

ADMINISTRATIVE PANEL DECISION

Zino Davidoff SA v. Zhang ZhaoZhuan

Case No. D2024-4500

1. The Parties

The Complainant is Zino Davidoff SA, Switzerland, represented by Abion GmbH, Switzerland.

The Respondent is Zhang ZhaoZhuan, China.

2. The Domain Name and Registrar

The disputed domain name <davidoff-cool-water.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 31, 2024. On November 1, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 1, 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 (Redacted for Privacy / Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 5, 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 November 8, 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 November 14, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 4, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 5, 2024.

The Center appointed Charles Gielen as the sole panelist in this matter on December 10, 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 is a Swiss-based family business which provides luxury goods such as leather goods, writing instruments, fragrances, watches, eyewear, fashion accessories, coffee and cognac that enjoy a high reputation. The Complainant's products are sold worldwide.

The Complainant holds a portfolio of registrations for trade marks, consisting of the word DAVIDOFF or COOLWATER (in whole or with a figurative element) in several countries and regions in the world. This portfolio includes the following registrations:

- Swiss registration for the trade mark DAVIDOFF, No. 2P-313368, registered on January 27, 1982, in classes 3, 14, 15, 16, 18, 20, 21, 25 and 33;
- International Registration for the trade mark DAVIDOFF, No. 467510, registered on January 27, 1982, in classes 3, 14, 15, 16, 18, 20, 21, 25, 33 and 34, for several designated countries;
- United States registration for the trade mark DAVIDOFF, No. 2609218, registered on August 20, 2002, in class 3;
- International Registration for the trade mark COOL WATER, No. 761286, registered on April 6, 2001, in classes 3, 9, 21, 24 and 25, for several designated countries;
- United States registration for the trade mark COOL WATER, No. 1735965, registered on December 1, 1992, in class 3.

Since many years the Complainant operates under domain names like <zinodavidoff.com>, <davidoff.com> and <davidoffcoolwater.com>.

The disputed domain name was registered on July 30, 2024 and resolves to a website which displays the trade marks DAVIDOFF and COOL WATER as well as many images of products commercialized by the Complainant under these trade marks.

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.

Notably, the Complainant contends that the disputed domain name is confusingly similar to the Complainant's trade marks. The disputed domain name incorporates the Complainant's registered trade marks DAVIDOFF and COOL WATER, only separated by hyphens, in their entirety. Therefore, the disputed domain name is confusingly similar to the trade marks in which the Complainant has rights. The presence of the generic Top-Level Domain ("gTLD") ".com" is a standard registration requirement and has to be disregarded for purposes of assessing confusing similarity.

Furthermore, the Complainant contends that the Respondent does not have any rights or legitimate interests in the disputed domain name. The Complainant gives several reasons for this. First, the Respondent registered the disputed domain name many years after the registration and first use of the Complainant's trade marks. Second, the Complainant did not license or otherwise authorize the Respondent to use the trade marks. Third, the Respondent has not been using, or preparing to use, the disputed domain name in connection with a bona fide offering of goods and services, nor making a legitimate noncommercial or fair use of the disputed domain name. On the contrary, the disputed domain name resolves to a website which aims at inferring a direct association to the Complainant, by especially displaying the DAVIDOFF and COOL

WATER trade marks prominently, at the top of each website pages, and repeatedly underneath. According to the Complainant, the repeated unauthorized use of the DAVIDOFF and COOL WATER trade marks aim clearly at implying a direct association with the Complainant in Internet users' mind and making them believe that the disputed domain name and the corresponding website are directly connected to, or operated by, the Complainant, which is not the case. Therefore, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name, within the meaning of the paragraphs 4(a)(ii) and (4)(c) of the Policy.

Finally, the Complainant argues that the Respondent registered and is using the disputed domain name in bad faith. With respect to the bad faith registration, the Complainant argues that its trade marks are widely known and are intensively being used via its official website and on social medias. By conducting a simple search online on popular search engines regarding the terms "Davidoff" and "Cool Water", the Respondent would have inevitably learnt about the Complainant, its trade marks and business, as the majority of the results relate to the Complainant its business activity, website, social medias accounts or related topics. Also, the registration of the disputed domain name, which includes the widely known trade marks DAVIDOFF and COOL WATER aims at creating a direct association with the Complainant and its domain names. The structure of the disputed domain name shows that the Respondent registered it having the Complainant and its DAVIDOFF and COOL WATER trade marks in mind. It reflects the Respondent's clear intention to create an association, and a subsequent likelihood of confusion, with the Complainant's trade marks in Internet users' mind. By reading the disputed domain name, the Internet users may believe that it is directly connected to or authorized by the Complainant. The Respondent registered the disputed domain name to take advantage of the Complainant's widely known trade marks.

