Decision for dispute CAC-UDRP-100725

Case number	CAC-UDRP-100725
Time of filing	2014-01-13 14:13:36
Domain names	danskespilmobil.com, danskespilresultater.com

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	Danske Spil A/S

Complainant representative

Organization	Zeusmark Consulting Group, Ms. Anne-Louise B. Andersen

Respondent

Name	Rasmus Refer

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain names.

IDENTIFICATION OF RIGHTS

"Danske Spil" is a company name and the Complainant owns registered word and word/image trademarks in Denmark. The company name has been in existence from 2002 on.

The Danish Supreme Court held in 2008 that the Complainant owns an unregistered trademark "Danske Spil". The Complainant is active in the field of gaming, the trademarks are registered for gaming related goods and services.

FACTUAL BACKGROUND

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

The Complainant is a Danish gaming company based in Denmark. The Danish Parliament founded the company in 1948 and in 2002 the Complainant changed its company name from Dansk Tipstjeneste A/S to the current name Danske Spil A/S.

From 1948 up till January 2012 the Complainant had a monopoly on providing gaming in Denmark and even after the partial gaming liberalization in January 2012, the Complainant kept its 65-year-old monopoly on providing a number of games e.g. LOTTO and bingo.

Since 1948 the Complainant has brought to market an increasing number of games and today the Complainant's gaming business includes all types of betting and lottery games distributed through authorized agents and online via the Complainants official website danskespil.dk.

Besides being the Complainant's company name, DANSKE SPIL is a registered word and device trade mark in Denmark.

The Complainant´s trade mark is well-known and this has been confirmed in a previous WIPO decision, see e.g Danske Spil A/S v. Peter Joergensen, WIPO Case no. D2011-0298. To support this statement, a decision of the Danish Supreme Court in May 2008 confirmed that the Complainant had established an unregistered right to the trade mark and company name "DANSKE SPIL" in Denmark.

Furthermore, the Complainant holds a large number of domain names containing the DANSKE SPIL trade mark including danskespil.com.

A: The domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
(Policy, Paragraph 4(a)(i); Rules, Paragraphs 3(b)(viii), (b)(ix)(1)):

The contested domain names are confusingly similar to the trade mark DANSKE SPIL, in which the Complainant holds rights. The domain names fully incorporate the Complainant's registered and well-known trade mark and company name DANSKE SPIL and the only differences between the disputed domain names and the Complainant´s trade mark are the addition of the generic words "mobil" and "resultater" and the suffix gTLD ".com".

The addition of the generic words "mobil" and "resultater" is not sufficient to differentiate the disputed domain names from the Complainant´s well-know trade mark, on the contrary the use of the mentioned generic words increases the likelihood of confusion because the words refer to activities in connection with the gaming services provided by the Complainant.

Furthermore, the Complainant asserts that it is an established and recognized principle under the UDRP that the presence of the .com top level designation is irrelevant in the comparison of a domain name and a trade mark.

B: The Respondent has no rights or legitimate interests in respect of the domain names;
(Policy, Paragraph 4(a)(ii); Rules, Paragraph 3(b)(ix)(2))

The Respondent has not been granted any license or consent, express or implied, to use the Complainant´s trade mark DANSKE SPIL in the domain names or in any other manner, nor has the Complainant agreed in any way to such use or application by the Respondent. At no time the Respondent was authorized to register the disputed domain names.

Further, to the best knowledge of the Complainant, the Respondent has no legitimate rights in the contested domain names danskespilmobil.com and danskespilresultater.com.

Firstly, the Respondent did not use the domain names as a trade mark, company name, business or trade name prior to the registration of the disputed domain names, nor is the Respondent otherwise commonly known in reference to the names.

Secondly, at the moment the domains danskespilmobil.com and danskespilresultater.com are inactive. Unfortunately, it is not possible to prove for how long the domain names in question have been inactive since a search in Internet Archive.org did not provide any snapshots of the domains. The missing snapshots also indicate that the two domain names have not

been used for an active webpage since their registration.

Due to the fact that the domain names in question are inactive, it can be concluded that the Respondent does not use the domain names in connection with a bona fide offering of goods and services.

In conclusion, the Complainant claims that the Respondent has no rights or legitimate interests in respect of the domain names danskespilmobil.com and danskespilresultater.com.

