Panel Decision for dispute CAC-ADREU-006166

Case number	CAC-ADREU-006166
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Domain names	suncasino.eu

Case administrator

	Tereza Bartošková (Case admin)

Complainant

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

Respondent

Name	Jurcenko Martins

FACTUAL BACKGROUND

The Complainant is the owner of numerous trademarks for the term SUN CASINO, including Community marks and uses them to promote gambling services.

The Respondent is using the disputed domain name to point to a page adverting online gambling services.

The Respondent has not been authorized or licensed to use the Complainant's mark.

A. COMPLAINANT

The Complainant Société des Bains de Mer et du Cercle des Etrangers à Monaco (hereinafter "SBM") is a company located in Monaco which organizes games and gambling in Monaco.

SBM has been operating the Casino de Monte-Carlo in Monaco for more than 140 years at the date of this Complaint. In addition to this first casino, SBM has been operating several other casinos in Monaco including the Sun Casino which has been inaugurated in 1975. SBM's casinos have become famous worldwide. The Sun Casino is well known for its "American style".

The Complainant has filed and registered several "Sun Casino" trademarks all around the world, including a Community trademark for "Sun Casino" on March 13, 2009 which has been registered on December 28th, 2010 under number 8155947.

The disputed domain name is identical to the Complainant's mark. Indeed it is well established that generic top-level domain names (gTLDs) are not considered when comparing domain names to marks. See Busy Body, Inc. v. Fitness Outlet Inc., D2000-0127, WIPO April 22, 2000 (the addition of the generic top-level domain (gTLD) name '.com' is without legal significance since use of a gTLD is required of domain name registrants).

Consequently, the disputed domain name is identical or confusingly similar to the mark 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.

The Respondent has no rights or legitimate interests in respect of the domain name. First, the Complainant has never authorized the Respondent to use its marks nor to use the disputed domain name and the Complainant does not have any type of business relationship with the Respondent.

Moreover, to the best of the Complainant's knowledge, 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 offer gambling services. It is well established that the Respondent's commercial use of the domain name to confuse and divert Internet traffic is not a legitimate use of the domain name. See Vapor Blast Mfg. Co. v. R & S Tech., Inc., FA 96577, Nat. Arb. Forum Feb. 27, 2001.

Furthermore, the Respondent's usage of the disputed domain name to attract Internet users to a competitive website unrelated to the Complainant cannot be considered as a bona fide offering of goods or services. See WeddingChannel.com Inc. v. Vasiliev, FA 156716, NAF June 12, 2003.

It is then 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. Therefore, the Respondent's usage does not constitute a legitimate noncommercial or fair use of the disputed domain name as provided by ADR Rules, §B1(10)(i)B).

The Respondent has no legitimate rights or interests in the disputed domain name, nor has it used the domain name in any bona fide manner or made any legitimate fair use of the same. Consequently, and according to ADR Rules (§B(10)(i)B), this should be sufficient to obtain the cancellation of the disputed domain name. However, the Complainant intends to demonstrate that the disputed domain name has also been registered and is used in bad faith by the Respondent.

The Respondent registered the disputed domain name in bad faith because he could not ignore the strong notoriety of the Complainant's mark SUN CASINO. Indeed, it results from the use that the Respondent is making of the disputed domain name that the Respondent is a professional in the gambling sector or, at least, that he is involved in some capacity in the gambling business.

Moreover, the fact that the disputed domain name exactly reproduces the Complainant's mark cannot reasonably be considered as pure coincidence. The Sun Casino is well-known, especially in the gambling sector and community, and the Respondent deliberately decided to register a domain name composed of the words "Sun" and "Casino". Such a decision is clearly a proof of bad faith registration.

Furthermore, the Respondent is using the disputed domain name in bad faith to redirect Internet users to a competitive website and is thereby attracting clients and potential clients to his website thanks to the renown of the Complainant's mark. The Respondent is thereby unduly and willfully deriving an economic benefit from the unauthorized exploitation of the Complainant's mark and this is clear proof of bad faith use of the disputed domain name.

