

ADMINISTRATIVE PANEL DECISION

Novomatic AG v. Kristyna Blazkova

Case No. DEU2023-0003

1. The Parties

The Complainant is Novomatic AG, Austria, represented by GEISTWERT Kletzer Messner Mosing Schnider Schultes Rechtsanwälte OG, Austria.

The Respondent is Kristyna Blazkova, Czech Republic.

2. The Domain Name, Registry and Registrar

The Registry of the disputed domain name <admiralyes.eu> is the European Registry for Internet Domains (“EURid” or the “Registry”). The Registrar of the disputed domain name is EURid vzw.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 18, 2023. On January 18, 2023, the Center transmitted by email to the Registry a request for registrar verification in connection with the disputed domain name. On January 20, 2023, the Registry 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 January 27, 2023, providing the registrant and contact information disclosed by the Registry, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on January 27, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the .eu Alternative Dispute Resolution Rules (the “ADR Rules”) and the World Intellectual Property Organization Supplemental Rules for .eu Alternative Dispute Resolution Rules (the “Supplemental Rules”).

In accordance with the ADR Rules, Paragraph B(2), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on January 30, 2023. In accordance with the ADR Rules, Paragraph B(3), the due date for Response was February 19, 2023. On January 30, 2023, the Center received an email from the on-site contact. On February 21, 2023, the Center suspended the proceeding upon receiving the Complainant’s request. On March 27, 2023, the Complainant requested the reinstatement of the proceeding and on March 31, 2023, the proceeding was reinstated. On April 3, 2023, the Registry

informed the Center that the registrar updated the domain name holder's contact details while the proceeding was suspended. The Center sent an email communication to the Complainant on May 17, 2023, providing the registrant and contact information newly disclosed by the Registry, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed a second amended Complaint on May 17, 2023.

The Center verified that the Complaint together with the second amended Complaint satisfied the formal requirements of the .eu Alternative Dispute Resolution Rules (the "ADR Rules") and the World Intellectual Property Organization Supplemental Rules for .eu Alternative Dispute Resolution Rules (the "Supplemental Rules").

In accordance with the ADR Rules, Paragraph B(2), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 26, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 23, 2023.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on July 4, 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 ADR Rules, Paragraph B(5).

4. Factual Background

The Complainant was established in 1980 and has since developed into one of Europe's largest gaming technology groups, and one of the largest such groups in the world. The Complainant has a global presence via a large number of subsidiaries, employs more than 21,000 staff, and has locations in more than 50 countries. The Complainant exports electronic gaming equipment to more than 70 countries.

The Complainant owns numerous ADMIRAL trademarks, including for example, Austrian Registered Trademark Number 145212 for the word mark ADMIRAL, registered on December 17, 1992 in Classes 9, 28, 37, 41 and 42. The Complainant also owns ADMIRALYES trademarks, including for example, European Union Registered Trademark Number 013789573 for the figurative mark ADMIRALYES, consisting of the capitalized word "ADMIRAL" in a white stylized typeface coupled with a blue speech bubble containing the capitalized word "YES" in a white typeface, all set against a black background, registered on June 18, 2015 in Classes 9, 28, 38 and 41.

The disputed domain name was registered on July 18, 2022. While the website associated with the disputed domain name is said to have been taken down, according to screenshots produced by the Complainant, it was originally headed "Admiral Bet" (where the word "admiral" is in the stylized typeface used by the Complainant). Said site was in the Italian language and referred to the "AdmiralYes Casino" while inviting users to login and register. At the bottom of the page, the website stated (machine translated by the Panel) "The casino no longer works with new players. Take advantage of the new [third party] casino with huge bonuses for Italians".

