

ADMINISTRATIVE PANEL DECISION

Escrow Services Overseas Limited v. Super Privacy Service LTD c/o Dynadot
/ 王鹏聪 (WANG Pengcong)
Case No. D2022-2816

1. The Parties

The Complainant is Escrow Services Overseas Limited, Virgin Islands, United Kingdom, represented by Herzog, Fox & Neeman, Israel.

The Respondent is Super Privacy Service LTD c/o Dynadot, United States of America / 王鹏聪 (WANG Pengcong), China.

2. The Domain Name and Registrar

The disputed domain name <captaincookscasinos.net> is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 1, 2022. On August 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 2, 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 August 12, 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 August 15, 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 August 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 4, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 6, 2022.

The Center appointed Daniel Peña as the sole panelist in this matter on September 23, 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 one of the IP holding companies of a group of companies, with the parent company being Internet Traffic Solutions Limited (“ITS” and the “Group” respectively). The Group is engaged in the online gaming industry, and through its various companies holds several gambling licenses in different jurisdictions, including the United Kingdom, Canada, Malta, Denmark, and Sweden.

The Group, including the Complainant, operates a number of online gaming websites under various brands, including the well-known online casino brand “Captain Cooks Casino” (the “Captain Cooks Casino Brand”). The Captain Cooks Casino Brand and the online casino service provided thereunder have been operated by the Group since 2002.

The Complainant maintains, amongst others, trademark registrations in the European Union and the United Kingdom for CAPTAIN COOKS CASINO (registration nos. 007328446 and UK00907328446), both since October 22, 2010 (together: the “Marks”).

The Complainant’s CAPTAIN COOKS CASINO Marks are registered, *inter alia*, for the following goods and services: Class 36 – Processing of electronic financial transactions; payment processing services; processing of digital transactions; etc. Class 41 – Entertainment services; on-line entertainment services; providing wagering services, tournaments and gaming competitions; on-line entertainment services providing games of chance and/or skill; casino services; providing wagering services, tournaments and gaming competitions by means of the Internet, computer, cable, satellite or television; etc.

The disputed domain name was registered on March 24, 2022. The disputed domain name redirects to a website operated by a third party offering similar goods and/or services to the Complainant, *i.e.*, online gambling.

5. Parties’ Contentions

A. Complainant

The Group, and the Complainant have, and continue to extensively advertise the Captain Cooks Casino Brand as evident in the advertisements, and they have invested, and continue to invest substantial sums in order to promote the Marks and the Captain Cooks Casino Brand’s offering on their official Websites. In 2021, the relevant marketing budget in connection with the Captain Cooks Casino Brand was USD13 million, and the projected budget for 2022 is USD 10 million. The Captain Cooks Casino Brand has gained great reputation and success, with current annual average of 3.4 million visitors and 330,000 users so far in 2022.

The Complainant submits that the disputed domain name is identical and confusingly similar to the CAPTAIN COOKS CASINO Marks, as it consists of the exact words “captain”, “cooks” and “casinos” and the suffix “.net”, which do not create an overall different impression.

The Respondent is not affiliated with the Complainant and has never been licensed or otherwise authorized to use the CAPTAIN COOKS CASINO Marks.

To the best of the Complainant’s knowledge, neither the Respondent nor any business operated by it is, or has ever been, commonly known by the disputed domain name.

The Respondent has not used, or made demonstrable preparations to use, the disputed domain name or any name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services.

The disputed domain name automatically redirects to a competing website operated by a Curacao company, Westward Way Tech N.V. located at “www.k8bet2.com” (“Redirected Website”), which offers services identical to some of the services offered by the Complainant. The Respondent is attempting to attract, for commercial gain, Internet users to this website by creating a likelihood of confusion with the CAPTAIN COOKS CASINO Marks as to the source, sponsorship, affiliation or endorsement of the website.

The Complainant owned and used the CAPTAIN COOKS CASINO Marks long before the Respondent registered the disputed domain name, and at the time of its registration Captain Cooks Casino Brand was (and still is) a world-famous brand that had been in existence for over twenty years.

