

ADMINISTRATIVE PANEL DECISION

Byborg IP v. Marian Titu
Case No. D2023-3289

1. The Parties

The Complainant is Byborg IP, Luxembourg, represented by Denemeyer & Associates S.A., Luxembourg.

The Respondent is Marian Titu, Romania.

2. The Domain Name and Registrar

The disputed domain name <livejasmin.wiki> is registered with Porkbun LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 31, 2023. On August 1, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 1, 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 (Redacted for Privacy / Private by Design, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 1, 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 August 4, 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 August 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 28, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 30, 2023.

The Center appointed Steven A. Maier as the sole panelist in this matter on September 1, 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 is a provider of streaming and entertainment services. Its services include an adult “camming” website operated under the name and trademark LIVEJASMIN. It has operated a website at “www.livejasmin.com” since 2001.

The Complainant is the owner of trademark registrations for the mark LIVEJASMIN including, for example, Benelux trademark registration number 948833 for the word mark LIVEJASMIN, registered on December 18, 2013 in International Classes 35, 38 and 42.

The disputed domain name was registered on November 24, 2022.

The Complainant produces evidence that the disputed domain name has resolved to a website headed “LOTTO 60 – Coming Soon – Get notified when we launch,” referring to an upcoming “casino meets lotto” website, and providing a form for users to enter their email address, country, and phone number.

5. Parties’ Contentions

A. Complainant

The Complainant submits it has operated its web platform under the name LIVEJASMIN since the early 2000s. It states that its website is accessible from 241 countries and has over 300 million annual and 25 million monthly visitors. The Complainant produces “Site Rank” data which it argues underlines the popularity of its website. It also provides details of industry nominations and awards and points out that it has a Wikipedia page which makes references to its services.

The Complainant submits that the disputed domain name is identical to its LIVEJASMIN trademark and that the Top-Level Domain (“TLD”) “.wiki” is irrelevant to that evaluation.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It states that it has no relationship with the Respondent and has never authorized it to use its LIVEJASMIN trademark, that the Respondent has not commonly been known by the disputed domain name and that the Respondent is making neither *bona fide* commercial use nor legitimate noncommercial or fair use of the disputed domain name. The Respondent argues that, instead, the Respondent is using the disputed domain name to divert Internet users to its own casino website.

The Complainant submits that the disputed domain name has been registered and is being used in bad faith. It contends that, owing to the worldwide reputation of its LIVEJASMIN trademark, it is obvious that the Respondent knew of that trademark when it registered the disputed domain name. It further submits that it is obvious from the Respondent’s website content that the Respondent has attempted to attract, for commercial gain, Internet users to its casino website by creating a likelihood of confusion with the Complainant’s trademark.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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.

A. Identical or Confusingly Similar

The Complainant has established that it has registered trademark rights in the name LIVEJASMIN. The disputed domain name is identical to that trademark, ignoring the TLD “.wiki”, which may typically be disregarded for the purpose of evaluation under paragraph 4(a)(i) of the Policy. The Panel therefore finds that the disputed domain name is identical to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

In the view of the Panel, the Complainant's submissions set out above give rise to a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. However, the Respondent has failed to file a Response in this proceeding and has not submitted any explanation for its registration and use of the disputed domain name, or evidence of rights or legitimate interests on its part in the disputed domain name, whether in the circumstances contemplated by paragraph 4(c) of the Policy or otherwise. Furthermore, the Panel finds that the Respondent has used the disputed domain name misleadingly to divert Internet users to its forthcoming casino website, which circumstances cannot give rise to rights or legitimate interests. The Panel therefore finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The Panel finds the Complainant's LIVEJASMIN trademark to be distinctive and to have become widely known in the field of adult entertainment services. The Respondent provides no explanation of its choice of the disputed domain name and the Panel readily infers in these circumstances that the Respondent registered the disputed domain name with knowledge of the Complainant's LIVEJASMIN trademark and with the intention of taking unfair commercial advantage of that mark.

The disputed domain name comprises an unadorned appropriation of the Complainant's LIVEJASMIN trademark, together with the TLD “.wiki”. In the view of the Panel, the disputed domain name is likely in these circumstances to imply to Internet users that it is owned, operated or otherwise legitimately commercially affiliated with the Complainant, possibly linking to authorized information about its services. The disputed domain name is in fact unconnected with the Complainant and resolves to a website providing information about the Respondent's forthcoming casino website. The Panel finds, therefore, that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of its website or of a product or service on its website (paragraph 4(b)(iv) of the Policy).

The Panel finds in the circumstances that the disputed domain name has been registered and is being 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 name, <livejasmin.wiki>, be transferred to the Complainant.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: September 15, 2023