Panel Decision for dispute CAC-ADREU-007795

Case number	CAC-ADREU-007795
Time of filing	2019-11-19 07:36:00
Domain names	stargames.eu

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	Stargames Oy

Respondent

Name	J.S. de Koning

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

None of which the Panel is aware.

FACTUAL BACKGROUND

The Complainant Stargames Oy is a limited company incorporated under that name in Finland on December 20, 1995. It is the owner of OHIM registered trademark No. 007579551 STARGAMES, registered on October 7, 2009. Mr Mika Samuli Wirtanen is the owner of the Company.

The disputed domain name <stargames.eu> was registered on April 7, 2006.

A. COMPLAINANT

Mr. Wirtenen makes the following statement:

I am preparing an international valuation, MBA Thesis, during the coming autumn 2019 on behalf of company Stargames Oy at Satakunta University of Applied Sciences, Finland. I have been a business owner since the establishment of the company and has made international business for the creation of a global Stargames brand.

The company name was investigated in a name study conducted by the National Board of Patents and Registration on 1995, and the name was not used as a registered company in the major languages, which is why the company was the first stargames company in the world to register. The name study took more than 6 months. Register number at traderegister is 651.070 and business ID is 1030678-3.

The company name is later protected by a trademark of Stargames Oy, Finland. All Stargames domains are associated with the company registered name and business plan and proprietary to IPR and shall be licensed towards royalties under a trademark number 007579551. Stargames domains may not be used without a license agreement approved by Stargames Oy board of directors.

The name Stargames Oy is much misused and speculative domain owners like .eu hiden behind the internet and demand money as long as examined my right to have more information about registrant. Domain name holders except .ax and .fi use unauthorized Stargames domains and tarnish the image and reputation of the company causing extra direct and indirect costs for the company owner. The speculative stargames.eu owner pointed out a huge starting price request of 20 000 € before releasing contact details. Domain is used for an inappropriate purpose, I think.

Without thinking endless days and hours, I want to take care of this company name and it´s reputation as well as provide well conducted license agreements to partners globally which want to use fresh stargames IPR portfolio rights in their businesses. Based on the

discussion on EURid, we request the transfer authorization code to register a globally renowned brand, the .eu domain, to clarify meaning and operation of the Stargames Oy company and to distinguish between the various existing market abuses. The right to use a company trademarked name has been frequently asked for different purposes.

Paragraph B1 (b) (10): According to strategic marketing plan and operation policy of company as well as code of conduct, Stargames Oy never allow or agree with any person or other entity that the company name could be used without royalty license agreement between Stargames Oy and user of company name. Users of company name are named for partner(s) or clients as consumers. Portfolio of Stargames Oy intellectual property rights consist of registered trademark, Stargames, number 007579551 and globally well-known and rapidly growing reputable business name associated to registered trademark and domains which contains company name. At the moment and since registration of company legal entity on 12/1995 there is only two authorized domain extensions accepted by company board of directors which were legally registered such as <stargames.fi> and <stargames.ax>. I want to use the same service provider if the price is reasonable. It is also possible to arrange hosting elsewhere in Europe.

Secondly, the Stargames Oy will reduce remarkable misuse of the company trademark and trademark secured business name including all consequences already carried out, especially caused to Stargames Oy by bad imaging videogame shops with violence games. Stargames Oy want to register this domain for security reasons to avoid such horrible consequences already met also locally to people which were doing business in one of our old store locations. Stargames Oy is looking for future to get such institutions or partners which will respect licensing terms and also paying royalties to use fresh and secured as well as untarnished business name. The company is not involved in the bad imaging videogame business nowadays. Unfortunately, the low financial position of company as well as speculative rich domain owners keep our company on the background at the moment.

Thirdly, in addition to achieve better and healthier Stargames brand development and clarify brand development without such violence and badly going videogame environment in our global society, the company have strategic marketing plan and guidance that will be attached to partners and accepted by partners which will use stargames name in the market. Stargames Oy is still conventional family company without any foreign financial supports, consisting of sport symphatizers and healthcare specialist including doctoral practice level. We want to keep our non-violence and healthy line in this business and brand development also for next generation, please.

Stargames Oy have any idea why .eu domain was registered without any respect for our company name and operations and why earlier such domains like .be, .es or .it etc. were also registered for videogame businesses. It is noticed that .com domain developer Greentube GmbH, nowadays acquired to Austrian casino business billionaires Novomatic AG, asked our company to hand over stargames.fi domain for them many years ago. That request was also missing respect for Advertising and Marketing Communication Practice, Consolidated ICC Code, like Article 15, Exploitation of goodwill. This Consolidated ICC Code as such provides security for rights of Stargames Oy and it´s shareholder against company unauthorized name users in the market. All domain names bearing stargames name are associated with the company name and IPR portfolio rights.

B1 (b) (11): To specify domain transfer to the complainant is based on the earlier company name registration and used resources, time and money as first stargames registered company, registered by Finnish Patent and Registration Office according to large name examination on 1995. This is also to secure legal business of Stargames Oy by way that allow all future partners and clients like consumers online and partners in their own environments to use IPR portfolio of Stargames Oy towards royalties as mentioned earlier. There is our real development and rapidly growing fresh business available for partners with compact and valid license agreement bundle which make it possible for them to provide their own platforms to consumers authorized by original right holders and signed by Stargames Oy board of directors accordingly.