The Complainant submits that the fact that the Respondent decided to redirect users to the Redirected Website which offers similar services to the Complainant’s website leaves no room for doubt that the Respondent’s only intention in acquiring the disputed domain name was to misuse it in order to attract customers to a competing service by relying on the CAPTAIN COOKS CASINO Marks and the Captain Cooks Casino Brand’s reputation and creating a likelihood of confusion as to the source of the Redirected Website.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and (iii) the disputed domain name has been registered and is being used in bad faith. Considering these requirements, the Panel rules as follows:

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant has provided evidence of its rights in the CAPTAIN COOKS CASINO trademarks on the basis of its multiple trademark registrations in several jurisdictions. A trademark registration provides a clear indication that the rights in the trademark belong to the Complainant (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 1.2.1).

It has also been established by prior UDRP panels that incorporating a trademark in its entirety into a domain name can be sufficient to establish that the domain name is confusingly similar to a trademark. Such finding is confirmed, for example, within section 1.7 of [WIPO Overview 3.0](#). The disputed domain name incorporates the CAPTAIN COOKS CASINO trademark in its entirety, with the addition of the letter “s” in the end, and is therefore confusingly similar to CAPTAIN COOKS CASINO trademark registered by the Complainant.

Furthermore, the addition of the generic Top-Level Domain (“gTLD”) “.net” is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.

The Panel is satisfied that the disputed domain name is confusingly similar to the Complainant’s mark and the Complainant has satisfied the requirement of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant bears the burden of proof in establishing this requirement. In view of the difficulties inherent in proving a negative and because the relevant information is mainly in the possession of the Respondent, it is enough for the Complainant to establish a *prima facie* case which, if not rebutted by sufficient evidence from the Respondent, will lead to this ground being set forth.

Refraining from submitting any Response, the Respondent has brought to the Panel's attention no circumstances from which the Panel could infer that the Respondent has rights to or legitimate interests in the disputed domain name.

The Panel will now examine the Complainant's arguments regarding the absence of rights or legitimate interests of the Respondent in connection with the disputed domain name. The Complainant claims that the Respondent has no connection or affiliation with the Complainant and has not received any license or consent, express or implied, to use the Complainant's trademarks in a domain name or in any other manner.

The Respondent did not submit a Response or attempt to demonstrate any rights or legitimate interests in the disputed domain name, leaving the Complainant's *prima facie* case unrebutted, and the Panel draws adverse inferences from this failure, where appropriate, in accordance with the Rules, paragraph 14(b).

The Panel finds the Respondent has no rights or legitimate interests in respect of the disputed domain name and that paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration and use of a disputed domain name in bad faith:

(i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant (the owner of the trademark or service mark) or to a competitor of that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name;

(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;

(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 online 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 its website or location.

In the Panel's view, a finding of bad faith may be made where the Respondent "knew or should have known" of the trademark prior to registering the disputed domain name. In this case, the Complainant submits that at the date of registration of the disputed domain name the Respondent should have had constructive, if not actual, knowledge of the Complainant's mark CAPTAIN COOKS CASINO, noting the nature of the disputed domain name that consists of the CAPTAIN COOKS CASINO trademark with the addition of the letter "s" in the end.

The Panel is satisfied that by redirecting the disputed domain name to a website operated by the Complainant's competitor, 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 mark as to the source, sponsorship, affiliation, or endorsement of its website or of the products on its website (see section 3.1.4 of the [WIPO Overview 3.0](#)). Under paragraph 4(b)(iv) of the Policy, this circumstance shall be evidence of the registration and use of a domain name in bad faith.

The Complainant points out that the Respondent is hiding its identity behind a Whois privacy wall. It is well-established that this, too, can be further *prima facie* evidence of bad faith in certain circumstances.

Having considered the Complainant's submissions and in the absence of a Response, the Panel accepts the Complainant's submission that on the evidence there is no plausible circumstance under which the Respondent could legitimately register or use the disputed domain name. Consequently, the Panel finds that the disputed domain name was registered and is being used by the Respondent in bad faith within Paragraph 4(a)(iv) 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, <captaincookscasinos.net>, be transferred to the Complainant.

/Daniel Peña/

Daniel Peña

Sole Panelist

Date: October 7, 2022