

ADMINISTRATIVE PANEL DECISION

Flutter Entertainment plc and Rational Intellectual Holdings Limited v. Global Domain Privacy Services Inc / Anikeev Pavel
Case No. D2022-1312

1. The Parties

The Complainant is Flutter Entertainment plc, Ireland (“First Complainant”), and Rational Intellectual Holdings Limited, Isle of Man, (“Second Complainant”), both represented by Demys Limited, United Kingdom.

The Respondent is Global Domain Privacy Services Inc, Panama / Anikeev Pavel, Russian Federation.

2. The Domain Names and Registrar

The disputed domain names <poker-stars.site> and <poker-stars.xyz> are registered with URL Solutions, Inc. dba Pananames (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 12, 2022. The Complaint referred to four domain names – the two disputed domain names and the domain names <pokerstars.best> and <pokerstars.cash>. On April 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On April 13, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainants on April 21, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint on April 26, 2022.

The Center verified that 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 May 9, 2022. In accordance with the Rules, paragraph 5,

the due date for Response was May 29, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 7, 2022.

On June 17, 2022, the Center informed the Complainants that the domain names <pokerstars.best> and <pokerstars.cash> appeared to be available for registration. Upon the Complainants' request, these two domain names were withdrawn from the proceeding on June 20, 2022.

The Center appointed Assen Alexiev as the sole panelist in this matter on June 28, 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 two Complainants are related entities. The First Complainant is a multinational company listed on the London Stock Exchange and on Euronext Dublin. It operates the sports betting and gaming brands PokerStars, Paddy Power, Fox Bet, Sky Betting, and Betfair. PokerStars offers worldwide online tournaments and interaction with professional poker players. Since 2002, it annually hosts the world championship of online poker. As of 2020, it had more than 13 million active customers in over 100 countries.

The Second Complainant is the intellectual property holding company which holds the POKERSTARS registered rights which the Complainants rely on in this proceeding. The Second Complainant is the owner of the following registrations of the POKERSTARS brand (the "POKERSTARS trademark"):

- the European Union Trade Mark POKERSTARS with trademark No. 004582301, registered on December 15, 2006 for goods and services in International Classes 9, 35, 41, and 42;
- the United Kingdom trademark POKERSTARS with trademark No. 904582301, registered on December 15, 2006 for goods and services in International Classes 9, 35, 41, and 42; and
- the United States of America ("United States") trademark POKERSTARS with registration No. 78542627, registered on February 12, 2008 for goods and services in International Classes 9 and 41.

The Complainants operate official websites at the domain names <pokerstars.com> and <pokerstars.net>.

The disputed domain names were registered on February 4 and 9, 2022. They resolve to websites that offer gambling services.

5. Parties' Contentions

A. Complainant

The Complainants submit that the disputed domain names are confusingly similar to the POKERSTARS trademark in which they have rights. They state that the hyphens in the disputed domain names do not distinguish them from the POKERSTARS trademark.

The Complainants contend that the Respondent does not have rights or legitimate interests in the disputed domain names. They submit that the Respondent is not commonly known under the disputed domain names, is not a licensee of the Complainants, and does not own any relevant trademarks. The Complainants note that the registration of their earliest trademark predates the registration of the disputed domain names by approximately 16 years. They contend that given the fame of their POKERSTARS trademark and that the disputed domain names are identical or confusingly similar to it, there is no conceivable use to which the disputed domain names could be put that would confer any legitimate interest

upon the Respondent. The Complainants further state that the disputed domain names have not been used in connection with any legitimate or fair noncommercial use, as the websites associated with the disputed domain names have been used as commercial websites advertising gambling services and falsely suggest an affiliation with the Complainant. The websites associated with the disputed domain names feature no disclaimers and redirect users to third party gambling websites that are not endorsed by the Complainants.

The Complainants maintain that the Respondent has made no demonstrable preparations to use the disputed domain names in connection with a *bona fide* offering of goods and services, but has appropriated the POKERSTARS trademark to advertise and promote unrelated and unapproved gambling websites. According to the Complainants, the Respondent has engaged in “bait-and-switch” conduct by registering the disputed domain names that are entirely made up of the Complainants’ POKERSTARS trademark and then using the associated websites to offer services offered by unrelated third parties.

The Complainants contend that the disputed domain names were registered and are being used in bad faith. Given that the Complainants’ POKERSTARS trademark is well-known, the Respondent must have had them in mind when registering the disputed domain names. As the disputed domain names are identical to the Complainants’ POKERSTARS trademark, Internet users seeing the disputed domain names in search engine results or elsewhere would reasonably assume that any associated website would be operated by or endorsed by the Complainants. This initial interest confusion is not dispelled by the websites associated with the disputed domain names, which prominently incorporate the Complainants’ POKERSTARS name, trademark, and logo, while also copying the look and feel of the Complainants’ own websites, but lack any disclaimers for the lack of relationship with the Complainants. The Complainants contend that the misleading use of the Complainants’ name and POKERSTARS trademark and use of a similar look and feel demonstrates an intention of the Respondent to mislead consumers into believing that its websites are authorized by or affiliated with the Complainants.

The Complainants request a decision for the transfer of the disputed domain names to the Second Complainant.

