

ADMINISTRATIVE PANEL DECISION

Flutter Entertainment plc, Rational Intellectual Holdings Limited v. kevin drotzur

Case No. D2022-0355

1. The Parties

The Complainants are Flutter Entertainment plc and Rational Intellectual Holdings Limited, Ireland, represented by Demys Limited, United Kingdom (the “Complainant” or “Complainants”).

The Respondent is kevin drotzur, United States of America (the “United States” or “USA”).

2. The Domain Name and Registrar

The disputed domain name <pokerstarsusa.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 1, 2022. On February 2, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 3, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on February 8, 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 February 10, 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 February 10, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 2, 2022. The Respondent did not submit any formal response but sent informal communications to the Center on February 10, February 22, March 3, and on March 9, 2022. Accordingly, the Center notified the Parties that it would proceed to panel appointment on March 3, 2022.

The Center appointed Taras Kyslyy as the sole panelist in this matter on March 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 Complainants are two entities within a group of related companies. The first Complainant – Flutter Entertainment plc – is a company incorporated in Dublin, Ireland. It is a multinational and market-leading parent company, operating sports betting and gaming brands including PokerStars, Paddy Power, Fox Bet, Sky Betting, and Betfair.

The second Complainant – Rational Intellectual Holdings Limited – is the intellectual property holding company incorporated in Onchan, Isle of Man. It, *inter alia*, holds POKERSTARS registered trademark rights which the first Complainant relies on. These registrations include United States trademark registration No. 3381727 of the mark POKERSTARS, registered on February 12, 2008.

The Complainants operate several official country-specific PokerStars websites to which Internet users are redirected when visiting the Complainants' website "www.pokerstars.com".

As of 2020, the Complainants unite more than 13 million active customers in over 100 countries and have an extensive presence on social media including Facebook (2,240,000 followers), Instagram (769,000 followers), Twitter (265,000 followers), and YouTube (1,260,000 subscribers).

The disputed domain name was registered on August 1, 2012, and redirected to one of the Complainants' websites in 2013. Thereafter the disputed domain name resolved to inactive webpage. The disputed domain name's zone file is configured with Mail eXchanger ("MX") and Sender Policy Framework ("SPF") records, which means it can be used for email communication. The disputed domain name is listed for sale with the minimum offer price of USD 5,000.

The Complainants' sent a cease and desist letter to the Respondent on November 19, 2021, but did not receive a response.

5. Parties' Contentions

A. Complainant

The disputed domain name is identical or confusingly similar to the Complainants' POKERSTARS trademark. The generic Top-Level Domain ("gTLD") ".com" in the disputed domain name is generic and should be disregarded for the purposes of comparison with the Complainants' trademark. The disputed domain name only differs from the Complainants' trademarks by the addition of an abbreviation "USA", which in this case stands for United States of America. The Complainants have a presence in the United States through, *inter alia*, a website operated from "www.pokerstars.bet". Therefore, the abbreviation "USA" is closely related to their activities and does nothing to distinguish the disputed domain name from the Complainants' trademarks.

The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has not been commonly known as POKERSTARS or POKERSTARS USA prior to or after the registration of the disputed domain name. The Respondent is not a licensee of the Complainants and has not received any permission or consent from either the Complainant, collectively or singly, to use their trademark. Taking into account the fame of the Complainants' trademarks and the confusing similarity of the disputed domain name to the trademarks, there is no conceivable good faith use to which the disputed domain name could be put. The disputed domain name does not resolve to an active website, which constitutes passive holding and, as

such, has not been used in connection with a *bona fide* offering of goods or services. The disputed domain name is listed for sale with the minimum offer price of USD 5,000, which cannot confer a legitimate interest on the registrant, as it incorporates the Complainants' well-known trademark. The Respondent's non-response and failure to give an explanation to the Complainants' contentions is an admission of the Complainants' said contentions.

The disputed domain name was registered and is being used in bad faith. Given that the Complainants' trademark is well-known, it is inconceivable that the Respondent did not have the Complainants firmly in mind when it acquired the disputed domain name. This is confirmed by the redirect that was setup on the disputed domain name in 2013 which redirected all traffic to the Complainants' domain name <pokerstars.com>. 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 trademark. The disputed domain name is listed for sale for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the disputed domain name. The disputed domain name is configured with MX and SPF records and is therefore capable of email communication. Since the disputed domain name incorporates the Complainants' well-known trademark with the addition of a term that is closely related to the Complainants and their activities, anyone receiving an email originating from the disputed domain name would reasonably (but incorrectly) assume that it was sent from the Complainants.

B. Respondent

The Respondent did not reply to the Complainant's contentions. In one of its informal communications the Respondent commented that "we had an agreement to pay for my costs (of) [...] USD 500 to sell them the name but they never paid".

6. Discussion and Findings

A. Preliminary Issues – Consolidation

The Complainants request the Panel hear the present dispute – brought by two Complainants against the Respondent – as a consolidated, "unitary" Complaint.

Paragraph 10(e) of the Rules states that a "[p]anel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules." Paragraph 10(c) of the Rules provides, in relevant part, that "the [p]anel shall ensure that the administrative proceeding takes place with due expedition."

Section 4.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the "[WIPO Overview 3.0](#)") summarizes the consensus view of UDRP panels on the consolidation of multiple complainants, in part, as follows: "In assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look at whether (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation."

The Complainants assert that they have a specific common grievance against the Respondent, in that the Respondent has targeted both the Complainants' rights. The disputed domain name thus takes unfair advantage of the first Complainant's brand and is confusingly similar to the second Complainant's registered rights. The Complainants also contend that the Respondent will not be prejudiced by the Complaint being brought jointly by both Complainants.

