

## ADMINISTRATIVE PANEL DECISION

### Flutter Entertainment plc, Rational Intellectual Holdings Limited v. Ye Li Case No. DNL2022-0015

#### 1. The Parties

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

The Respondent is Ye Li, China.

#### 2. The Domain Name and Registrar

The disputed domain name <pokerstarssports.nl> (the “Disputed Domain Name”) is registered with SIDN through Key-Systems GmbH.

#### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 15, 2022. On March 16, 2022, the Center transmitted by email to SIDN a request for registrar verification in connection with the Disputed Domain Name. On March 17, 2022, SIDN 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 March 18, 2022, providing the information disclosed by SIDN, and inviting the Complainant to amend the Complaint in this light. The Complainant filed an amended Complaint on March 18, 2022.

The Center verified that the Complaint as amended satisfies the formal requirements of the Dispute Resolution Regulations for .nl Domain Names (the “Regulations”).

In accordance with the Regulations, articles 5.1 and 16.4, the Center formally notified the Respondent of the Complaint and the proceedings commenced on March 21, 2022. In accordance with the Regulations, article 7.1, the due date for Response was April 10, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 11, 2022.

The Center appointed Thijs van Aerde as the panelist in this matter on April 26, 2022. The Panel finds that it was properly constituted. The Panelist has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required to ensure compliance with the Regulations, article 9.2.

#### **4. Factual Background**

The Complainants are two entities within a group of affiliated companies. The First Complainant is a multinational and parent company, operating sports betting and gaming brands including PokerStars, Paddy Power, Fox Bet, Sky Betting, and Betfair.

The Second Complainant is an intellectual property holding company, holding, *inter alia*, the registered trademark rights which the First Complainant relies on. These registrations include the following trademark registrations (the "Trademarks"):

- Benelux trademark POKERSTARS, registered on November 21, 2005, registration No. 778011; and
- European Union trademark POKERSTARS, registered on December 15, 2006, registration No. 004582301.

The Disputed Domain Name was registered by the Respondent on December 14, 2020, and resolves to a pay-per-click ("PPC") page containing third-party commercial advertising links related to the Complainants' business and activities.

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

##### **A. Complainants**

The Complainants assert that the Disputed Domain Name is confusingly similar to the Trademarks to which the Second Complainant has rights, noting that the registration of the earliest POKERSTARS trademark predates the registration of the Disputed Domain Name by more than 15 years. The Disputed Domain Name only differs from the Trademarks by the addition of the term "sports".

The Complainants contend that the Respondent has no rights to or legitimate interests in the Disputed Domain Name. According to the Complainants, there is no evidence that the Respondent has been commonly known by the Disputed Domain Name. The Respondent is not a licensee of the Complainants and has not received any permission or consent from either of the Complainants to use the Trademarks.

The Complainants argue that the use and registration of the Disputed Domain Name by the Respondent is in bad faith. Given the renown of the Trademarks, the Complainants assert that it is inconceivable that the Respondent did not have the Complainants in mind when registering the Disputed Domain Name. Further, the Complainants point out that the Disputed Domain Name is listed for sale, which is a strong indication that the Respondent had a bad faith intent when it registered the Disputed Domain Name. Given that the Disputed Domain Name incorporates the Trademarks in their entirety, the Complainants argue that it is of no legitimate value to anyone aside from the Complainants or a competitor.

##### **B. Respondent**

The Respondent did not reply to the Complainants' contentions.

#### **6. Discussion and Findings**

Pursuant to article 2.1 of the Regulations the Complainants must prove each of the following three elements:

a. the Disputed Domain Name is identical or confusingly similar to:

- I) a trademark or trade name protected under Dutch law in which the Complainants have rights; or
- II) a personal name registered in the General Municipal Register (*Gemeentelijke Basisadministratie*) of a municipality in the Netherlands, or the name of a Dutch public legal entity or the name of an association or

foundation registered in the Netherlands under which the Complainants undertake public activities on a permanent basis; and

b. the Respondent has no rights to or legitimate interests in the Disputed Domain Name; and

c. the Disputed Domain Name has been registered or is being used in bad faith.

As the Respondent has not filed a response, the Panel shall rule on the basis of the Complaint. In accordance with article 10.3 of the Regulations, the Complaint shall in that event be granted, unless the Panel considers it to be without basis in law or in fact.