B. Respondent

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

6. Discussion and Findings

6.1. Procedural issue – Consolidation of the Complainants

The Complainants request their consolidation. They submit that they have a specific common grievance against the Respondent, in that the Respondent has targeted both Complainants’ rights, where the disputed domain names take unfair advantage of the First Complainant’s brand and are confusingly similar to the Second Complainant’s registered rights. The Complainants also submit that the Respondent will not be prejudiced by the Complaint being brought jointly by both Complainants.

The Policy and the Rules do not directly regulate the consolidation of multiple Complainants in a single Complaint. As discussed in section 4.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), in assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look at whether the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and whether it would be equitable and procedurally efficient to permit the consolidation.

The Panel finds that these two factors are present here. As argued in the Complaint, it appears that the Respondent has engaged in a conduct that affects both of the Complainants and gives rise to a common grievance of them against the Respondent. The Respondent has not objected to the consolidation request

and has not brought forward any reason why it would not be equitable and procedurally efficient to permit the consolidation. The Panel is of the view is that the consolidation would lead to greater procedural efficiency, and is not aware of any reasons why it would not be fair and equitable to all parties.

Therefore, the Panel allows the consolidation of the Complainants in this proceeding.

6.2. Substantive issues

Pursuant to the Policy, paragraph 4(a), the Complainants must prove each of the following to justify the transfer of the disputed domain names:

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

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: “[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name [...]”.

The Respondent has however not submitted a Response and has not disputed the Complainants’ contentions and evidence in this proceeding.

A. Identical or Confusingly Similar

The Complainants have provided evidence that the Second Complainant is the owner of the POKERSTARS trademark and submit that they are affiliates. As discussed in section 1.4.1 of the [WIPO Overview 3.0](#), a trademark owner’s affiliate is considered to have rights in a trademark under the UDRP for purposes of standing to file a complaint. In view of this, the Panel accepts that the Complainants have established their rights in the POKERSTARS trademark for the purposes of the present proceeding.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the Top-Level Domain (“TLD”) section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). See section 1.11.1 of the [WIPO Overview 3.0](#). The Panel sees no reason not to follow the same approach here, so it will disregard the “.site” and “.xyz” TLDs of the disputed domain names.

The disputed domain names incorporate the POKERSTARS trademark entirely with the addition of a hyphen between “poker” and “stars”, but the trademark remains easily recognizable in this disputed domain names. In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing. See section 1.7 of the [WIPO Overview 3.0](#).

In view of the above, the Panel finds that the disputed domain names are identical or confusingly similar to the POKERSTARS trademark in which the Complainants have rights.

B. Rights or Legitimate Interests

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainants contend that the Respondent has no rights or legitimate interests in the disputed domain names, stating that the Respondents are not commonly known under the disputed domain names, have no relevant trademark rights and have not been authorized by the Complainants to use their POKERSTARS trademark. According to the Complainants, the Respondents are not carrying out a *bona fide* use of the disputed domain names, as the websites at the disputed domain names offer third-party gambling services and prominently display the POKERSTARS trademark without authorization by the Complainants. Thus, the Complainants have established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names.

The Respondent has not submitted a Response. It has not alleged that it has rights or legitimate interests in the disputed domain names and has not disputed the Complainants' allegations in this proceeding.

The disputed domain names are confusingly similar to the POKERSTARS trademark, and the evidence in the case file shows that they indeed resolve to websites that feature the POKERSTARS trademark and offer third party gambling services without disclosing the lack of relationship between the Parties. Rather, these websites contain the copyright notices "© 2022 Copyright Pokerstars" or "© 2016-2021 PokerStars. All rights reserved" respectively, which suggest the existence of such relationship.

In view of the above, the Panel is satisfied that it is more likely than not that the Respondent, being well aware of the goodwill of the Complainants' POKERSTARS trademark, has registered and used the disputed domain names in an attempt to exploit the trademark's goodwill to attract Internet users to the Respondent's websites which offer gambling services in competition with the Complainants without disclosure of the lack of relationship between the Parties and without authorization of this conduct by the Complainants. To the Panel, such conduct does not appear to be legitimate nor giving rise to rights or legitimate interests of the Respondent in the disputed domain names.

Therefore, the Panel finds that the Respondents do not have rights or legitimate interests in the disputed domain names.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

"(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location."

The disputed domain names incorporate the POKERSTARS trademark, which was first registered almost 16 years prior to the registration of the disputed domain names. The Respondent does not deny that the disputed domain names are linked to websites that offer gambling services in competition with the Complainants and feature the POKERSTARS trademark without disclosing the lack of relationship between the Parties. The Respondent also does not deny that its conduct has not been authorized by the Complainants.

Taking the above into account, the Panel accepts that it is more likely than not that the Respondent has registered the disputed domain names with knowledge of the Complainants and targeting the POKERSTARS trademark in an attempt to attract traffic to the disputed domain names by confusing Internet users that they are reaching official online locations where the Complainant's gambling services are provided, and then offer them the services of competitors of the Complainants. In view of this, the Panel accepts that by registering and using the disputed domain names, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the websites at the disputed domain names, by creating a likelihood of confusion with the Complainant's POKERSTARS trademark, which supports a finding of bad faith conduct under paragraph 4(b)(iv) of the Policy.

Therefore, the Panel finds that the disputed domain names have been registered and used in bad faith.

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 names, <poker-stars.site> and <poker-stars.xyz>, be transferred to the Second Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: July 7, 2022