See for example Yahoo! Inc. and GeoCities v. Data Art Corp., DataArt Enterprises, Inc., Stonybrook Investments, Global Net 2000, Inc., Powerclick, Inc., and Yahoo Search, Inc., WIPO Case No. D2000-0587 (clearly, Respondent is deriving economic benefit from this practice, either by attracting users to Respondent's website, where goods and services are offered, or by the receipt of compensation from the owners of other websites for delivering users to those sites); and GlobalCenter Pty Ltd v. Global Domain Hosting Pty Lt. DAU2002-0001 (WIPO, March 5, 2003 (The Panel notes that re-direction is not of itself evidence sufficient to satisfy 4(a)(iii) of the Policy. However, where the Respondent is using a "virtually identical" or "confusingly similar" name to redirect customers to a competitor of the Complainant, and no response or evidence of any legitimate use of the Disputed Domains is provided, the Panel can draw adverse inferences against the Respondent).

Therefore, the Complainant considers that "the domain name was intentionally used to attract Internet users, for commercial gain to the Respondent's website or other on-line location, by creating a likelihood of confusion with a name on which a right

is recognized or established, by national and Community law". This is expressly recognized as circumstance which proves bad faith use of the disputed domain name (see ADR Rules, §B11(f)(4)).

All the abovementioned elements show that the Respondent has acquired the domain name in bad faith, to attract the Complainant's clients and consumers to its website which competes with the Complainant.

For all these reasons (the Respondent has no right or legitimate interest on the disputed domain name, and the Respondent registered and is using the disputed domain name in bad faith), the Complainant requests cancellation of the disputed domain name, according to ADR Rules, §B1(b)(11) and ADR Rules, §B11(b).

B. RESPONDENT

The Respondent did not reply

DISCUSSION AND FINDINGS

The requirements for revocation of a registered domain name under ".eu" are found in Article 21 of the Public Policy Rules, Commission Regulation (EC) No. 874/22004 of 28 April 2004.

For the purposes of the revocation of speculative and abusive registrations, the Complainant has to prove that he Respondent holds the disputed domain name; that the domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by national and/or Community law; and that either

(a) the domain name has been registered by its holder without rights or legitimate interest in the domain name; or

(b) the domain name has been registered or is being used in bad faith.

In the present case, the Complainant has shown that the Respondent does hold the disputed domain name and that the Complainant does owns a Community trademark for the term "SUN CASINO".

The disputed domain name is obviously identical to that mark.

The Complainant alleges that the Respondent has no rights in the terms "SUN" or "CASINO" and that its use of the disputed domain name to attract Internet users to a competitive website unrelated to Complainant cannot be considered as a bona fide offering of goods or services.

Further, according to the Complainant, the Respondent registered and is using the disputed domain name in bad faith, because he is using the Complainant's well known mark to create confusion by attracting users to the Respondent's website which offers services that compete with those of the Complainant, and this without any authorization from the Complainant.

In accordance with 10(b) of the ADR Rules, the Panel shall draw such inferences as it considers appropriate from the Respondent's failure to reply.

In the present case, the Panel infers from the Respondent's silence that it has no valid arguments to oppose to the Complainant, and that the Complainant's allegations are accurate.

Thus, the Panel finds that the Respondent does not have any rights or legitimate interest in the disputed domain name, and that the disputed domain name has been registered and is being used in 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. Richard Hill**

DATE OF PANEL DECISION 2012-02-07

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant is a Monaco company that owns a Community mark. The disputed domain name is identical to that mark.

The disputed domain name is used to point to a web site that offers services that compete with those of the Complainant. The Respondent is not commonly known by that name, nor does it have any other grounds to claim rights or legitimate interests in the disputed domain name.

The Panel revoked the disputed domain name.