panel concludes that the Complainant has established that the Respondent lacks rights or legitimate interests in the Domain Name. The Panel therefore finds that paragraph 4(a)(ii) of the Policy has been satisfied.

D. 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.

Based upon the evidence submitted by the Complainant, the Panel finds that the Respondent had actual knowledge of the Complainant and the Complainant’s Mark, along with the Complainant’s products and its website, when registering the Domain Name. This finding is supported by the uncontested evidence showing that the Respondent’s recent registration of the Domain Name in no way pre-dates the Complainant’s significantly earlier registration dates for the Complainant’s Mark. Rather the review of the Complainant’s trademark registrations for the Complainant’s Mark shows that such registrations well pre-date the Respondent’s registration of the Domain Name.

Moreover, the undisputed evidence shows that the Respondent was not making any legitimate noncommercial or fair use of the Domain Name. For instance, the uncontested evidence demonstrates that the Domain Name is confusingly similar to the Complainant’s Mark and resolved to a website that, inter alia: (i) appeared to impersonate or otherwise mimic the Complainant’s website – but with false contact and ownership details; (ii) featured unauthorized uses of the Complainant’s Mark; and (iii) falsely purported to sell authentic versions of the Complainant’s products at discounted prices for the Respondent’s apparent financial gain and benefit.

The Panel also observes that the website linked to the Domain Name displayed images that appeared to feature, not only identical products to the Complainant's products, but also the same images of the models as featured on the Complainant's website. This evidence supports the Complainant's allegations that the Respondent was well aware of the Complainant's business, including the Complainant's Mark, its website, its domain name, and its product range.

Despite the Domain Name not currently resolving to an active webpage, the Panel does not find such non-use of the Domain Name as preventing a finding of bad faith in the circumstances of this proceeding. Specifically, the unchallenged evidence, which includes, inter alia, the distinctiveness of the Complainant's Mark, the composition of the Domain Name, the Respondent's failure to provide a response or evidence of actual or contemplated good faith use, and the Respondent's obscuring of its identity, all support a finding of bad faith registration and use of the Domain Name by the Respondent.

Based on the above, the Panel concludes that the Respondent registered, has used and uses the Domain Name to intentionally attract, for commercial gain, consumers of goods of the Complainant to the Respondent and its Internet activities by creating a likelihood of confusion with the Complainant and the Complainant's Mark as to the source, sponsorship, affiliation, or endorsement thereof and the goods offered thereon.

The Panel finds that the Respondent registered and is using the Domain Name in bad faith. Paragraph 4(a)(iii) of the Policy has been satisfied.

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 <zadigandvoltaireperu.com> be transferred to the Complainant.

/Marylee Jenkins/

Marylee Jenkins

Sole Panelist

Date: June 4, 2024