

ADMINISTRATIVE PANEL DECISION

NOVOMATIC AG v. Fabio Azzouzi

Case No. D2023-1675

1. The Parties

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

The Respondent is Fabio Azzouzi, Italy.

2. The Domain Name and Registrar

The disputed domain name <spielebookofra.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 April 17, 2023. On April 18, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 18, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on April 19, 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 April 20, 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 April 28, 2023. The proceedings were suspended on May 4, 2023, for purposes of settlement discussions. The proceedings were reinstated on July 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 20, 2023. The Respondent sent an informal communication to the Center on May 1, 2023. The Respondent did not submit any formal response. Accordingly, the Center notified the parties that it would proceed to panel appointment on July 25, 2023.

The Center appointed Anne-Virginie La Spada as the sole panelist in this matter on September 8, 2023.¹ 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 high-tech gaming technology company based in Austria, with a presence in many countries.

Among other games, the Complainant operates the online game “Book of Ra”.

The Complainant is the owner of *inter alia* the following trademark registrations:

- The European Union trademark registration No. 4451431 for BOOK OF RA, registered on May 24, 2006, in class 9;
- The European Union trademark registration No. 12456828 for BOOK OF RA & design, registered on April 23, 2014, in class 9.

The disputed domain name was registered on January 22, 2021. At the time of filing of the Complaint, the disputed domain name resolved to an active website where users could purportedly play to the Complainant’s games, including “Book of Ra”. The Complainant’s word & design trademark BOOK OF RA was displayed on such website.

5. Parties’ Contentions

A. Complainant

According to the Complainant, the disputed domain name is confusingly similar to its trademark, as it identically reproduces its trademark with the mere addition of the descriptive term “spiele”, which is the German word for “games”.

The Complainant also contends that the Respondent has no rights or legitimate interests in the disputed domain name, as the Respondent offers online games being fake versions of the Complainant’s original online games, and has no relationship with or permission from the Complainant for the use of its trademark. Furthermore, the Respondent is not commonly known under the disputed domain name nor has he acquired any trademark or service mark rights for BOOK OF RA.

Finally, according to the Complainant, the Respondent has registered and used the disputed domain name in bad faith. The Complainant further asserts that the Respondent infringed its trademarks and misled consumers about the identity of the company running the infringing online games, thus misleading and poaching the Complainant’s clients. Therefore, the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name within the meaning of the Policy.

B. Respondent

The Respondent did not file a proper response to the Complaint.

The Respondent sent an email communication to the Center, where he stated that he was “deeply concerned about the situation that has occurred” and “was ready to make every effort to resolve this issue”. The Respondent indicated that he had disabled the disputed domain name.

¹ The previously appointed Panelist had to recuse himself from the case.

6. Discussion and Findings

According to paragraph 4(a) of the Policy, a complainant must assert and prove each of the following:

- (i) the domain name registered by the respondent is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) the domain name registered by the respondent has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The disputed domain name <spielebookofra.com> incorporates entirely the Complainant's BOOK OF RA mark, with the adjunction of the term "spiele".

The addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) to a domain name where the relevant trademark is recognizable within the disputed domain name is considered by panels to be confusingly similar to the relevant mark for purposes of the first element (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8).

In the present case, the trademark BOOK OF RA is clearly recognizable in the disputed domain name. The mere addition of the term "spiele", which means "games" in German, does not change the overall impression produced by the disputed domain name and does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark.

Finally, UDRP panels also accept that a generic Top-Level Domain ("gTLD"), such as ".com", may be disregarded when assessing whether a domain name is identical or confusing similar to a trademark (see section 1.11 of the [WIPO Overview 3.0](#)).

The Panel finds accordingly that the Complainant has successfully established the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Based on the information submitted by the Complainant, the Respondent does not appear to have rights or legitimate interests in respect of the disputed domain name, nor has the Complainant granted to the Respondent any authorization to use the disputed domain name. Moreover, there is no evidence indicating that the Respondent is commonly known by the disputed domain name.

The Respondent does not appear to have operated any *bona fide* or legitimate business under the disputed domain name and is not making a noncommercial or fair use of the disputed domain name. Instead, the disputed domain name resolved to a website displaying the Complainant's BOOK OF RA word & design trademark and offering a tool allegedly enabling users to play to the Complainant's games, including the game "Book of Ra". Such use further supports the apparent lack of rights or legitimate interests of the Respondent in the disputed domain name. Indeed, impersonating the Complainant or creating the impression that there is a link between the Respondent and the Complainant can hardly be a legitimate or fair use.

Furthermore, UDRP panels consider that even where a domain name consists of a trademark plus an additional term (at the second- or top-level), such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner (see section 2.5.1 of the [WIPO Overview 3.0](#)).

Finally, the Respondent did not file a proper Response to the Complaint. The Panel may draw from the lack of a Response the inferences that it considers appropriate, according to the Rules, paragraph 14(b).

In view of the above, the Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, and that the Respondent's silence corroborates such *prima facie* case.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name, and that the Complainant has satisfied the condition set out in paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Given that the trademark BOOK OF RA of the Complainant is distinctive and has been widely used before the registration of the disputed domain name, and that the Respondent used the Complainant's word & design trademark BOOK OF RA on his website, the Panel accepts that the Respondent was aware of the existence of the Complainant and of its BOOK OF RA trademark at the time of the registration of the disputed domain name. Accordingly, the Panel finds that the disputed domain name was registered in bad faith.

Under paragraph 4(b)(iv) of the Policy, the use of a disputed domain name to intentionally attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of a web site or location or of a product or service on the website or location, amounts to evidence of registration and use in bad faith.

The Respondent used the disputed domain name in connection to a website displaying the Complainant's trademark and offering a tool allegedly enabling users to play the Complainant's games. Such use was apt to create the false impression that the Respondent's website was operated or endorsed by the Complainant. Such behavior amount to use in bad faith under paragraph 4(b)(iv) of the Policy.

For the reasons set out above, the Panel finds that the Respondent has registered and is using the disputed domain name in bad faith, and that the Complainant has satisfied the condition set forth in 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 <spielebookofra.com> be transferred to the Complainant.

/Anne-Virginie La Spada/

Anne-Virginie La Spada

Sole Panelist

Date: September 25, 2023