

## **EXPERT DECISION**

Flutter Entertainment Plc, and Rational Intellectual Holdings Limited v.  
Simone Gorska  
Case No. DCH2022-0003

### **1. The Parties**

The Claimants are Flutter Entertainment Plc, Ireland, and Rational Intellectual Holdings Limited, Isle of Man, United Kingdom, represented by Demys Limited, United Kingdom.

The Respondent is Simone Gorska, Spain.

### **2. The Domain Name**

The dispute concerns the following domain name <pokerstarssports.ch>.

### **3. Procedural History**

The Request was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 7, 2022. On March 7, 2022, the Center transmitted by email to SWITCH, the “.ch” and “.li” registry, a request for verification in connection with the Disputed Domain Name. On March 8, 2022, SWITCH transmitted by email to the Center its verification response confirming that the Respondent is listed as the holder of the Disputed Domain Name and providing the relevant contact details. The Center verified that the Request satisfied the formal requirements of the Rules of procedure for dispute resolution procedures for “.ch” and “.li” domain names (the “Rules of Procedure”), adopted by SWITCH, on January 1, 2020.

In accordance with the Rules of Procedure, paragraph 14, the Center formally notified the Respondent of the Request, and the Dispute resolution procedure commenced on March 15, 2022. In accordance with the Rules of Procedure, paragraph 15(a), the due date for Response was April 4, 2022.

The Respondent has neither filed a Response nor expressed its readiness to participate in a Conciliation in accordance with paragraph 15(d) of the Rules of Procedure

On April 5, 2022, the Center notified the Claimant accordingly, who on April 7, 2022, made an application for the continuation of the Dispute resolution proceedings in accordance with specified in paragraph 19 of the Rules of procedure.

On April 11, 2022, the Center appointed Andrea Mondini as Expert in this case. The Expert finds that it was properly appointed. In accordance with Rules of Procedure, paragraph 4, the above Expert has declared his independence of the parties.

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

The first Claimant, Flutter Entertainment Plc, is a multinational company operating sports betting and gaming brands, including PokerStars, which with 13 million users in over 100 countries is one of the largest poker sites worldwide. The second Claimant is the intellectual property holding company owning, among others, the trademark POKERSTARS.

The second Claimant, Rational Intellectual Holdings Limited, is the owner of the Swiss trademark registration No 726411 for POKERSTARS, filed on December 27, 2016, and registered on January 23, 2019, in the international classes 9 and 41. The Claimants announced a merger with PokerStars in October 2019 and the transaction was completed in May 2020 (here and after the "Claimant").

The Claimant operates several official domain names such as <pokerstarssports.com>.

The Disputed Domain Name was registered on April 26, 2021.

The Disputed Domain Name resolves to a pay-per-click (PPC) advertising site referring also to other gaming sites.

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

##### **A. Claimant**

In summary, the Claimant asserts the following:

The second Claimant owns the Swiss trademark registration No 726411 for POKERSTARS.

The Disputed Domain Name is confusingly similar to the trademark POKERSTARS, because the addition of the descriptive term "sports" does not dispel confusing similarity.

The Respondent is not a licensee of the Claimant and has not received any permission from the Claimant to use their marks.

The Respondent infringes the second Claimant's trademark rights because the Disputed Domain Name resolves to a website with PPC advertising, which diverts Internet users to competitors of the Claimants.

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

The Respondent has not submitted a response.

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

According to the Rules of Procedure, Paragraph 24(c), "the Expert shall grant the request if the allocation or use of the domain name constitutes a clear infringement of a right in a distinctive sign which the Claimant owns under the laws of Switzerland".

The Rules of Procedure, Paragraph 24(d) specify that "in particular, a clear infringement of an intellectual property right exists when:

- both the existence and the infringement of the claimed right in a distinctive sign clearly result from the wording of the law or from an acknowledged interpretation of the law and from the presented facts and are proven by the evidence submitted; and
- the respondent has not conclusively pleaded and proven any relevant grounds for defense; and
- the infringement of the right justifies the transfer or revocation of the domain name, depending on the remedy requested in the request”.

#### **A. The Claimant has a right in a distinctive sign under the law of Switzerland**

The Claimant has established ownership of the Swiss trademark registration No 726411 for POKERSTARS, in the international classes 9 and 41, in particular also for services related to sports activities offered on the Internet.

Therefore, the Expert finds that the Claimant has established its exclusive right in its distinctive sign (*i.e.* the trademark POKERSTARS) in Switzerland. Accordingly, the Claimant has provided sufficient evidence of Swiss trademark rights in accordance with Paragraph 24(d)(i) of the Rules of Procedure.

#### **B. The allocation or use of the domain name constitutes a clear infringement of a Right in a distinctive sign which the Claimant owns under the law of Switzerland**

According to Art. 13 para 1 and para. 2(c) of the Swiss Trademark Act, a trademark right confers on the proprietor the exclusive right to use the trademark to identify the goods or services for which it is claimed, and to prohibit others from offering or providing services under a sign that is identical or confusingly similar to its trademark.

According to Swiss supreme court rulings, the use of domain names that are identical or confusingly similar to a trademark on websites offering the same or similar goods constitutes trademark infringement (see *e.g.* decisions of the Swiss Federal Supreme Court 4C.31/2004, <riesen.ch> and 4C.341/2005 <swiss-life.ch>).

The Disputed Domain Name is confusingly similar to the trademark POKERSTARS and the addition of the descriptive word “sports” does not suffice to avoid a finding of confusing similarity.

Furthermore, the Disputed Domain Name resolves to a PPC website which refers also to several online gaming websites operated by the Claimant’s competitors. There is an obvious risk that Internet users who wish to visit the Claimant’s website will unintentionally access to the Respondent’s website. Moreover, by referring also to online gaming websites operated by the Claimant’s competitors, the Disputed Domain Name is used on a website offering similar goods as those claimed for the Complainant’s trademark. The Disputed Domain Name thus creates a likelihood of confusion with the Claimant’s trademark (see *Bulgari S.p.A. v. Registration Private, WhoisGuardService.com / S. H., Two Stooges LLC*, WIPO Case No. [DCH2021-0005](#), <bulgari.ch>). This clearly constitutes a trademark infringement under Swiss law.

The Respondent has neither pleaded nor proven any relevant grounds for defense.

The Expert therefore holds that the infringement of the right justifies the transfer of the Disputed Domain Name.

### **6. Expert Decision**

For the above reasons, in accordance with paragraph 24 of the Rules of Procedure, the Expert orders that the Disputed Domain Name <pokerstarssports.ch> be transferred to the First Claimant, Flutter Entertainment Plc.

*/Andrea Mondini/*

**Andrea Mondini**

Expert

Dated: April 14, 2022