On January 30, 2023, immediately after notification of the Complaint, the onsite contact for the disputed domain name wrote to the Center advising that all content would be removed from the corresponding website immediately and that it was investigating the matter with the Complainant's marketing department, with which it claimed to be cooperating. Later the same day, the onsite contact wrote to the Center again, stating that the disputed domain name would be transferred to the Complainant in the near future. As indicated in the procedural history section above, the proceeding was suspended thereafter for a transfer to be effected. No transfer was made. When the proceeding was reinstated, it was noted that the disputed domain name's holder's contact details had been amended on February 24, 2023, and despite notification being made to the newly provided details, nothing further has been heard from the Respondent or from anyone on its behalf. In these circumstances, nothing is known of the current holder of the disputed domain

name, being the Respondent in this proceeding, other than that it lists an address in Prague, Czech Republic.

5. Parties' Contentions

A. Complainant

In summary, the Complainant contends as follows:

Identical or confusingly similar

ADMIRAL and ADMIRAL YES are names in respect of which a right is recognized or established by the national law of Austria and European Union law respectively. The ADMIRAL trademark and the disputed domain name are identical in their distinctive part and they are confusingly similar since the disputed domain name incorporates the trademark ADMIRALYES in its entirety and the Top-Level Domain ".eu" cannot exclude confusion.

Rights or legitimate interests

The disputed domain name is used for a fake website. The Respondent has no relationship with or permission from the Complainant for the use of the ADMIRAL trademarks. The Respondent has neither been commonly known by the disputed domain name or by the "admiral" sign, nor has it acquired corresponding trademark rights. The email from the Respondent's onsite contact suggested that the disputed domain name was registered for cooperation with the Complainant's marketing department. It is incorrect that the Respondent was once entitled to use the Complainant's trademarks to counterfeit its products. The email confirms that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Registered or used in bad faith

The Respondent registered the disputed domain name long after the Complainant had registered its respective trademarks. The disputed domain name was registered for use with counterfeit content infringing the Complainant's rights. The Complainant's trademarks are so well known that the Respondent was undoubtedly aware of them when registering the disputed domain name. The Respondent also had a duty to check the trademark registries and undoubtedly would have found the Complainant's marks.

The user is informed on the website associated with the disputed domain name that the Complainant allegedly does not accept new players, which is wrong and aims to motivate users to register on the Respondent's fake site. Upon receipt of the Complaint, the Respondent removed the website content, which is a clear admission of bad faith.

B. Respondent

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

6. Discussion and Findings

In terms of the ADR Rules, Paragraph B11(d)(1), the Complainant is required to demonstrate that:

- (i) The domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or European Union law and; either

- (ii) The domain name has been registered by the Respondent without rights or legitimate interest in the name; or
- (iii) The domain name has been registered or is being used in bad faith.

A. Identical or Confusingly Similar to a name in respect of which a right or rights are recognized or established by national law of a Member State and/or European Union law

The Complainant has demonstrated to the Panel's satisfaction that it possesses rights in names that are recognized or established by national law of a Member State and/or European Union law, in that the Complainant's ADMIRAL trademark is an Austrian registered trademark and the Complainant's ADMIRALYES trademark is a European Union registered trademark, as more particularly described in the factual background section above.

Comparing the disputed domain name to these trademarks, it may be seen that the disputed domain name incorporates the entirety of each of these marks. In the case of the Complainant's ADMIRAL mark, this is accompanied by the word "yes" in the disputed domain name, which does not prevent a finding of confusing similarity, and the said mark remains fully recognizable in the disputed domain name despite the presence of this additional word. In the case of the Complainant's ADMIRALYES mark, while this is figurative in nature, the textual elements may be excised straightforwardly from the design elements, and the latter do not overtake the textual elements in prominence. Accordingly, comparing the textual elements of the ADMIRALYES mark to Second-Level Domain of the disputed domain name, it may be seen that these are alphanumerically identical. The ".eu" Top-Level Domain is typically disregarded for the purposes of the comparison with each of the Complainant's marks on the basis that it is a mere technical requirement for registration.