Based on the above, the Panel finds that the Complainants have established a *prima facie* case that the Complaint can be consolidated. The Respondent has not rebutted this consolidation.

Consequently, the Panel finds that it is appropriate to consider the Complaint filed by both Complainants.

B. Identical or Confusingly Similar

According to section 1.11.1 of the [WIPO Overview 3.0](#) the applicable gTLD in a domain name (e.g., “.com”, “.club”, “.nyc”) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. Thus, the Panel disregards the gTLD “.com” for the purposes of the confusing similarity test.

According to section 1.7 of the [WIPO Overview 3.0](#) in cases where a domain name incorporates the entirety of a trademark the domain name will normally be considered identical or confusingly similar to that mark for purposes of UDRP standing. The Panel finds that in the present case the disputed domain name incorporates the entirety of the Complainants' trademark.

According to section 1.8 of the [WIPO Overview 3.0](#) where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The Panel finds that in the present case the addition of geographical term “USA” does not prevent a finding of confusing similarity.

Considering the above the Panel finds the disputed domain name is confusingly similar to the Complainant's trademark, therefore, the Complainants have established its case under paragraph 4(a)(i) of the Policy.

C. Rights or Legitimate Interests

The Complainants have established *prima facie* that the Respondent has no rights or legitimate interests in the disputed domain name.

Furthermore, the Respondent has provided no evidence that it holds rights or legitimate interests in the disputed domain name.

The Respondent is not commonly known by the disputed domain name, which could demonstrate its rights or legitimate interests (see, e.g., *World Natural Bodybuilding Federation, Inc. v. Daniel Jones, TheDotCafe, / Victoria McCann / Robert Hope*, WIPO Case No. [D2008-0642](#)).

The Complainants did not license or otherwise agree for use of its prior registered trademarks by the Respondent, thus in the circumstances no actual or contemplated *bona fide* or legitimate use of the disputed domain name could be reasonably claimed (see, e.g., *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#)).

The disputed domain name incorporates the POKERSTARS trademark of the Complainants in its entirety and it is its distinctive element. Since POKERSTARS is a well-known trademark, and the disputed domain name previously redirected to one of the Complainants' websites, the Panel finds that the Respondent must have been aware of the POKERSTARS trademark when it registered the disputed domain name, and that it chose to target the POKERSTARS trademark because of the likelihood that it will attract traffic to the Respondent's website. In the Panel's view, such conduct cannot be regarded as giving rise to rights or legitimate interests on the part of the Respondent to register and use the disputed domain name (see, e.g., *LEGO Juris A/S v. Andrei Novakovich*, WIPO Case No. [D2016-1513](#)).

The Respondent has no right or legitimate interests in the disputed domain name resolving to an inactive website (see, e.g., *Philip Morris USA Inc. v. Daniele Tornatore*, WIPO Case No. [D2016-1302](#)).

Noting the high risk of implied affiliation between the disputed domain name and the well-known trademark of the Complainants, the Panel finds that there is no plausible fair use to which the disputed domain name could be put that would not have the effect of being somehow connected to the Complainants (see, e.g., *Instagram, LLC v. Super Privacy Service LTD c/o Dynadot / Zayed*, WIPO Case No. [D2019-2897](#)).

Considering the above the Panel finds the Respondent does not have rights or legitimate interests in the disputed domain name. Therefore, the Complainants have established its case under paragraph 4(a)(ii) of the Policy.

D. Registered and Used in Bad Faith

According to section 3.2.2 of the [WIPO Overview 3.0](#) further factors including the nature of the domain name, the chosen Top-Level Domain, any use of the domain name, or any respondent pattern, may obviate a respondent's claim not to have been aware of the complainant's mark. In the present case the Respondent shortly after registration of the disputed domain name incorporating the Complainants' trademark started its redirection to one of the Complainants' websites. The Panel finds that the nature of the disputed domain name and its use confirms the Respondent knew of the Complainant's prior trademark rights, which confirms both the bad faith registration and use of the disputed domain name (notwithstanding its current non-use).

Also, according to section 3.1.4 of the [WIPO Overview 3.0](#) the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. The Panel is convinced that the Complainants' trademark is well established through long and widespread use and the Complainants has acquired a significant reputation and level of goodwill in its trademark including in the United States. Thus, the Panel finds that the disputed domain name which is confusingly similar to the Complainants' trademark was registered in bad faith.

According to section 3.1 of the [WIPO Overview 3.0](#) bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. To facilitate assessment of whether this has occurred, and bearing in mind that the burden of proof rests with the complainant, paragraph 4(b) of the Policy provides that any one of the following non-exclusive scenarios constitutes evidence of a respondent's bad faith:

- (i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

In this regard, the Panel finds that at least the first and the fourth of the above scenarios apply to the present case confirming the Respondent's bad faith.

According to section 3.3 of the [WIPO Overview 3.0](#) from the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding. In this regard the Panel takes into account (i) the high degree of distinctiveness and reputation of the Complainants' trademark, (ii) the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the failure of the Respondent to address the Complainant's cease and desist letter, and (iv) the implausibility of any good faith use to which the disputed domain name may be put.

Considering the above the Panel finds the disputed domain name was registered and is being used in bad faith. Therefore, the Complainants have established its case under 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, < pokerstarsusa.com >, be transferred to the Complainant Rational Intellectual Holdings Limited.

/Taras Kyslyy/

Taras Kyslyy

Sole Panelist

Date: April 7, 2022