Decision for dispute CAC-UDRP-100302

Case number	**CAC-UDRP-100302**
Time of filing	**2011-08-12 12:27:09**
Domain names	**tipsport.org**

Case administrator

Name	**Tereza Bartošková (Case admin)**

Complainant

Organization	**TIPSPORT a.s.**

Respondent

Name	**Dan Fiker**

OTHER LEGAL PROCEEDINGS

No other legal proceedings are known to the Panel.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the word mark no 222794, <TIPSPORT>, registered on 28 February 2000 in the Czech Republic (Application date: 2 October 1998) for services in classes 36 and 41.

FACTUAL BACKGROUND

The Complaint was filed with the Czech Arbitration Court ("CAC") on 10 August 2011. On the same day, the CAC proceeded to the Request for Registrar Verification. Following a reminder issued by the CAC on 15 August 2011, the Registrar forwarded the Respondent's confirmation that the latter was actually the domain manager/owner of the disputed domain name. However, the Registrar did not comply with the CAC's further request, in particular, the request to inform about the language of the registration agreement and about the blockage of the disputed domain name.

Furthermore, with notification of deficiencies in Complaint, dated 17 August 2011, the CAC invited the Complainant to submit an amendment to the Complaint. The Complainant filed the amended Complaint on 17 August 2011.

In accordance with the Rules, the CAC formally notified the Respondent of the amended Complaint via email on 17 August 2011 and by registered mail. However, the written notice of the Complaint returned back to the CAC as undelivered. No response has been received neither within the term as of 6 September 2011 nor after expiration of said term.

With non-standard communication of 21 September 2011 the Panel requested the Complainant to pay an additional UDRP fee in accordance with Annex A of UDRP Supplemental Rules. The Complainant paid the additional fee on 26 September 2011.

Moreover, after the CAC's Request for Registrar Verification the Registrar enabled the transfer of the disputed domain name to another Registrar on 18 August. Furthermore, the disputed domain name has meanwhile been transferred to another

Registrant. These transfers only came to light after the CAC controlled the Whois information and have subsequently been confirmed by the new Registrar, i.e. “Directi Internet Solutions Pvt. Ltd. d/b/a PublicDomainRegistry.com”.

Furthermore, the CAC contacted the new Registrar informing that there was a UDRP administrative proceeding pending concerning the disputed domain name <tipsport.org>.

Finally, the new Registrar required the CAC to provide him with the Complaint and annexes of the pending UDRP proceeding and to indicate the current domain Registrant as Respondent in this case.

As at the date of this decision the disputed domain name results connected to a website containing information on online betting.

The Complainant asks the Panel to proceed to a decision in accordance with the Uniform Domain Name Dispute Resolution Policy and the Rules for Uniform Domain Name Dispute Resolution Policy and to order the transfer of the disputed domain name <tipsport.org> to the Complainant.

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT.

The Complainant is a company based according Czech Law, registered in companies register of Městský soud v Praze, section B 673, seated at Beroun, Politických vězňů 156, Postal Code 266 01, Czech republic. It is the biggest betting Company in Czech Republic and it has been operating his business in that area since the year 1991.

It results from the documents provided by the Complainant and its undisputed allegations that the Complainant provides both, bets on sport at betting offices in the Czech Republic, Slovakia and Poland and on-line bets through the web sites <tipsport.cz>, <tipsport.sk>, <tipsport.eu> and <tipsport.net>.

The Complainant holds national Czech word mark no 222794, <TIPSPORT> and contends that his trademark TIPSPORT is a well known trademark in the Czech Republic and across the border too.

Furthermore, the disputed domain name <tipsport.org> was created in 2009. At the date of filing of the Complaint it was registered on behalf of the Respondent and the Registrar ASCIO Technologies, Inc., Denmark. At that time the disputed domain name was parked with SEDO (showing amongst others links to pornographic websites) and explicitly offered for sale.

Before filing the Complaint, the Complainant contacted the Respondent and asked for the transfer of the disputed domain name. The Respondent requested the sum of EUR 2000 for transferring the domain name. This correspondence was in English language.

Attachment– record from the whois database, copy of e-mail communication between the parties, screenshot of the Respondent’s web presentation under the domain name that is subjekt of this Complaint.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

1. The Complainant contends that the Respondent has never shown any intention to use the domain name in any reasonable way in particular that the domain name has never been used by the Respondent for any meaningful web presentation, on-line

services, offering his own services or proper presentation of his business or other real activity. It appends evidence in support of that assertion.

2. The Complainant contends that the Respondent explicitly offered the domain name for sale and asserts that there have been negotiations between the parties for the transfer of the disputed domain name. It appends evidence in support of that assertion.

3. The Complainant asserts use of the domain name involves an infringement of its Czech trade mark.

4. The Complainant contends that the disputed domain name is identical to his Czech trademark <TIPSPORT>.

5. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the domain name since there is no circumstance that can be considered to be an evidence of such rights and the Respondent has never shown any intention to use the domain name in any reasonable way.