The Panel therefore finds that the disputed domain name is identical to the Complainant's ADMIRALYES trademark and confusingly similar to the Complainant's ADMIRAL trademark in respect of each of which the Complainant has rights, as required by the ADR Rules, Paragraph B(11)(d)(1)(i), and that the Complainant has carried its burden in this respect.

B. Rights or Legitimate Interests

As the Panel finds that the Complainant has made out its case of registration or use in bad faith in accordance with the ADR Rules, Paragraph B(11)(d)(1)(iii), discussed below, and as this paragraph is expressed as an alternative to making a case that the Respondent has no rights or legitimate interests in the disputed domain name, in accordance with the ADR Rules, Paragraph B(11)(d)(1)(ii), the Panel does not require to examine the facts and circumstances in terms of this particular element.

C. Registered or Used in Bad Faith

The ADR Rules, Paragraph B(11)(d)(1)(iii), requires the Complainant to prove that the disputed domain name has been registered or that it has been used in bad faith. In the present case, the Panel has concluded that the disputed domain name has been used in bad faith for the reasons outlined below, such that it does not also require to examine whether the disputed domain name has been registered in bad faith.

Before the website associated with the disputed domain name was taken down, the Complainant's screenshots show that it expressly referred to the Complainant and its ADMIRALYES mark, using the same distinctive typeface for the capitalized "admiral" element of this mark as is found in the Complainant's figurative European Union trademark. The website content then stated that the Complainant was not taking on new customers. The Complainant makes the uncontested averment that this statement is false. The website went on to invite Internet users to register with an alternative provider of gaming services. All of these circumstances suggest to the Panel that the Respondent has been using the attractive force of the Complainant's trademark in the disputed domain name and on the associated website, without the Complainant's permission, to deliver traffic to the Respondent's website. Upon arrival at the website, the

Respondent's content then set out to confuse Internet users into switching to an alternative gaming service, whereby the Respondent presumably obtained some form of commercial benefit. In no way could this be described as a good faith use of the disputed domain name.

After notification of the Complaint was made, the website content was removed, and the onsite contact for the disputed domain name alleged that the Respondent had been working in cooperation with the Complainant. Shortly thereafter, it proposed that the disputed domain name be transferred to the Complainant, although this was never done. The Complainant denies that there has ever been any cooperation between it and the Respondent and the Respondent has not attempted to contradict that denial.

In the Panel's opinion, the actions of the Respondent's onsite contact following notification of the Complaint are further evidence that the disputed domain name is being used in bad faith. Furthermore, insofar as the Respondent's website is now inactive, the Panel finds that the current non-use of the disputed domain name would not prevent a finding of bad faith in light of the Respondent's deliberate targeting of the Complainant's marks, its failure to submit a response or to provide any evidence of actual or contemplated good-faith use, and the implausibility of any good faith use to which the inherently misleading disputed domain name may be put.

The Respondent has failed to address the Complainant's submissions and evidence. In the absence of such, the Panel cannot contemplate any explanation that the Respondent might have tendered that would have showed that its use of the disputed domain name should not be considered to be being used in bad faith.

In these circumstances, the Panel finds that the disputed domain name is being used in bad faith and that the Complainant has carried its burden in terms of the ADR Rules, Paragraph B(11)(d)(1)(iii).

7. Decision

For the foregoing reasons, in accordance with the ADR Rules, Paragraph B(11), the Panel orders that the disputed domain name <admiralyes.eu> be transferred to the Complainant¹. The Panel notes that the Complainant is an undertaking that is established in Austria, and that it thereby satisfies the general eligibility criteria for registration set out in Article 3 of Regulation (EU) 2019/517.

/Andrew D. S. Lothian/

Andrew D. S. Lothian

Sole Panelist

Date: July 18, 2023

¹ The decision shall be implemented by the Registry within thirty (30) days after the notification of the decision to the Parties, unless the Respondent initiates court proceedings in a Mutual Jurisdiction, as defined in the ADR Rules, Paragraph A(1).