

ADMINISTRATIVE PANEL DECISION

Elec Games Ltd. v. REGL Admin, Rhino Entertainment LTD
Case No. D2024-4346

1. The Parties

The Complainant is Elec Games Ltd., Malta, represented by Abion AB, Sweden.

The Respondent is REGL Admin, Rhino Entertainment LTD, Malta, represented internally.

2. The Domain Name and Registrar

The disputed domain name <buustikasino.com> is registered with Amazon Registrar, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 22, 2024. On October 23, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 24, 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 from the Respondent identified by reference to Annex 1 to the Complaint (on behalf of buustikasino.com owner, Identity Protection Service), and contact information in the Complaint. The Center sent an email communication to the Complainant on October 25, 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 amended Complaint on October 30, 2024.

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 October 31, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 20, 2024. The Response was filed with the Center on November 19, 2024.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on November 27, 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 limited liability company with an address in Malta. The Complainant states that it specializes in the development and distribution of innovative electronic gaming experiences.

The Complainant is the owner of several registered trademarks for the word mark BOOST CASINO, including European Registered Trademark Number 17754681, registered on May 18, 2018, in Classes 9, 38, and 41, and Norwegian Registered Trademark Number 201801536, registered on September 30, 2022, in Class 41.

The Complainant states that it is also the holder of the domain name <boostcasino.com>, registered on March 16, 2015, although the Whois entry that it produces states that such domain name is registered to IGM Domain Name Services Limited, Gibraltar. For present purposes, the Panel will assume that this is an affiliate of the Complainant.

The disputed domain name was registered on September 27, 2021, and currently redirects to a page at "buustikasino.com/fi" which is an online casino/gambling website. The Respondent is a limited liability company with an address in Malta. It is active in the online casino industry, operating various domain names and websites offering casino games and content. "Buusti Kasino" is a casino licensed in Estonia and targeting the Finnish market. The language of the disputed domain name and of the website associated with the disputed domain name is Finnish and targets a specific userbase. The Respondent claims, but does not evidence, that the website associated with the disputed domain name has over 1,000 daily users, and that it has been promoted via a marketing spend of over EUR 4 million in 2022 and over EUR 2 million in 2023. The Respondent's corporate website provides a timeline of its activities, noting that "Buusti Kasino" is its second brand with an Estonian license, and adding that this was launched in December 2021.

The Respondent is the owner of European Union Registered Trademark Number 18831488 in respect of the word mark BUUSTI KASINO, registered on May 23, 2023, in Classes 9, 28, 38, and 41.

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 its trademark is recognizable in the disputed domain name, adding that this incorporates the Complainant's registered trademark if translated into Finnish and Estonian, with "buusti" being translated as "boosted" and "kasino" as "casino. The Complainant indicates that the disputed domain name therefore reads "boosted casino" in Finnish. The Complainant states that its operations are focused on the Finnish, Estonian and Russian markets, with the disputed domain name enhancing confusion for the relevant public in those places. The Complainant also asserts that the Top-Level Domain of the disputed domain name contributes to the risk of confusion because the Complainant only offers its services online.

The Complainant asserts that the Respondent has no rights to the Complainant's mark, and is not a licensee of the Complainant, nor has the Respondent received any permission from the Complainant to register the disputed domain name or to use it for an offering of goods or services. The Complainant notes that the services being offered at the disputed domain name are identical to those of the Complainant. The Complainant asserts that the use of the disputed domain name suggests that it was registered with the Complainant's trademarks in mind, to profit commercially from misleading consumers searching for the Complainant's business, adding that the website associated with the disputed domain name appears to be designed to deceive Internet users into believing that it is associated with or endorsed by the Complainant when this is not the case.

