

ADMINISTRATIVE PANEL DECISION

DinoTech Limited v. Viktor Meshko
Case No. D2024-2050

1. The Parties

The Complainant is DinoTech Limited, Malta, represented by Abion AB, Sweden.

The Respondent is Viktor Meshko, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <kim.casino> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 16, 2024. On May 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 17, 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 (N/A) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 3, 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 June 3, 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 June 4, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 24, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 15, 2024.

The Center appointed Luca Barbero as the sole panelist in this matter on July 23, 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 is a Maltese-based software company specialized in the online gaming and online casino industry.

The Complainant is the owner of the European Union trademark registration No. 018961157 for KIM CASINO (word mark), filed on December 7, 2023, and registered on April 24, 2024, in classes 09 and 41.

The Complainant is also the owner of the domain name <kimcasino.com>, which was registered on January 22, 2014, and is used by the Complainant to provide its services under the trademark KIM CASINO.

The disputed domain name <kim.casino> was registered on January 24, 2024 and is currently not pointed to an active website. However, based on the screenshots submitted by the Complainant – which have not been contested by the Respondent - the disputed domain name was redirected, prior to the filing of the Complaint, to a gambling website featuring the Complainant's trademark and reproducing the look and feel of the Complainant's official website at "www.kimcasino.com".

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 disputed domain name <kim.casino> is confusingly similar to the KIM CASINO trademark in which the Complainant has rights, as it reproduces the trademark in its entirety by using the generic Top-Level Domain ".casino".

With reference to rights or legitimate interests in respect of the disputed domain name, the Complainant states that the Respondent i) does not have rights in the KIM CASINO mark; ii) is not a licensee of the Complainant and iii) has never received any permission to register or use the Complainant's trademark in any way.

The Complainant further contends that the Respondent lacks rights or legitimate interests in the disputed domain name and has not made legitimate use of the same, since he redirected the disputed domain name to a copycat version of the Complainant's official website, clearly intending to create confusion among Internet users, to give the impression that the website was somewhat endorsed by the Complainant, which it was not.

With reference to the circumstances evidencing bad faith, the Complainant indicates that though the Complainant's trademark application was pending when the Respondent registered the disputed domain name, the Complainant has been using the trademark KIM CASINO through its official website long before the disputed domain name was registered. The Complainant therefore submits that the Respondent was aware of the Complainant's existence at the time of registering the disputed domain name.

The Complainant submits that considering the contents of the website to which the disputed domain name resolved prior to the present proceeding and the use of the Complainant's marks, the Respondent is deliberately trying to take advantage of the Complainant's renown to draw traffic to its website and to profit commercially from the likelihood of confusion between the Complainant's trademark and the disputed domain name.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Procedural Considerations

Under paragraph 10 of the Rules, the Panel needs to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case, and that the administrative proceeding takes place with due expedition.

The Panel notes that, according to the Whois records, the Respondent is based in Ukraine, which is subject to an international conflict at the date of this Decision that may impact case notification. Therefore, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

The Panel is of the view that it should. According to the records, the Center sent notification of the Complaint to the Respondent at its email address as disclosed by the Registrar and no delivery failure notice was received.

The Panel also notes that the Respondent, which registered the disputed domain name only on January 24, 2024, appears to be capable of controlling the disputed domain name and the related content and that, having apparently received notification of the Complaint by email, it would have been able to formulate and file a Response in the administrative proceeding in case it wished to do so.

Moreover, for reasons detailed below, the Panel has no doubts (albeit in the absence of a Response) that the Respondent registered and has used the disputed domain name in bad faith.

The Panel concludes that the Parties have been given a fair opportunity to present their case and, in order to ensure that the administrative proceeding takes place with due expedition, will now proceed to a Decision.

6.2. Substantive issues

According to paragraph 15(a) of the Rules: “A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.” Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- (i) that the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that 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 has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Indeed, the Complainant has provided evidence of ownership of a valid trademark registration for KIM CASINO, as per trademark registration certificate submitted as Annex 4 to the Complaint.

The entirety of the mark is reproduced within the disputed domain name, considering in combination the second-level portion (“kim”) and the Top-Level Domain (“casino”). Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), sections 1.7 and 1.11.3.

Therefore, 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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available 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. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

According to the evidence on record, there is no relationship between the Complainant and the Respondent and the Complainant has not authorized the Respondent to register or use its trademark or the disputed domain name. Moreover, there is no element from which the Panel could infer a Respondent’s right over the disputed domain name, or that the Respondent might be commonly known by the disputed domain name.

The Panel finds that the Respondent’s prior use of the disputed domain name to redirect users to a website promoting online gambling services identical to the ones of the Complainant, publishing the Complainant’s figurative mark and game related content, does not amount to bona fide offering of goods or services or a legitimate non-commercial or fair use without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant’s trademarks.

Moreover, considering the composition of the disputed domain name, it is inherently misleading as it suggests an affiliation with the Complainant that, according to the records, does not exist. [WIPO Overview 3.0](#), section 2.5.1.

Therefore, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Panel notes that the disputed domain name was registered on January 24, 2024, before the registration of the Complainant’s European Union trademark No. 018961157, which occurred on April 24, 2024, but after the filing of the related application (on December 7, 2023), and the registration date of the Complainant’s domain name <kimcasino.com> (January 22, 2014). The Complainant stated that it has been using its trademark KIM CASINO in connection with its services provided via the website at “www.kimcasino.com” since before the disputed domain name was registered.

In view of the above and considering i) the composition of the disputed domain name, reproducing the Complainant's trademark in its entirety, and ii) the content of the website to which it previously resolved, featuring the Complainant's mark and imitating the look and feel of the Complainant's official website, the Panel finds that the Respondent very likely registered the disputed domain name being aware of the Complainant and its – at the time nascent - trademark rights. As stated in section 3.8 of the [WIPO Overview 3.0](#), “in certain limited circumstances where the facts of the case establish that the respondent's intent in registering the domain name was to unfairly capitalize on the complainant's nascent (typically as yet unregistered) trademark rights, panels have been prepared to find that the respondent has acted in bad faith”.

The Panel also finds that, in view of the prior use of the disputed domain name described above, the Respondent intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of his website and the services promoted therein according to paragraph 4(b)(iv) of the Policy.

With regards to the current redirection of the disputed domain name to an inactive website, Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness of the Complainant's trademark, the composition of the disputed domain name and the prior use of the same made by the Respondent, who did not submit a Response to provide any evidence of actual or contemplated good-faith use, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Therefore, the Panel finds that the Complainant has also 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 <kim.casino> be transferred to the Complainant.

/Luca Barbero/

Luca Barbero

Sole Panelist

Date: August 6, 2024