

ADMINISTRATIVE PANEL DECISION

Omega Entertainment N.V. v. Domain Admin, Privacy Protect, LLC
(PrivacyProtect.org) / Recep
Case No. D2022-1431

1. The Parties

The Complainant is Omega Entertainment N.V., Netherlands, represented by (SMES) Solutions for Management and Employment Support N.V.

The Respondent is Domain Admin, Privacy Protect, LLC (PrivacyProtect.org), United States of America / Recep, Turkey.

2. The Domain Name and Registrar

The disputed domain name <altincasino.site> is registered with Hostinger, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 21, 2022. On April 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 25, 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 April 25, 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 on April 27, 2022.

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 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 18, 2022. The Respondent sent an informal communication email to the Center on April 28, 2022, but did not submit any formal response. Accordingly, the Center notified the Parties of the Commencement of Panel Appointment Process on May 19, 2022.

The Center appointed Kaya Köklü as the sole panelist in this matter on May 20, 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 company based in the Netherlands, which offers online betting and gambling services since 2017.

The Complainant is the owner of the AC ALTINCASINO trademark, which is registered as a European Union Trademark (Reg. No. 018296120, registered on December 18, 2020), (Annex 7 to the Complaint).

The Complainant further holds and operates its official website at “www.altincasino.com” (Annex 6 to the Complaint).

The Respondent appears to be an individual located in Turkey.

The disputed domain name was registered on June 22, 2021. The language of the Registration Agreement of the disputed domain name is English.

The screenshots, as provided by the Complainant (Annex 8 to the Complaint), show that the disputed domain name resolved to a website in the Turkish language, which was used for promoting online gambling services. On this website, the AC ALTINCASINO trademark and an “AC” logo as used by the Complainant on its official website were prominently used without any visible disclaimer describing the existence (or a lack) of a relationship between the Parties.

At the time of the decision, the disputed domain name no longer resolves to an active website.

Prior to initiating the present administrative proceeding, the Complainant tried to solve the matter amicably by sending a demand letter to the Registrar on November 9, 2021, and requesting the Registrar to forward the communication to the Respondent (Annex 9 to the Complaint). However, there were no responses.

5. Parties' Contentions

A. Complainant

The Complainant requests the transfer of the disputed domain name to the Complainant.

The Complainant is of the opinion that the disputed domain name is confusingly similar to its AC ALTINCASINO trademark.

It further argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

In addition, the Complainant is convinced that the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

The Respondent did not file any formal response to the Complainant's contentions. In his short email communication to the Center on April 28, 2022, the Respondent merely notes that he prefers Turkish to be the language of the administrative proceeding and that he is willing to transfer the disputed domain name in return of a payment in the amount of USD 1.000.

6. Discussion and Findings

6.1. Preliminary Issue: Language of the Proceeding

In his informal email communication to the Center, the Respondent indicates that he prefers Turkish to be the language of the administrative proceeding. However, as the Registrar confirmed that the language of the Registration Agreement of the disputed domain name is English, and there is no other agreement between the Parties, the Panel determines in accordance with the Rules, paragraph 11(a) that the language of this administrative proceeding shall be English.

6.2. Substantive Issues

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

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 or service mark 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. See *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

The Panel finds that the Complainant has registered trademark rights in the mark AC ALTINCASINO by virtue of a European Union Trademark Registration (Annex 7 to the Complaint).

Furthermore, the Panel notes that the disputed domain name differs from the Complainant's AC ALTINCASINO trademark only by the omission of the characters "AC".

As stated at section 1.9 of the [WIPO Overview 3.0](#), where the relevant trademark remains recognizable within the disputed domain name, the omission of characters does not prevent a finding of confusing similarity. In view of the Panel, the Complainant's AC ALTINCASINO is still well recognizable within in the disputed domain name, so that the missing characters "AC" do not prevent a finding of confusing similarity with the Complainant's trademark.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's AC ALTINCASINO trademark and concludes that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Panel further finds that the Respondent has failed to demonstrate any rights or legitimate interests in the disputed domain name.

While the burden of proof on this element remains with the Complainant, previous UDRP panels have recognized that this would result in the often impossible task of proving a negative, in particular as the evidence in this regard is often 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 in order to meet the requirements of paragraph 4(a)(ii) of the Policy. See, *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

The Panel finds that the Complainant has satisfied this requirement, while the Respondent has failed to file any evidence or make any convincing argument to demonstrate rights or legitimate interests in the disputed domain name according to the Policy, paragraphs 4(a)(ii) and 4(c).

In its Complaint, the Complainant has provided uncontested *prima facie* evidence that the Respondent has no rights or legitimate interests to use the Complainant's trademark AC ALTINCASINO in a confusingly similar way within the disputed domain name.

There is also no indication in the current record that the Respondent is commonly known by the disputed domain name. In the absence of a formal response, the Respondent has particularly failed to demonstrate any of the other non-exclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c) or other evidence of rights or legitimate interests in the disputed domain name.

The Panel further notes the nature of the disputed domain name, which in view of the Panel carries a risk of implied affiliation or association, as stated in section 2.5.1 of the [WIPO Overview 3.0](#).

As a conclusion, the Panel finds that the Complainant has also satisfied the requirements of paragraph 4(a)(ii) of the Policy.

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 Panel is convinced that the Respondent must have had the Complainant's trademark in mind when registering the disputed domain name. In view of the Panel, the Respondent has registered the disputed domain name solely for the purpose of creating an association with the Complainant and its online betting and/or gambling services.

After having reviewed the Complainant's screenshots of the website linked to the disputed domain name (Annex 8 to the Complaint), the Panel is convinced that the Respondent has intentionally registered the disputed domain name in order to generate traffic to its own website. The Panel particularly notes that the Respondent has not published any visible disclaimer on the website linked to the disputed domain name to explain that there is no existing relationship between the Respondent and the Complainant. Rather, the prominent use of the Complainant's AC ALTINCASINO trademark and its official "AC" logo on the website linked to the disputed domain name, in addition to the nature of the disputed domain name is, in view of the Panel, compelling evidence that the Respondent intentionally tries to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation or endorsement of its website. In addition, the fact that the Respondent offered to sell the disputed domain name is a further indication of bad faith.

The fact that the disputed domain name does not currently resolve to an active website anymore does not change the Panel's findings in this respect. See section 3.3 of the [WIPO Overview 3.0](#).

The Panel therefore concludes that the disputed domain name was registered and is being used in bad faith and that the Complainant has also 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 <altincasino.site> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: June 2, 2022