The Complainant notes that its mark was registered and used well before the Respondent became the owner of the disputed domain name, implying "obvious" knowledge of the Complainant's mark and business. The Complainant asserts that the Respondent is trying to take advantage of the Complainant's mark to draw traffic to the website associated with the disputed domain name, and therefore to profit commercially from the likelihood of confusion between said mark and the disputed domain name. The Complainant adds that it issued a cease and desist notice to the Respondent on September 19, 2024, which has not received a reply despite reminders. The Complainant asserts that the continued use of the disputed domain name is therefore in bad faith.

B. Respondent

The Respondent contends that the Complainant has not satisfied the elements required under the Policy for a transfer of the disputed domain name.

The Respondent notes that the instance of the Complaint specifies that the domain name that is the subject of the Complaint is <bigboostcasinos.com>, which is a domain name owned by another entity forming part of the Complainant's group of companies, and which is not registered by the Respondent. The Complainant contends that the website at that domain name is an attempt to capitalize unlawfully and in bad faith on the traffic generated by the Respondent's investments in its brand.

The Respondent asserts that the Complainant's trademark cannot cause confusion because it is composed of two words, "boost" and "casino" and is registered in respect of goods and services related to the casino industry. The Respondent notes that the first word "boost" is in no way distinctive of the Complainant, while the second word is completely descriptive and not distinctive in any way. The Respondent asserts that the Complainant cannot stop third parties from using a dictionary word in its ordinary dictionary capacity and meaning, adding that a term such as "boost casino" could be used by any casino provider, and not just the Complainant, as the minimum degree of distinctiveness is lacking. The Respondent submits that not all persons who read the disputed domain name will understand the meaning of "buusti" or that the population in general will read the disputed domain name as "boosted casino", adding that "buusti" targets a Finnish-speaking audience, unlike the Complainant's domain name, which targets an English-speaking audience, and noting that Finnish is a small language with only 0.07 per cent of the global population understanding it.

The Respondent asserts that it is a long-standing remote gambling company of good repute running various domain names and websites globally including the website associated with the disputed domain name, which is offered to a specific market and has been used legitimately for a casino since 2021, well before the Complaint was filed. The Respondent asserts that the Complainant's domain name is visually very different from the disputed domain name and is in the English language. The Respondent notes the terms of its BUUSTI KASINO trademark, which it adds was registered long before the Complaint was filed.

The Respondent asserts that it has been trading legitimately via the disputed domain name "for quite some time now", in good faith, in connection with its own business interests, by running an online casino with no connection to that operated by the Complainant. The Respondent indicates that, by comparing the website associated with the disputed domain name with the Complainant's website, it may be seen that the Respondent is not seeking to capitalize on the Complainant's goodwill.

The Respondent asserts that the longer the time a domain name has been registered, the more difficult it is for a complainant to prove bad faith registration. The Respondent submits that the Complainant has failed to prove that the disputed domain name was registered with the Complainant's trademark in mind, to profit commercially from misleading Internet users searching for the Complainant's business, or that the website associated with the disputed domain name is designed to deceive Internet users into believing that it is associated with, or endorsed by, the Complainant. The Respondent adds that a comparison of the respective landing pages of the Parties' websites shows that these are very different from one another, and that there is no way in which the Respondent has attempted to copy any part of the Complainant's website or get up to mislead Internet users. The Respondent contrasts this with the alleged activity of a third party entity within the Complainant's group of companies, which the Respondent says has made use of the livery and logo appearance of the Respondent's other marks in bad faith.

The Respondent states that it did not answer the Complainant's cease and desist letter in September 2024 because it was deemed vexatious by the Respondent's legal team and was therefore ignored. The Respondent adds that the present administrative proceeding is similarly vexatious and was filed in bad faith to disrupt the Respondent's legitimate business. The Respondent submits that none of the provisions of paragraph 4(b) of the Policy are made out in the circumstances of the present case.

