Panel Decision for dispute CAC-ADREU-006164

Case number	CAC-ADREU-006164
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Domain names	suncasino.eu

Case administrator

Lada Válková (Case admin)

Complainant

Organization	Société des Bains de Mer et du Cercle des Etrangers à Monaco

Respondent

Organization	Michau Enterprises s.r.o

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

The Panel is not aware of any other pending or ongoing legal procedures or adopted decisions which relate to the disputed domain name.

FACTUAL BACKGROUND

Complainant is the company which has been granted the gambling monopoly in Monaco. Complainant is the owner of the several trademark registrations, including CTM trademark SUN CASINO, which has been registered on December 28th, 2010 under number 8155947. Complainant's trademark SUN CASINO has acquired the strong notoriety and is famous gambling brand in all over the world. The Respondent is the natural person who has no legitimate interest in the disputed domain name and is using it as the link to the websites of the Complainant's competitors in the sector of online gambling services. The Complainant sent a warning letter to the Respondent, but the Respondent didn't reply. He also failed to provide the response in this administrative proceeding.

A. COMPLAINANT

Complainant (Société des Bains de Mer et du Cercle des Etrangers à Monaco (hereinafter "SBM") presented and evidenced that it has been operating the Casino de Monte-Carlo in Monaco for more than 140 years at the date of this Complaint. The Sun Casino has been inaugurated in 1975. SBM's casinos have become famous worldwide as the most luxurious gambling facilities in the world. The Sun Casino is well known for its "American style".
Complainant has filed and registered several "Sun Casino" trademarks all around the world and the Community trademark for "Sun Casino" was filed on March 13, 2009. It has been registered on December 28th, 2010, under number 8155947. Complainant is also the owner of several domain names including, but not limited to, sun-casino.mc, suncasino.tel and sun-casino.eu.
The disputed domain name <suncasino.eu> is confusingly similar to the Complainant's Trademarks "Sun Casino" as it exactly consists of the Complainant's Trademarks. According to the Complainant, the addition of the generic top-level domain is without legal significance since the use of a gTLD is a prerequisite. The only difference between the domain name and the registered trademarks consists of the deletion of the space between the words "SUN" and "CASINO". Such difference does not erase the strong similarity – not to say the identity – that exists between the both names. The Complainant concludes, that the Respondent's domain name is confusingly similar to the prior trademarks in which the Complainant has rights recognized and established by the national law of several Members States as well as by the European Union law and meets the requirements of §B1(10)(i)A of ADR Rules.
It is obvious that the Respondent does not meet any requirement displayed by the ADR Rules, §B11(e) which shall demonstrate the Respondent's rights or legitimate interests to the domain name: 1) the Complainant has never authorized the Respondent to use its trademarks "Sun Casino" nor to use the disputed domain name and the Complainant does not have any type of business relationship with the Respondent; 2) the Respondent holds no intellectual property rights over any mark that contains the terms "Sun" and "Casino"
The Respondent is using the disputed domain name to promote online casino through hypertext links which redirect the user on websites offering online casino and gambling services. Respondent's commercial use of the domain name to confuse and divert Internet

traffic is not a legitimate use of the domain name.
The Respondent registered the disputed domain name in bad faith because he could not ignore the strong notoriety of the Complainant's Trademarks "Sun Casino". The fact that the domain name exactly reproduces Complainant's Trademark "Sun Casino" cannot reasonably be considered as pure coincidence. It is impossible that the Respondent's choice to register a domain name confusingly similar not to say virtually identical to Complainant's Trademarks be purely coincidental. The Sun Casino is well-known, especially in the gambling sector and community, and the Respondent deliberately decided to register domain name composed of the words "Sun" and "Casino". Such a decision is clearly a proof of bad faith registration.
The Respondent has never responded to the cease and desist letter sent by the Complainant on June 10, 2013, who tried as first step to resolve this matter amicably. Such behaviour increases the bad faith of the Respondent.
Finally, the Complainant noted, that the domain name "suncasino.eu" has already been subject to a decision No 06166 rendered by the ADR Center on July 2, 2012 in favor of the Complainant and which has ordered the revocation of this domain name registered by Mr. Jurcenko Martins at that time. Therefore, the Respondent could not ignore that the registration and use of the disputed domain name would violate Complainant's rights.
The Respondent is also using the disputed domain name to redirect Internet users to a competitive gambling websites, and is thereby attracting clients and potential clients to these websites thanks to the renown of the Complainant's trademark, so the Respondent is thereby unduly and willfully deriving an economic benefit from the unauthorized exploitation of the Complainant's trademark. This is clear proof of bad faith use of the disputed domain name.
For all these reasons (Respondent has no right or legitimate interest on the disputed domain name, and then Respondent registered and is using the disputed domain name in bad faith), the Complainant requested the cancellation of the disputed domain name, according to ADR Rules, §B1(b)(11) and ADR Rules, §B11(b).
The Complainant requested the Panel to issue a decision that the disputed domain name be cancelled.