6. The Complainant contends that the domain name has been registered and is being used in bad faith since the circumstances described by the Complainant above indicate that the Respondent registered the domain name primarily for the purpose of selling it.

7. By reason of these facts it contends that the domain name was registered in bad faith and without any legitimate interest.

RESPONDENT:

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The Respondent has never accessed the documents of these proceedings on the CAC's online platform.

RIGHTS

In the circumstances, the Complainant easily satisfies the requirement of paragraph 4(a)(i) of the Policy that the domain name be confusingly similar to a trade mark in which the Complainant has rights.

The Panel accepts that the Complainant is the owner of Czech trademark <TIPSPORT>. It results from the Panel's research that this trademark is in force. In addition, the Panel notes that the Respondent does not put forward any positive argument to the contrary.

The Panel further finds that the disputed domain name <tipsport.org> is at least confusingly similar to the Complainant's trademark <TIPSPORT>. It is clear practice of the Panels to consider that if the Complainant owns a trademark, then it generally satisfies the threshold requirement of having trademark rights. The location of the trademark, its date of registration (or first use), and the goods and/or services for which it is registered, are all irrelevant for the purpose of finding rights in a trademark under the first element of the UDRP (see paragraph 1.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions)

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent has no rights or legitimate interests in respect of the domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

The Complainant contends that the Respondent has not made any use of, or demonstrable preparations to use the domain name in connection with a bona fide offering of goods or services. Furthermore, he is not making a legitimate non-commercial or fair use of the disputed domain name either. Before filing the Complaint, the disputed domain name has not been used for any active web site, although it has been registered approx. two years before the filing of the present Complaint. The Respondent has provided no information to explain why the domain name was an appropriate domain name

for him to select.

In addition, the Respondent is not commonly known under the disputed domain name. The Panel notes that the Respondent's name or contact details contain no reference to TIPSPORT or similar word or name.

In lack of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of <tipsport.org>.

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

1. The Panel is convinced that the Respondent registered the disputed domain name <tipsport.org> for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant or to a competitor of the Complainant for valuable consideration in excess of the Respondent´s documented out-of-pocket costs directly related to the domain name (paragraph 4 (b) (i) of the Policy). Indeed, the Respondent offered the disputed domain name for sale for an amount of EUR 2.000. Evidence of the offer to sell the domain name prior to the Complainant's filing of a UDRP Complaint is generally admissible under the UDRP, and together with the further facts of this case, enough to show bad faith. The legal criteria for showing bad faith directly specify that an offer for sale can be evidence of bad faith, and the panel is convinced that this offer represents a bad faith effort to extort (see paragraph 3.6 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions).

2. Furthermore, the Panel considers the fact that while the domain name was parked, links to pornographic sites were displayed on the website, constitutes evidence of registration and/or use of a domain name in bad faith under the aspect of tarnishment of the Complainant's trademark (see paragraph 3.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions). This behavior of bad faith is underlined by the fact that only after filing the Complaint, effective content has been made available under the disputed domain name. As at the date of this decision, when accessing the disputed domain name a website offering online betting games is displayed - as the Panel verified. This means that the domain name is currently used to display services that directly compete with the Complainant's activities covered by its trademarks.

3. Finally, Respondent committed "Cyberflight". "Cyberflight" is described as an attempt to delay a UDRP proceeding by changing the domain name registration details or Registrar after learning of the Complaint (See WIPO Cases No. D2008-1688 – Humana Inc. v. CDN Properties Incorporated and No. D2006-0917 – PREPADOM v. Domain Drop S.A.). "Cyberflight" can occur either before the filing of a Complaint, or after filing of the Complaint and the interested parties to the dispute have been served copies of the case documents. The first type of "Cyberflight" could typically be in direct response to a cease and desist letter. Such "Cyberflight" is likely to indicate bad faith, although it is not in direct violation of paragraph 8(a) of the Policy. The second type of cyber flying occurs when the domain name is transferred during a pending proceeding and is in direct violation of the Policy paragraph 8 (a).

On assessing the facts of this case, in particular the transfer of the disputed domain name to both, to a new Registrant and to a new Registrar, the Panel is convinced that it clearly establishes the latter variety of "Cyberflight". The transfer of the domain name, in the present case was made upon receipt of filing the Complaint, which is in gross violation of the provisions of the Policy, paragraph 8(a) and (b). Under paragraph 8(a) of the Policy, the Registrant is expressly prohibited from transferring the domain name during a pending administrative proceeding. Furthermore, under paragraph 8(b) of the Policy, it is also prohibited to change Registrar during a pending administrative proceeding. The Panel considers the transfer of the disputed domain name to another Registrar and Registrant during a pending UDRP-proceedings as indicative of bad faith due to "Cyberflight" (See WIPO Case No. D2000-1336 A.H. – Belo Corporation v. King TV and 5 Kings).