6. Discussion and Findings

6.1. Preliminary Issue – disputed domain name

The Respondent points out that the domain name listed in the instance of the Complaint as "Disputed Domain Name(s)" is <bigboostcasinos.com>, while the domain name listed in section III paragraph 8 of the Complaint is <buustikasino.com>. This particular section of the Complaint is headed "The Domain Name(s) and Registrar(s)", and refers to paragraph 3(b)(vi) of the Rules, which states that a complaint must "Specify the domain name(s) that is/are the subject of the complaint".

The Panel is satisfied that the domain name listed in the instance of the Complaint has been placed there in error, and that the Complainant intended the Complaint to be directed to <buustikasino.com>. This is clear from the context of the remainder of the Complaint and from the related Annexes. The Center has also treated <buustikasino.com> as the disputed domain name in its correspondence with the Parties. Furthermore, it is clear from the terms of the Response that the Respondent understands that the subject of the Complaint is <buustikasino.com>, and that it has therefore suffered no prejudice from the inadvertent inclusion of the other domain name in the instance.

Consequently, in accordance with the general powers conferred upon it in paragraph 10 of the Rules, the Panel finds that the disputed domain name is <buustikasino.com>, and that the reference to <bigboostcasinos.com> in the instance of the Complaint may be disregarded.

6.2. Substantive Issues

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.

The comparison of the Complainant's BOOST CASINO mark with the disputed domain name is made on a relatively straightforward side-by-side basis in order to assess whether the mark is recognizable within the disputed domain name. [WIPO Overview 3.0](#), section 1.7. Consequently, the Respondent's various submissions regarding the distinctiveness of the Complainant's mark, or the composition thereof, may be disregarded for present purposes as not relevant to the first element analysis.

A straightforward side-by-side comparison of the Second-Level Domain of the disputed domain name and the Complainant's trademark shows that these are alphanumerically different. However, the Complainant asserts that the disputed domain name is a translation of its trademark, which consists of the two English words "boost" and "casino" into the Finnish language. Generally speaking, a domain name that consists or is comprised of a translation of a trademark will normally be found to be identical or confusingly similar to such trademark for purposes of standing under the Policy, where the trademark – or its variant – is incorporated into or otherwise recognizable, through such translation, in the domain name. [WIPO Overview 3.0](#), section 1.14. The problem for the Complainant here, however, is that it has provided no evidence of such translation. Nevertheless, the Panel has performed a machine translation of both words "buusti" and "kasino" independently, and as a phrase, noting that this returns the words "boosted" and "casino" or "boosted casino" respectively, conforming to the Complainant's alleged translation.

The Panel might have been prepared to find for the Complainant's alleged translation, supported by the machine translation, on the basis that the Respondent appears to accept the validity of the translation, noting that the Respondent states that it is specifically targeting the Finnish marketplace and may therefore be expected to have some facility with the language. However, in light of its finding in the section immediately following, the Panel does not require to reach a conclusion on the first element assessment.

B. Rights or Legitimate Interests and Registered and Use in Bad Faith

In this particular case, it is convenient to consider both the topic of rights and legitimate interests and registered and used in bad faith together.

The Panel notes that both of the Parties operate online gaming websites. Both are focused upon the same marketplace. Both are based in the same location. Both have European Union registered trademarks for their respective online brands, the Complainant's in English and the Respondent's in Finnish.¹ The Panel assumes that both of the Parties have been granted gaming licenses to trade as such under their respective marks, although only the Respondent made reference to its gaming license in its submissions.

There is an identity in the Parties' services, and it is clear that the Complainant's registered trademark and corresponding domain name were registered before those of the Respondent. However, there is no evidence before the Panel indicating that the Respondent was necessarily targeting the Complainant's rights when it registered the disputed domain name. Given the use in the disputed domain name of the dictionary word "boosted" with the descriptive term "casino" (in translation), it is conceivable on the present record at least that the Respondent may have come up with the disputed domain name independently of the Complainant's mark. Notably, beyond the fact that the Parties are in the same industry and are based in the same location, the Complainant provides no evidence which would allow the Panel to infer that such mark must have come to the Respondent's attention, and specifically, it provides no evidence regarding the duration or extent of its business under the mark concerned.

