

## **ADMINISTRATIVE PANEL DECISION**

Staatliche Toto-Lotto GmbH Baden-Württemberg v. PrivacyGuardian.org /  
Joost Vandrijf  
Case No. D2022-0884

### **1. The Parties**

The Complainant is Staatliche Toto-Lotto GmbH Baden-Württemberg, Germany, represented by CBH Rechtsanwälte, Germany.

The Respondent is PrivacyGuardian.org, United States of America (“United States”) / Joost Vandrijf, United States.

### **2. The Domain Name and Registrar**

The disputed domain name <silvester-millionen.info> is registered with NameSilo, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 14, 2022. On March 15, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 15, 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 April 5, 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 amendment to the Complaint on April 7, 2022.

The Center verified that the Complaint together with the amendment to the 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 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 28, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 4, 2022.

The Center appointed Anne-Virginie La Spada as the sole panelist in this matter May 12, 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 Complainant is a German state-owned lottery organizer.

The Complainant is the owner of the German trademark registration number 30 2010 015 286 for SILVESTER-MILLIONEN, registered on December 8, 2011, in Classes 16 and 36.

The disputed domain name <silvester-millionen.info> was registered on February 24, 2021.

At the time of filing of the Complaint, the disputed domain name resolved to an active website purportedly offering bets on state lotteries, and containing links to a third party lottery under the domain name <lottohelden.de>.

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

##### **A. Complainant**

According to the Complainant, the disputed domain name is confusingly similar to its SILVESTER-MILLIONEN registered trademark as it identically reproduces its trademark, the generic Top-Level-Domain ("gTLD") ".info" being disregarded due to its purely technical function.

The Complainant also contends that the Respondent has no rights or legitimate interests in the disputed domain name, as the Respondent has not used the disputed domain name in connection with a *bona fide* offering of goods or services and is not commonly known by the disputed domain name. The Complainant contends that the Respondent's activity of offering bets on lotteries is prohibited in Germany and that the Respondent does not have a permit to host a lottery.

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 diverted Internet traffic to the Complainant's direct competitor. 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 reply to the Complainant's contentions.

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

##### **6.1 Language of the proceedings**

The Complainant submitted the Complaint in English and suggested in the Complaint that the proceedings be conducted in German. The Complainant alleged in this respect that due to the use by the Respondent of a privacy service, the Complainant did not know the language of the Registration Agreement. The Complainant did not mention its request to have the proceedings conducted in German in its amended complaint filed after the Center informed the Complainant of the identity of the Respondent and of his address in the United States.

According to the case file, the Registrar confirmed to the Center that English was the language of the registration agreement concerning the disputed domain name.

According to paragraph 11 (a) of the Rules “unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding”.

UDRP panels may accordingly allow that proceedings be conducted in another language than the registration agreement, if the circumstances warrant it (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.5.1). This provision must be applied in accordance with paragraphs 10(b) and 10(c) of the Rules, requiring that the parties be treated equally, that each party be given a fair opportunity to present its case and that the proceeding take place with due expedition. Moreover, the language of the proceeding must also ensure the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes (see *Banque Pictet & Cie SA v. Hu Deng Xia*, WIPO Case No. [D2015-0781](#)).

According to the Complainant, the fact that the disputed domain name resolved to a website in German clearly shows that the Respondent is able to understand and communicate in German.

While it is possible that the Respondent is in fact based in Germany and/or may be able to communicate in German, there would be no obvious advantage to the Complainant in having the proceedings conducted in German at this juncture. Indeed, the Complaint was filed in English, the Respondent did not file a Response, and the Complainant is assisted by counsel with a good command of English. In these circumstances, the Panel sees no sufficient justification to depart from the rule of paragraph 11(a) of the Rules.

The Panel therefore rules that the language of the proceedings shall be English.

## **6.2 Substantive elements of the Policy**

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
- (ii) 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 is identical to the Complainant’s SILVESTER-MILLIONEN trademark.

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

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 an authorization to use the disputed domain name. Moreover, there is no evidence indicating that the Respondent is commonly known by the disputed domain name.

In addition, based on the evidence provided by the Complainant, the Respondent has used the disputed domain name to host a website with competing services and also features a link that redirects Internet users to a third party website in direct competition with the Complainant, in all likelihood for the Respondent's commercial gain, which is not a legitimate noncommercial purpose.

Finally, the Respondent did not file a 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**

The disputed domain name was registered after the Complainant registered its SILVESTER-MILLIONEN trademark. Given the presence on the website connected to the disputed domain name of several references to the Complainant's field of activity and the exact reproduction of the Complainant's trademark in the Respondent's website, the Panel finds it unlikely that the disputed domain name was chosen independently without having in mind the Complainant's trademark. Consequently, the Panel considers that the Respondent could not ignore the existence of the Complainant and of its trademark at the time of the registration of the disputed domain name, such that the disputed domain name was registered in bad faith.

Furthermore, the Respondent used the disputed domain name in connection with an active website purportedly offering bets on state lotteries (an illegal activity according to the Complainant), and containing links to a competing lottery.

In the Panel's opinion, this supports a finding that the Respondent has used the disputed domain name to attract, for commercial gain, Internet users to his website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of his website, a behavior which amounts to use in bad faith according to paragraph 4(b)(iv) of the Policy.

For the reasons set out above, the Panel finds that the Respondent has registered and used 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 <silvester-millionen.info> be transferred to the Complainant.

*/Anne-Virginie La Spada/*

**Anne-Virginie La Spada**

Sole Panelist

Date: May 26, 2022