PROCEDURAL FACTORS

Pursuant to paragraph 10 of the UDRP Rules, the Panel has the discretion to conduct the proceedings in such a manner as it

deems convenient. Against this background, the Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

1. The Panel notes that the former Registrar failed to provide all information requested by the CAC in its Request for Registrar Verification. In particular, it did not inform about the language of the registration agreement and about the blockage of the disputed domain name.

As far as the language is concerned, nothing can be found about the languages supported by this Registrar. However, its website is in English (even its German part is partly in English). In addition, the parties communicated with each other in English regarding an eventual transaction on the disputed domain name. Finally, the correspondence of the Registrant with its Registrar is also in English. In the light of these facts and having regard to the circumstances of the administrative proceeding, the Panel establishes under paragraph 11(a) of the UDRP Rules the language of this proceedings to be English.

2. Additionally the former Registrar's conduct is critical also under a further aspect, i.e. the transfer of the domain name to a new holder covered by a Privacy Service and the change of Registrar during the pending UDRP dispute, i.e. after the Registrar's Verification and after notification of the Complaint. The Panel considers this as a direct violation of respectively paragraph 8(a) and 8(b) of the Policy and, therefore, as being contradictory to the spirit of the UDRP Policy. Indeed, conduct of this sort is likely to threaten the proper functioning of the Policy.

3. With regard to the administrative proceeding, the Panel holds the view that these changes do, however, not affect the pending proceeding. It is the entry in the WHOIS-register at the time of the filing of the Complaint that is the sole decisive factor. As a consequence the transfer of the disputed domain name to a third party and the change of Registrar after Registrar's Verification and after notification of the Complaint have no influence on the pending proceeding. Accordingly, this UDRP proceeding is to be continued between the former parties; it is the domain name holder registered before the transfer of the domain name that continues to be the Respondent in this proceeding. Neither a change of Registrant, nor even a change of Registrar affects the pending proceeding (see WIPO Case No D2001-1160 – worldnetatt.net; see also Bettinger ed., Domain Name Law and Practice, 2005, pages 965, 966 with further references).

4. Furthermore, the Panel invites the CAC to bring both, the former Registrar's failure to fully respond to the Registrar Verification Request and the fact that it transferred the disputed domain name to another Registrar while this UDRP-proceeding was pending to the attention of ICANN. In other cases where faced either with the non-cooperation or obstruction of Registrars in the conduct of the Policy Panels have considered it appropriate to invite the dispute resolution Provider to bring the relevant Registrar's conduct to the attention of ICANN so that ICANN can undertake such investigation and impose such sanctions as it considers appropriate in the circumstances (see CAC Case No. 100149 Amateri.cz s.r.o. v. Brian Muir and WIPO Case No. D2009-1657 Four Seasons Hotels Limited v. Internet bs Corporation/ Private Whois Service). The Panel considers that due to the circumstances outlined above the case at hand is a case where a similar approach is warranted.

PRINCIPAL REASONS FOR THE DECISION

1. The domain name is confusingly similar to the Complainant's registered Czech trade mark <TIPSPORT>.

2. The Respondent has no right or legitimate interests in respect of the disputed domain name. Before filing the Complaint, the disputed domain name has not been used for any active web site, although it has been registered approx. two years before the filing of the present Complaint. The Respondent has provided no information to explain why the domain name was an appropriate domain name for him to select. In addition, the Respondent is not commonly known under the disputed domain name. The Panel notes that the Respondent's name or contact details contain no reference to TIPSPORT or similar word or name.

3. The disputed domain name has been registered and is being used in bad faith.

a) The Panel is convinced that the Respondent registered the disputed domain name <tipsport.org> for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant or to a competitor of the

Complainant for valuable consideration in excess of the Respondent´s documented out-of-pocket costs directly related to the domain name.

b) Furthermore, the Panel considers the fact that while the domain name was parked, links to pornographic sites were displayed on the website, constitutes evidence of registration and/or use of a domain name in bad faith under the aspect of tarnishment of the Complainant's trademark.

c) Finally, Respondent committed "Cyberflight" as the disputed domain name has been transferred to a new Registrant and to a new Registrar during the pending UDRP proceedings, which is in gross violation of the provisions of the Policy, paragraph 8(a) and (b).

4. With regard to the administrative proceeding, the Panel holds the view that the transfer of the disputed domain name to a third party and the change of Registrar after Registrar's Verification and after notification of the Complaint have no influence on the pending proceedings. It is the entry in the WHOIS-register at the time of the filing of the Complaint that is the sole decisive factor.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **TIPSPORT.ORG**: Transferred

PANELLISTS

Name	**Dr. Tobias Malte Müller**

DATE OF PANEL DECISION 2011-10-03

Publish the Decision