In this case, Stargames Oy want to be sure that the license partner could use domain of stargames.eu within terms of accepted license agreement by considering IPR rights of Stargames Oy at the best possible value by way that registered trademark and business name will not be such badly infringed. Agreed partnership contains also opportunity to choose accounting services arranged by Stargames Oy financial department WMS-Tilit.

Compared to ongoing misuse of Stargames IPR portfolio inside casino gaming industry, companies behind the casino gaming platforms are doing their business fully without any agreement and without paying any compensation by using our secured business name for their own purposes at the moment. Most of them like Novomatic AG with its subsidiaries are behind the scenes but not reachable in real life for initial discussion of license agreements or consequence of their actions they cause for Stargames Oy. The huge and wild business of casino gaming including unhealthy alcohol promotions on platforms using stargames name is very harmful for us. Just stop it, please.

We generally and in particular know adverse effects and direct/indirect cost of alcohol usage for people and society, therefore name of Stargames is totally prohibited to use in such environments whereas such adverse effects are possible to obtain. This is our reality and conviction. The original idea of company name was an idea to promote different kind of sport equipments globally. Stargames brand

development requires a holistic vision that also takes into account children and youth work. That´s why casino business and alcohol advertising using our company name is not without problems. I am founder of sport club during stargames company registration. This is to confirm that the board of directors of Stargames Oy have ever accepted any kind of royalty license agreement with casino gaming platforms.

B. RESPONDENT

No Response has been submitted to the Provider.

DISCUSSION AND FINDINGS

Article 22 of Regulation (EC) No. 874/2004 provides that an ADR procedure may be initiated by any party where the registration is speculative or abusive within the meaning of Article 21, which provides that a registered domain name shall be subject to revocation where the name is identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or EU law and where:
(a) it has been registered by its holder without rights or legitimate interest in the name; or
(b) it has been registered or used in bad faith.

The Panel is satisfied that the disputed domain name is identical or confusingly similar to a name in respect of which the Complainant has rights recognised by EU law by virtue of its Finnish company name STARGAMES OY and its Community Trade Mark "STARGAMES", the ".eu" extension being inconsequential for the purpose of this determination (see CAC case No. 00283, <lastminute.eu>).

As to whether the Respondent has rights or legitimate interests in the disputed domain name, the Panel notes that the disputed domain name was registered several years after the Complainant was incorporated under its STARGAMES OY name and several years before the Complainant registered its trademark. Accordingly, although the disputed domain name could not have been registered with the Complainant's registered trademark in mind, the same cannot be said in relation to the Complainant's company name, which was registered in 1995. The Complainant has provided no evidence of use by the Respondent of the disputed domain name and the Panel's own search did not produce a website to which the disputed domain name resolves.

Nevertheless, the Panel is satisfied that the Complainant has established a prima facie case of lack of rights or legitimate interests in the disputed domain name on the part of the Respondent, in light of the following circumstances: although the word "stargames" combines two dictionary words, it has no inherent meaning and is distinctive; the disputed domain name was registered several years after the incorporation of the Complainant under the STARGAMES OY name; there is no evidence of use of the disputed domain name since it was registered in 2006; the Complainant asserts that it has not authorized the Respondent to register or use the disputed domain name and that the Respondent sought 20 000 € from the Complainant before releasing contact details. The evidentiary burden therefore shifts to the Respondent to show that he does have rights or legitimate interests in the disputed domain name. The Respondent has made no attempt to do so.

In the circumstances of this case, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name, which is therefore speculative. See CAC .EU Overview 2.0, IV.5 and see Noonan Services Group v. OEEO NETWORKS LIMITED, CAC 5578.

It is unnecessary to consider the question of bad faith registration or use.

Since the Complainant, based in Finland, is an undertaking that is established in the Union, the Complainant is eligible to register the domain name under the registration provisions of Article 20 of Regulation (EU) 2019/517.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the disputed domain name <STARGAMES.EU> be transferred to the Complainant.

PANELISTS

Name	**Mr Alan Lawrence Limbury**

DATE OF PANEL DECISION 2019-11-18

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: <stargames.eu>.

II. Country of the Complainant: Finland, country of the Respondent: Netherlands.

III. Date of registration of the domain name: 7 April 2006.

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision: company name: STARGAMES.OY.

V. Response submitted: No.

VI. Domain name is identical/confusingly similar to the protected right of the Complainant.

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. No
2. Why: Although the word "stargames" combines two dictionary words, it has no inherent meaning and is distinctive; the disputed domain name was registered several years after the incorporation of the Complainant under the STARGAMES OY name; there is no evidence of use of the disputed domain name since it was registered in 2006; the Complainant asserts that it has not authorized the Respondent to register or use the disputed domain name and that the Respondent sought 20 000 € from the Complainant before releasing contact details. The evidentiary burden therefore shifts to the Respondent to show that he does have rights or legitimate interests in the disputed domain name. The Respondent has made no attempt to do so.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004): Unnecessary to consider.

IX. Other substantial facts the Panel considers relevant: None.

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

XI. Procedural factors the Panel considers relevant: None.

XII. Is Complainant eligible? Yes.