With respect to the bad faith use of the disputed domain name, the Complainant argues that it resolves to a website which aims at inferring a direct association with the Complainant, by directly referring to, and pretending to be operated by, the Complainant as well as displaying DAVIDOFF and COOL WATER products for sale at a discounted price. When encountering the disputed domain name and the associated website, Internet users and consumers may be confused as to their source and be falsely led to believe that they are operated or owned by the Complainant. Being misled in thinking that the same website is operated or connected to the Complainant, Internet users might have attempted to send an email to receive a newsletter to allegedly benefit from discounted products. The website associated to the disputed domain name indeed displays the sentence "Become part of our newsletter community and benefit from special advantages such as this exclusive offer – subscribe today!". These facts demonstrate that, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the website associated with the disputed domain name, by creating a likelihood of confusion with the Complainant's marks as to the source of the website. Such conduct is clearly in bad faith and is very harmful for the Complainant.

In view of the above, the Complainant contends that the Respondent registered and used the disputed domain name in bad faith and its conduct falls within the meaning of paragraph 4(a)(iii) of the Policy.

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 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.

The Complainant has shown rights in respect of two trade marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the two trade marks DAVIDOFF and COOL WATER is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to both the trade marks DAVIDOFF and COOL WATER of the Complainant for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Therefore, the requirement under paragraph 4(a)(i) of the Policy is met.

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.

Although the overall burden of proof in UDRP proceedings is on the Complainant, panels have recognized that proving the 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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available 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 such as those enumerated in the Policy or otherwise.

First, the Respondent did not show that it owns any rights to the names DAVIDOFF, COOL WATER or a combination thereof nor that it has any license from the Complainant to use its trade marks. Second, the Respondent did not argue that it is commonly known, or that it has ever been known under the name “davidoff-cool-water”. Furthermore, the Panel did not find any evidence that the Respondent has used, or prepared to use, the disputed domain name in connection with a bona fide offering of goods or services. On the contrary, the disputed domain name resolves to a website on which products of the Complainant and advertising texts used by the Complainant are being used without making clear the relationship (or lack thereof) with the Complainant. On the contrary, the website at the disputed domain name displays prominently the Complainant’s trade marks and reproduces statements using the terms “we” and “our” to refer to “Davidoff Cool Water”, which in view of the composition of the disputed domain name, create a risk of affiliation with the Complainant. Such use can never be a bona fide offering of goods or services and does not create a legitimate interest in the disputed domain name.

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.

In the present case, the Panel notes that by registering the disputed domain name the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website accessed via the disputed

domain name by creating a likelihood of confusion with the Complainant's trade mark as to the source, sponsorship, affiliation, or endorsement of its website. The Panel agrees with the Complainant that the registration of the disputed domain name, which includes the widely known trade marks DAVIDOFF and COOL WATER aims at creating a direct association with the Complainant and its trade marks and domain names. This reflects the Respondent's clear intention to create an association, and a subsequent likelihood of confusion, with the Complainant's trade marks in Internet users' mind. By reading the disputed domain name, the Internet users may believe that it is directly connected to, or authorized by the Complainant. The Respondent registered the disputed domain name to take advantage of the Complainant's widely known trade marks.

Furthermore, the Panel is of the opinion that the Complainant showed the fraudulent intent by the Respondent because the Respondent is using the disputed domain name for unlawful purposes by creating a website showing products of the Complainant as well as advertising texts used by the Complainant, which shows that the Respondent is using the disputed domain name to make an association with the Complainant and its products. Such association causes confusion in the minds of Internet users. This behavior is evidence of both registration and use of a disputed domain name in bad faith.

The Panel finds that the Complainant has established the third element 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 <davidoff-cool-water.com> be transferred to the Complainant.

/Charles Gielen/

Charles Gielen

Sole Panelist

Date: December 21, 2024