¹ See the [WIPO Overview 3.0](#), section 2.12 on the subject of whether a respondent trademark corresponding to a domain name automatically generates rights and legitimate interests under the Policy. The Panel notes that, here, the overall circumstances do not demonstrate on the balance of probabilities that the Respondent's trademark was obtained primarily to circumvent the application of the UDRP or otherwise to prevent the Complainant's exercise of its rights.

The Parties' websites have a very different look and feel, suggesting that the Respondent was not setting out (at least in the design of its site) to confuse consumers as to whether its business is that of the Complainant. The Respondent does not appear to have sought to conceal its related activities in any way. Specifically, it has applied for, and been granted, a registered trademark corresponding to the disputed domain name, it has presumably applied for, and presumably been granted, the requisite gaming license, and it has begun to trade accordingly, making (on its assertion only) a substantial marketing investment in the corresponding website.²

The above analysis may indicate that a decision on the merits would be unlikely to fall in the Complainant's favor. In any event, as described in the present record, the Parties' dispute raises a question as to whether it is beyond the scope of this administrative proceeding. As the panel in *LIBRO AG v. NA Global Link Limited*, WIPO Case No. [D2000-0186](#) noted in the early days of developing jurisprudence under the Policy, "The UDRP is very narrow in scope; it covers only clear cut cases of 'cybersquatting' and 'cyberpiracy', and does not cover every dispute that might rise over domain names (see, for example, Second Staff Report on Implementation Documents for the Uniform Dispute Resolution Policy (October 24, 1999), available at 'http://www.icann.org/udrp/udrp-second-staff-report-24oct99.htm' which states: Except in cases involving 'abusive registrations' made with bad faith intent to profit commercially from others' trademarks (e.g., cybersquatting and cyberpiracy) the adopted policy leaves the resolution of disputes to the courts and calls for registrars not to disturb a registration until those courts decide. The adopted policy establishes a streamlined, inexpensive administrative dispute-resolution procedure intended only for the relatively narrow class of cases of 'abusive registrations'.)"

The Panel is of the opinion that the present dispute would more properly be characterized as a wider trademark dispute rather than the type of clearcut case of cybersquatting or cyberpiracy that would fit within the narrow confines of the Policy. In particular, the Panel considers that the question as to whether the Parties may or may not be able to co-exist as a matter of trademark law in their chosen field of online gambling, in the jurisdiction(s) in which they are interested, is beyond the scope of this proceeding, and is best addressed in an appropriate (trademark office or court) forum. Consequently, this decision is not addressed to any other forum in which the Parties' wider dispute may ultimately be considered.

In accordance with paragraph 15 of the Rules, the Panel states that the dispute is not within the scope of paragraph 4(a) of the Policy.

C. Reverse Domain Name Hijacking

Paragraph 15(e) of the Rules provides that, if after considering the submissions, the Panel finds that the Complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or to harass the domain-name holder, the Panel shall declare in its decision that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding. The mere lack of success of the complaint is not, on its own, sufficient to constitute reverse domain name hijacking. [WIPO Overview 3.0](#), section 4.16.

In the present case, the Respondent does not make an explicit allegation of Reverse Domain Name Hijacking. In its discussion of the Complainant's cease and desist notice, the Respondent does however assert in passing that the proceedings are vexatious and filed only in bad faith to disrupt the Respondent's legitimate business. The Respondent does not develop this particular submission with reference to Policy jurisprudence concerning Reverse Domain Name Hijacking. In any event, it is unnecessary for the Panel to reach a conclusion on this issue having found that the dispute is not within the scope of the Policy.

² The existence of the Respondent's gaming license was merely the subject of an assertion by the Respondent, but the Panel has no reason to disbelieve this.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Andrew D. S. Lothian/

Andrew D. S. Lothian

Sole Panelist

Date: December 9, 2024