

## **ADMINISTRATIVE PANEL DECISION**

Streamotion Pty Ltd v. Ovi Khan

Case No. D2022-3784

### **1. The Parties**

The Complainant is Streamotion Pty Ltd, Australia, represented by Allens Patent and Trade Mark Attorneys, Australia.

The Respondent is Ovi Khan, Bangladesh.

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

The disputed domain name <kayosportslive.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 11, 2022. On October 11, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 11, 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 (Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 13, 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 October 25, 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 October 31, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 20, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 21, 2022.

The Center appointed Christopher J. Pibus as the sole panelist in this matter on November 24, 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 carries on business in Australia as a provider of sports-related streaming services in connection with its trademarks KAYO and KAYO SPORTS. The Complainant owns the following registered marks: Australian trademark registration No. 1949995 for KAYO SPORTS (registered from August 22, 2018) and Australian trademark registration No. 2000335 for KAYO (registered from April 2, 2019). Having launched its business in November 2018, the Complainant grew rapidly so that by May 2021 it had more than 1 million Australian subscribers. As a result, the Complainant has achieved significant reputation in the field of online and streamed sports content. In terms of domain names, the Complainant holds a variety of KAYO-formative names including its principal website hosted at <kayosports.com.au> as well as <kayosport.com>, <kayosport.live>, <kayosport.net> and others.

The Respondent registered the disputed domain name <kayosportslive.com> on December 20, 2021.

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

##### **A. Complainant**

The Complainant submits that it owns registered rights to the distinctive KAYO and KAYO SPORTS trademarks in Australia, where it holds a well-recognized reputation for its live and on-demand streaming services for sports events and related content. The Complainant argues that the disputed domain name is confusingly similar to the registered marks because it contains the entirety of the distinctive KAYO mark and the KAYO SPORTS mark, differing only by the word "live". In the Complainant's view, the Respondent has engaged in a deliberate scheme to deceive Internet users who will mistake the disputed domain name for the Complainant's well-known marks. The addition of the word "live" does not obviate confusion as it is descriptive of the nature of relevant services.

With respect to the absence of rights or legitimate interests, the Complainant seeks to establish a *prima facie* case, submitting that the Respondent was never associated with the Complainant or otherwise authorized to use the disputed domain name. The Complainant characterizes the Respondent's use of the disputed domain name as part of a fraudulent scheme to impersonate the Complainant's business model. The circumstances support the conclusion that the Respondent's use of the disputed domain name is not legitimate but is improper and nefarious. In the absence of any response in this matter, the Complainant submits that it should be deemed to have satisfied the second element under the Policy.

With respect to bad faith, the Complainant relies on the evidence of impersonation by the Respondent including the copying of content, logos and the look and feel of the Complainant's website. Proof of this sort of deliberate misconduct shows that the Respondent was intentionally targeting the Complainant's trademark rights in KAYO and KAYO SPORTS, resulting in an abusive registration contrary to the Policy.

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

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

## 6. Discussion and Findings

### A. Identical or Confusingly Similar

The Complainant clearly owns a portfolio of rights in its KAYO and KAYO SPORTS trademarks, established through significant use and registrations in Australia where it carries on its business of a streaming service for sports-related content.

The test for this first element under the Policy is described as a “reasoned but relatively straightforward comparison between the complainant’s trademark and the disputed domain name” in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 1.7.

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s registered trademarks. The disputed domain name is clearly modelled on the trademarks in question; it includes the entirety of the distinctive KAYO SPORTS mark. The Complainant’s trademarks are clearly recognizable within the disputed domain name. ([WIPO Overview 3.0](#), section 1.8.)

The Complainant has satisfied paragraph 4(a)(i) of the Policy.

### B. Rights or Legitimate Interests

Although the Policy places on the complainant the burden of proof to establish the absence of rights or legitimate interests, the practice now recognizes that it is often sufficient for a complainant to make out a *prima facie* case, which then shifts the burden to the Respondent to bring forward evidence to demonstrate the relevant rights or interests. Where the Respondent fails to produce such evidence, the Complainant will be deemed to have satisfied the second element ([WIPO Overview 3.0](#), section 2.1).

The Complainant has established a plausible *prima facie* case by bringing forward evidence on the following points: (1) the Respondent has never been associated in any way with the Complainant nor has he ever been authorized to use the KAYO SPORTS mark; (2) KAYO is a distinctive coined mark, which is well known as the primary mark of the Complainant; (3) the disputed domain name is so closely modelled on the KAYO and KAYO SPORTS marks that it has clearly been registered for the purpose of misleading and diverting consumers from the Complainant’s services in return for commercial advantage; and (4) the disputed domain name actually resolves to web pages which impersonate and replicate the look and feel of the Complainant’s website, including the details of the Complainant’s distinctive logo.

The totality of the evidence clearly establishes a *prima facie* case of the absence of rights or legitimate interests on the part of the Respondent. Illegal conduct of this nature is highly probative in connection with this issue. “Panels have categorically held that the use of a domain name for illegal activity (e.g....impersonation/passing off or other types of fraud) can never confer rights or legitimate interests on a respondent.” ([WIPO Overview 3.0](#) section 2.13.1).

Once the Complainant has established a *prima facie* case, the burden then shifts to the Respondent to bring forward evidence of rights and legitimate interests. The Respondent has not filed any submissions relating to this matter. In the absence of any such response, the Panel is prepared to find, for the purposes of this proceeding, that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant is deemed to have satisfied the requirements under paragraph 4(a)(ii) of the Policy.

### C. Registered and Used in Bad Faith

The Panel finds that the disputed domain name constitutes an abusive registration which was registered and used in bad faith. The Respondent clearly set out to target the Complainant. The evidence reveals a scheme whereby Internet users were intended to be diverted away from the Complainant’s primary website toward the Respondent’s website which had been designed to closely resemble many aspects of the

Complainant's website. Replicated features included the distinctive black and green colour scheme, the green KAYO logo, and the overall look and feel. It is clear that the Respondent was fully aware of the Complainant and its rights to the KAYO and KAYO SPORTS marks at all material times, and deliberately set out to deceive the Complainant's customers. This form of intentional impersonation is a compelling example of fraudulent conduct, which has often been recognized as proof of bad faith ([WIPO Overview 3.0](#) section 3.4).

The Complainant has satisfied 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 <kayosportslive.com> be transferred to the Complainant.

*/Christopher J. Pibus/*

**Christopher J. Pibus**

Sole Panelist

Date: December 5, 2022