

## **ADMINISTRATIVE PANEL DECISION**

### Casino Guichard Perrachon v. Naiyaz Sumodhee, Elonix Technologies Ltd Case No. D2023-1264

#### **1. The Parties**

The Complainant is Casino Guichard Perrachon, France, represented by SafeBrands, France.

The Respondent is Naiyaz Sumodhee, Elonix Technologies Ltd, United Kingdom.

#### **2. The Domain Name and Registrar**

The disputed domain name <casinohyperfrais.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 March 23, 2023. On March 23, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 23, 2023, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 24, 2023 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 March 28, 2023.

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 March 31, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 20, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 21, 2023.

The Center appointed Angelica Lodigiani as the sole panelist in this matter on April 28, 2023. 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 was founded in 1898 and operates various hypermarkets, supermarkets, convenience stores and discount stores in France and abroad. The Complainant operates under different signboards, including "Géant Casino", which in 2022 was replaced by "Casino HyperFrais".

The Complainant is the owner of the following trademarks:

- CASINO (word), International registration No. 348047 of September 13, 1968 for goods in classes 1-33;
- CASINO (word), International registration No. 448217, of November 2, 1979, for services in classes 35-41;
- CASINO (figurative), International registration No. 973252, of July 23, 2008, for goods in classes 3, 4, 5, 8, 11, 16, 18, 20, 21, 24, 29, 30, 31, 32 and 33;
- CASINO HYPERFRAIS (figurative), French registration No. 4821719 of March 25, 2022, for services in classes 35, 39 and 43

The Complainant is also the owner of the domain names <groupecasino.com> registered on May 3, 2000 and <casino-hyper-frais.com> registered on August 22, 2022.

The disputed domain name was registered on June 20, 2022 and resolves to a page containing links referring to the Complainant's activity. Prior to the filing of the Complaint, the Complainant sent a cease and desist letter and several reminders to the Respondent requesting the transfer of the disputed domain name in return of the payment of an amount to compensate the assignment costs. According to the Complainant, the Respondent offered to sell the disputed domain name to the Complainant for GBP 7,000.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant maintains that the disputed domain name is identical to its trademark CASINO HYPERFRAIS as the only difference lies in the generic Top-Level Domain ("gTLD") ".com", which is a technical requirement and has no impact on the assessment of confusing similarity.

The Complainant further maintains that the Respondent does not have rights or legitimate interests in the disputed domain name. To the best of the Complainant's knowledge, the Respondent does not own any right on the trademark CASINO HYPERFRAIS or on similar trademarks. The Respondent is using the disputed domain name to resolve to a parking page containing sponsored links referring to the Complainant's activity. The Complainant tried to contact the Respondent to reach an amicable solution of the matter, but received no reply until after several reminders when the Respondent offered to transfer the disputed domain name for GBP 7,000. This use cannot amount to a *bona fide* offering of goods or services, or to legitimate, noncommercial or fair use of the disputed domain name.

Lastly, the Complainant maintains that the disputed domain name has been registered and is being used in bad faith. The Complainant is the owner of the distinctive trademark CASINO HYPERFRAIS, which is identical to the disputed domain name. Moreover, the use of the disputed domain name as described above shows that the Respondent is making an unfair commercial use of the disputed domain name and is trying to sell the disputed domain name for an amount in excess of the out-of-pocket costs directly related to the

disputed domain name. Lastly, the Respondent is also preventing the Complainant from reflecting its trademark in a corresponding domain name.

## **B. Respondent**

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

## **6. Discussion and Findings**

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

The Panel finds that the Complainant has duly substantiated its earlier registered rights on the trademarks CASINO and CASINO HYPERFRAIS. The assessment of identity or confusing similarity involves comparing the (alpha-numeric) domain name and the textual components of the relevant mark(s). In the instant case, the Panel finds that the disputed domain name is identical to the textual elements of the Complainant's mark CASINO HYPERFRAIS and confusingly similar to the trademark CASINO.

Accordingly, the Panel finds that the Complainant has established the first element of paragraph 4(a) of the Policy.

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

While the overall burden of proof rests with the complainant, UDRP panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. As such, where a complainant makes a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

In the case at issue, the Panel finds that the Respondent has not been authorized to register a domain name including the Complainant's trademark and that the Respondent has no business relation, or any other kind of relation, with the Complainant. The Respondent does not own trademarks consisting of the words "casino hyperfrais" and does not appear to be known by the disputed domain name.

The disputed domain name is identical to the Complainant's trademark, which entails a high risk of implied affiliation as the Respondent is trying to impersonate the Complainant or suggest sponsorship or endorsement by the Respondent. Moreover, the disputed domain name resolves to a webpage displaying several sponsored links, referring to the Complainant's activity. By clicking on these links, the Respondent is likely earning a profit. Furthermore, following the receipt of the Complainant's cease and desist letter and subsequent reminders, the Respondent offered to sell the disputed domain name for an amount most likely exceeding the out-of-pocket costs directly related to the disputed domain name. All these circumstances show that the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services or a noncommercial and fair use without intent for commercial gain to misleadingly divert consumers or tarnish the Complainant's trademarks.

In light of the above, the Panel is satisfied that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. As the Respondent failed to file a Response and rebut the Complainant's arguments, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

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

Paragraph 4(a)(iii) of the Policy requires the complainant to demonstrate that the disputed domain name was registered and is being used in bad faith.

The Panel notes that the Respondent was certainly aware of the Complainant and of its CASINO and CASINO HYPERFRAIS trademarks when it registered the disputed domain name. The Respondent

registered the disputed domain name only a few months after the registration of the Complainant's identical trademark CASINO HYPERFRAIS and a few months before the launch of this trademark on the market. The sponsored links appearing on the parking page associated to the disputed domain name refer to the Complainant's activity, which further supports the Respondent's knowledge of the Complainant and of its trademarks at the time of the registration of the disputed domain name.

The Respondent is likely earning an income from each click on the sponsored links associated to the disputed domain name. When the Complainant tried to solve the matter amicably, the Respondent offered to sell the disputed domain name to the Complainant for a considerable amount of money, likely far in excess of the out-of-pocket costs associated to the disputed domain name. Both these circumstances suggest that the Respondent registered and used the disputed domain name in bad faith, to sell it to the Complainant for valuable consideration in excess of the Respondent's costs related to the disputed domain name, and to intentionally attempt to attract, for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

Moreover, the Panel notes that the disputed domain name is registered under the generic Top-Level Domain ("gTLD") ".com", which is the most commonly used and appealing gTLD. The fact that the disputed domain name was registered on June 20, 2022 and that the Complainant registered the domain name <casino-hyperfrais.com> on August 22, 2022 is, in the Panel's view, evidence of the fact that by registering the disputed domain name the Respondent prevented the Complainant from reflecting its mark in a corresponding domain name. Indeed, the disputed domain name is identical to the Complainant's CASINO HYPERFRAIS trademark and following the registration of the disputed domain name by the Respondent, the Complainant had to rely on a different domain name, *i.e.*, a domain name where the words "casino" and "hyperfrais" are separated by a hyphen.

In light of the above, the Panel is satisfied that also the third and last condition set forth in paragraph 4(a)(iii) of the Policy has been met.

## **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 <casinohyperfrais.com> be transferred to the Complainant.

*/Angelica Lodigiani/*

**Angelica Lodigiani**

Sole Panelist

Date: May 12, 2023