C: The domain names were registered and are being used in bad faith.
(Policy, paragraphs 4(a)(iii), 4(b); Rules, paragraph 3(b)(ix)(3))

Registration in bad faith

The Complainant's company name and trade mark DANSKE SPIL have been used for 11 years before the Respondent's registration of the disputed domain name and due to the fact that the Complainant and the Complainant´s trade mark is well-known and the Respondent has registered a Danish address, it is inconceivable that the Respondent registered the domain names without prior knowledge of the existence of the Complainant and the Complainant´s trade marks.

The Respondent´s registration of the domain names danskespilmobil.com and danskespilresultater.com prevents the Complainant from registering the domain names and use the well-known company name and trade mark DANSKE SPIL in the domain names in connection with the Complainant´s gaming business.

Bad faith use

Currently, the domain names in question are inactive, hence the Respondent is not using the domain names for active websites. In addition to this fact, the Complainant claims that the Respondent has been holding the domain names danskespilmobil.com and danskespilresultater.com passively for more than six months and the domain names are therefore used in bad faith.

Furthermore, the Complainant alleges that the Respondent has intentionally attempted to attract Internet users to the Respondent´s websites by creating a likelihood of confusion with the Complainant´s trade mark. The Respondent has done so to generate user traffic to the websites and as a result of this traffic the Respondent can offer to sell the domain names in question to the Complainant.

The Complainant is of the opinion that the domain names in question danskespilmobil.com and danskespilresultater.com are confusingly similar to the Complainants well-known company name and trade mark DANSKE SPIL, that the Respondent has no rights or legitimate interests and finally that the domain names were registered and are being used in bad faith in accordance with paragraph 4(a).

Furthermore, it should be stated that the Complainant had the following domain names transferred to the Complainant: danskespil.org (Case No. D2010-0087), danskespil.info (Case No. D2011-0298), danskespil.net (Case No.D2011-0299) and danskespil.com (Case No. D2011-0300).

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

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

BAD FAITH

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

PROCEDURAL FACTORS

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.

PRINCIPAL REASONS FOR THE DECISION

I.
The Complainant has, to the satisfaction of the Panel, shown the Domain Names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

The Complainant is owner of a company name "Danske Spil" and several "Danske Spil" trademarks.

Adding the suffix ".com" to the trademark "Danske Spil" does not render the Domain Names unsimilar, as the suffix is mandatory and the market knows this.

Adding the generic terms "mobil" and/or "resultater" neither renders the Domain Names unsimilar, as the market will regard theses added terms as sub categories of the trademark "Danske Spil" and will expect, for example, a mobile version of the services of the Complainant, respectively results of gaming events of the Complainants (also see WIPO Case No. D2000-0777 - yahochat.org, WIPO Case No. D2000-0878 - canoninkjets.com).

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

No facts have been presented to indicate that Respondent has any rights in the Domain Names.

III.
The Complainant has, to the satisfaction of the Panel, shown the Domain Names have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

Although the Respondent is obviously not using the Domain Names by presenting a website and offering goods or services under the Domain Names, the Panel is convinced of the bad faith registration and use by the Respondent.

This is indicated by several facts:

- the trademark "Danske Spil" registered as a Domain Name is a well known trademark, the existence of which could not have escaped the Respondent, who is - according to the registration - located in Denmark (WIPO Case No. 2000-0310 - choyongpil.net, NAV Case No. FA 95314 - thecaravanclub.com).

- The non use of the Domain Names for at least 6 months has been regarded an indication of bad faith (WIPO Case No. D2000-0612 - tylenol.org).

- the written copy of the Complaint has not been collected by the Respondent. The mail service confirmed that the letter remained unclaimed "ikke afhentet".

The Panel agrees to the principles laid down in the Telstra decision (WIPO Case D2000-0003 - telstra.org) and that these principles apply here:

Although the Respondent does not use the Domain Names actively, the passive holding can be regarded as being bad faith. The Complainant owns a well known trademark, there is no proof of good faith on behalf of the Respondent, and it is not possible to conceive of any active use of the Domain Names that is not illegitimate.

Although the Respondent has not evidently concealed its identity, it has to be taken into account that the written copy of the Complaint, sent to the Respondent's registered address, has not been collected by the Respondent.

Thus, this brings the Panel to the conclusion that the Respondent acted in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **DANSKESPILMOBIL.COM**: Transferred
2. **DANSKESPILRESULTATER.COM**: Transferred

PANELLISTS

Name	**Dominik Eickemeier**

DATE OF PANEL DECISION 2014-03-04

Publish the Decision