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

The Complainants have established that the Second Complainant has rights in the Trademarks.

In accordance with case law under the Regulations, the country code Top-Level Domain “.nl” may be disregarded when assessing confusing similarity between a disputed domain name and a trademark, see *Roompot Recreatie Beheer B.V. v. Edoco LTD*, WIPO Zaaknr. [DNL2008-0008](#).

Pursuant to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”),<sup>1</sup> section 1.8, where the relevant trademark is recognizable within the Disputed Domain Name, the addition of other terms, in this case “sports”, does not prevent a finding of confusing similarity under the first element.

The Panel finds that the Complainants have established the first element of article 2.1 of the Regulations.

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

Pursuant to article 2.1(b) of the Regulations, the onus of establishing the Respondent’s lack of rights to or legitimate interests in the Disputed Domain Name falls on the Complainants. Given the difficulties for a complainant in proving a negative as relevant information concerning (lack of) rights to or legitimate interests is in the possession of the other party, it is generally sufficient for a complainant to make a *prima facie* case against the respondent under this element. Once a *prima facie* case has been made, the burden of production to rebut the complainant’s case shifts to the respondent. See, *Auto 5 v. E. Shiripour*, WIPO Zaaknr, [DNL2008-0027](#), and [WIPO Overview 3.0](#), section 2.1.

The Respondent has not responded to the Complaint. Based on the record presented, the Panel finds that there is no reason to suggest that the Respondent is commonly known by the Disputed Domain Name as meant in article 3.1(b) of the Regulations. Further, there is no indication before the Panel that the Respondent possesses any relevant trademark, trade name, or other right relating to the term “pokerstarssports”.

The Disputed Domain Name only differs from the Trademarks by the addition of the term “sports”. Given the Complainants’ business in offering sports betting services, the Panel finds that this is a clear indication that the Respondent must have been aware of the Complainants and the Trademarks when registering the Disputed Domain Name.

This is further substantiated by the use of the Disputed Domain Name. The Disputed Domain Name redirects Internet users to a page containing PPC advertising links closely associated with the Complainants’ sports betting activities and misdirecting Internet users to third-party services, potentially competing with the

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<sup>1</sup> In view of the fact that the Regulations are substantially similar to the Uniform Domain Name Dispute Resolution Policy (“UDRP”), it is well established that both cases decided under the Regulations and cases decided under the UDRP, and therefore WIPO Overview 3.0, may be relevant to the determination of this proceeding (see, e.g., *Aktiebolaget Electrolux v. Beuk Horeca B.V.*, WIPO Case No. [DNL2008-0050](#)).

Complainants. This use does not amount to a *bona fide* offering of goods and services under article 3.1(a) of the Regulations, nor can it be considered a legitimate noncommercial use of the Disputed Domain Name under article 3.1(c) of the Regulations.

The Panel finds that the Respondent does not have rights to or legitimate interests in the Disputed Domain Name. The Complainants have thus satisfied the second limb of article 2.1 of the Regulations.

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

The Second Complainant's trademark registrations for POKERSTARS predate the Respondent's registration of the Domain Name by some 15 years. The described use of the Disputed Domain Name demonstrates the Respondent's intention to capitalize on the reputation and goodwill of the Trademarks. The combination of facts presented to the Panel makes it obvious that the Respondent intends to use the Complainants' renown to confuse Internet users seeking the Complainant's services.

This becomes all the more clear given the fact that the Respondent has engaged in a cybersquatting pattern of conduct, following a series of abusive domain name registrations incorporating well-known marks and having the domain names resolve to PPC pages. As evidenced by the Complainants, the Panel notes that the Respondent has been party to at least 18 domain name disputes of which 17 were decided against the Respondent and one was denied in part.

Noting the use of the Disputed Domain Name for a PPC page with links associated with the Complainants' business, the listing for sale of the Disputed Domain Name, and the pattern of abusive registrations by the Respondent, the Panel finds bad faith on the part of the Respondent.

The requirement of article 2.1(c) of the Regulations has thus been met.

## **7. Decision**

For all the foregoing reasons, in accordance with articles 1 and 14 of the Regulations, the Panel orders that the Disputed Domain Name <pokerstarssports.nl> be transferred to the Second Complainant.

*/Thijs van Aerde/*

**Thijs van Aerde**

Panelist

Date: May 10, 2022