

ADMINISTRATIVE PANEL DECISION

Streamotion Pty Ltd v. Rasel Islam
Case No. D2024-0459

1. The Parties

The Complainant is Streamotion Pty Ltd, Australia, represented by Allens Linklaters, Australia.

The Respondent is Rasel Islam, Bangladesh.

2. The Domain Name and Registrar

The disputed domain name <kayosportsau.live> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 31, 2024. On January 31, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 31, 2024, 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 (Unknown registrant) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 1, 2024, 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 February 2, 2024.

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 February 6, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 26, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 28, 2024.

The Center appointed Peter Burgstaller as the sole panelist in this matter on March 7, 2024. 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 offers a live and on-demand sports-streaming service which is available to Australian consumers through a paid subscription or via a free 14-day trial subscription. It launched the streaming service in November 2018.

The Complainant registered the Australian business name KAYO SPORTS on January 6, 2020, and is the owner of the following trade mark registrations:

- Australian trademark registration No. 1949995 for KAYO SPORTS, registered August 22, 2018; and
- Australian trademark registration No. 2000335 for KAYO, registered April 2, 2019 (Annex 4 and 6 to the Complaint).

The Complainant's service is available at the domain name <kayosports.com.au> and via the Complainant's Sports app (Annex 5 to the Complaint).

The Complainant successfully acquired the domain names <kayolivesports.com> and <kayosportslive.com> through *Streamotion Pty Ltd v. Sahadat Hossain*, WIPO Case No. [D2021-3079](#) (Annex 8 to the Complaint) and registered various domain names containing the mark KAYO SPORTS, e.g. <kayosport.com> and <kayosport.live> (Annex 9 to the Complaint).

The disputed domain name was registered on January 10, 2024 (Annex 1 to the Complaint). At the time of filing this Complaint the disputed domain name resolved to a website which displayed a streaming service similar to those of the Complainant (Annex 11 to the Complaint).

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the KAYO and KAYO SPORTS trademarks are distinctive and registered long before the registration of the disputed domain name.

The Complainant notes that the disputed domain name contains the KAYO and KAYO SPORTS trademarks in their entirety, simply adding the country code of Australia "au" at the end. The Complainant submits that it is therefore inconceivable that the Respondent would not have been aware of the Complainant's trademarks and business when registering the disputed domain name, or that there would be any legitimate use for the disputed domain name. This is supported by the fact, that the term "kayo" has no meaning in English.

Further, the Complainant has never assigned, granted, licensed, sold, transferred, or in any way authorized the Respondent to register or use the KAYO or KAYO SPORTS trademarks in any manner.

The Complainant notes that the disputed domain name is actively used for providing sport streaming services which are similar than the Complainant's service. Hence, the Complainant contends, that based on the totality of these factors, it is clear that the Respondent is acting in bad faith with the intent to create a likelihood of confusion with the Complainant's mark and legitimate e-commerce website.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove that:

- (i) the disputed domain name 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 with respect to the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 1.7.

The Complainant submitted evidence, which incontestably and conclusively establishes rights in the marks KAYO and KAYO SPORTS.

In the present case the disputed domain name is confusingly similar to the KAYO and KAYO SPORTS marks in which the Complainant have rights since it incorporates the entirety of the marks and only adds the country code of Australia "au" at the end.

It has long been established under UDRP decisions that where the relevant trademark is recognizable within the disputed domain name, the mere addition of a descriptive term or a generally known abbreviation (here country code of Australia) will not prevent a finding of confusing similarity under the first element of the Policy ([WIPO Overview 3.0](#), section 1.8). This is the case at present.

Finally, it has also long been held that generic Top-Level-Domains ("gTLDs") (in this case ".live") are generally disregarded when evaluating the confusing similarity of a disputed domain name. [WIPO Overview 3.0](#), section 1.11.1.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name, since it has never assigned, granted, licensed, sold, transferred, or in any way authorized the Respondent to register or use the KAYO or KAYO SPORTS trademarks in any manner. Although the Respondent is not an authorized dealer of the Complainant, it has used the disputed domain name to address its website with streaming services similar to those of the Complainant.

Such a behavior cannot be considered fair use as it falsely suggests an affiliation with the Complainant that does not exist. [WIPO Overview 3.0](#), section 2.5.

The Respondent did not reply and hence has not rebutted the Complainant's contentions.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

As stated in many decisions rendered under the Policy both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainant must show that:

- the disputed domain name was registered by the Respondent in bad faith; and
- the disputed domain name is being used by the Respondent in bad faith.

(i) The Complainant has established rights in the registered trademarks KAYO and KAYO SPORTS, long before the registration of the disputed domain name. Further, the trademark KAYO is distinctive since the word "kayo" has no meaning in the English language.

It is therefore inconceivable for this Panel that the Respondent has registered and used the disputed domain name without knowledge of the Complainant's rights, which leads to the necessary inference of bad faith. This finding is supported by the fact that the disputed domain name entirely incorporates the Complainant's distinctive trademarks KAYO and KAYO SPORTS together with the generally known country code for Australia, "au", and the gTLD ".live" which strongly indicates that the Respondent was aware of the Complainant and its streaming-business in Australia.

Therefore, the Panel is convinced that the disputed domain name was registered in bad faith by the Respondent.

(ii) Further, the Complainant put forward evidence that the disputed domain name resolved to a website with similar services than those provided by the Complainant under its trademarks KAYO and KAYO SPORTS available at the domain name <kayosports.com.au> and via its app.

In doing so, the Respondent has intentionally attempted to attract Internet users to its website, for commercial gain, by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of its website according to paragraph 4(b)(iv) of the Policy which constitutes bad faith use of the disputed domain name.

The evidence and documents produced and put forward by the Complainant together with the fact that the Respondent has failed to present any evidence of any good faith registration and use with regard to the disputed domain name supports the finding of bad faith.

Based on the available record, the Panel finds that the Complainant has established the third element 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 <kayosportsau.live> be transferred to the Complainant.

/Peter Burgstaller/

Peter Burgstaller

Sole Panelist

Date: March 21, 2024