B. RESPONDENT

No response was provided.

DISCUSSION AND FINDINGS

1. Trademark status
Complainant Société des Bains de Mer et du Cercle des Etrangers à Monaco (hereinafter "SBM") has evidenced fully that it owns several trademark registrations of SUN CASINO trademark. For the purposes of this case it is important to note that CTM trademark SUN CASINO has been registered on December 28th, 2010, under number 8155947. The trademark's validity does not raise any doubts to the Panel. The same is attributed to the exclusive and extensive use of this trademark for more than 20 years.
2. Identicality/Similarity of the disputed domain name

It is obvious that the disputed second level domain name <suncasino> is identical to the CTM trademark SUN CASINO. The top level domain <.eu>, which is attached to <suncasino>, does not create any distinctiveness of the disputed domain name. The issue of possible confusing similarity of the domain name <suncasino.eu> to the trademark "SUN CASINO" (with the space between words "SUN and "CASINO") is not relevant in this case, as Panel finds the disputed domain name <suncasino.eu> is identical to CTM trademark SUN CASINO (see Art. 11 of Regulation No 874/2004, entitled 'Special characters', provides: '… Where the name for which prior rights are claimed contains special characters, spaces, or punctuations, these shall be eliminated entirely from the corresponding domain name …'). Moreover, the panel decision No 06166 rendered by the ADR Center on July 2, 2012, has already proved these findings as regards the same question. These findings are alone enough for the purposes of Art 21 (1) of the Regulation (EC) No. 874/2004.

3. Respondent's lack of rights or legitimate interests in the name

The Panel considers that the Complainant sufficiently presented and proved the Respondent's lack of rights or legitimate interests in the disputed domain name.

The Panel fully agrees with the Complainant's contentions that: (a) the Complainant has never authorized the Respondent to use its trademarks "Sun Casino" nor to use the disputed domain name and the Complainant does not have any type of business relationship with the Respondent; b) the Respondent holds no intellectual property rights over any mark that contains the terms "Sun" and "Casino"; c) the Respondent is using the disputed domain name to promote online casino through hypertext links which redirect the user on websites offering online casino and gambling services.
In Panel decision ADR 2035 (WAREMA) the Panel stated: "Furthermore, the Panel holds that although the burden of proof lies with the Complainants, the existence of a right or legitimate interest is difficult to prove since the relevant facts lie mostly in the sphere of the holder. Hence, the Panel holds that it is sufficient that the Complainants contend that the obvious facts do not demonstrate a right or legitimate interest of the Respondent in the Domain Name. The onus then shifts to the Respondent to produce factual evidence for a

right or legitimate interest". This approach shall be followed in the current case too. The Complainant complied with the stated requirements and the Respondent didn't file a Response which means that Complainant's contentions were not disputed by the Respondent.

4. Respondent's bad faith

Panel agrees with the Complainant that the Respondent registered the disputed domain name in bad faith because he could not ignore the strong notoriety of the Complainant's trademarks "SUN CASINO". The Respondent should have known the notoriety of this brand as he has later used this domain name to redirect Internet users to gambling websites (not some other services or products). Moreover, if the domain name was intentionally used to attract Internet users, for commercial gain, to the holder of a domain name website or other on-line location, by creating a likelihood of confusion with a name on which a right is recognized (Art 21 (3) (d) of the Regulation (EC) 874/2004) than it is the case of the Respondent's bad faith. This conduct alone is enough to find the existence of bad faith.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that

the domain name SUNCASINO be revoked

PANELISTS

Name	Dr. Darius Sauliunas

DATE OF PANEL DECISION 2013-12-19

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: suncasino.eu

II. Country of the Complainant: Monaco, country of the Respondent: Slovakia

III. Date of registration of the domain name: 8, May, 2012

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. word trademark registered in the Community, reg. No. 8155947, for the term 10 years, filed on 13 March 2009, registered on 28 December, 2010, in respect of goods and services in classes 9, 28, 41.

V. Response submitted: No.

VI. Domain name is identical to the protected rights of the Complainant

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
No.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes.
2. Why: the domain name was intentionally used to attract Internet users, for commercial gain, to the holder of a domain name website or other on-line location, by creating a likelihood of confusion with a name on which a right is recognised or established by national and/or Community law or a name of a public body, such likelihood arising as to the source, sponsorship, affiliation or endorsement of the website or location or of a product or service on the website or location of the holder of a domain name.

IX. Other substantial facts the Panel considers relevant: The same domain name has been already cancelled by the panel almost two years ago.

X. Dispute Result: Revocation of the disputed domain name.

XI. Procedural factors the Panel considers relevant:No.