Decision for dispute CAC-UDRP-101166

Case number	**CAC-UDRP-101166**
Time of filing	**2016-02-09 14:08:27**
Domain names	**sportka.org**

Case administrator

Name	**Lada Válková (Case admin)**

Complainant

Organization	**SAZKA a.s.**

Complainant representative

Name	**Vojtěch Chloupek**

Respondent

Organization	**Lottoland Limited**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of other legal proceedings.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of and relies on its various registered marks for and including the word "SPORTKA." These include a CTM No. 003527678 (“SPORTKA”) with a priority date 3 December 2003 and a number of national marks for “SPORTKA” including Czech national trade marks, No. 199255, (priority date 24 January 1995), No. 245424 (priority date 4 September 2000), No. 327195, (priority date 18 February 2012).

It also has various other marks combining that word with other elements such as “SUPERJACKPOT SPORTKA,” CTM no. 008848442 (priority date 1 February 2010) and “JACKPOT SPORTKA SAZKA,” Czech national mark No. 222051 (priority date 8 February 1999) and “SAZKA SPORTKA 50,” No. 290083 (priority date 22 December 2006) and “SPORTKA SAZKA,” No. 335554 (priority date 23 April 2013).

All of the above marks are registered in class 41 (arranging and conducting lotteries, operating lotteries, games, roulettes and casinos, organizing betting games and similar) at least. Some are also registered in additional classes.

The Complainant also registered the second level domain names "sportka.cz" and "sportka.eu" in 2001 and 2006 respectively and has made extensive use of them in trade.

The Complainant also relies on its rights in law to fair competition and to be protected from the unfair --relating to and/or arising through use in trade since 1957.

FACTUAL BACKGROUND

The Complainant is SAZKA a.s., a company registered in the Czech Republic and a major Czech lottery company, one of whose key lottery games is called “SPORTKA.” This lottery has been offered by the Complainant (and its legal predecessors) since 22 April 1957, that is, for almost fifty years.

The SPORTKA lottery draw takes place twice a week on national Czech national television, on Channel No. 1 at prime time (before 8pm) and is watched by millions of viewers every week.

The SPORTKA Lottery has acquired a reputation so that the average Czech consumer views the sign SPORTKA as exclusively distinguishing and identifying the services of the Complainant and it is a well-known/famous trade mark.
The Complainant has all necessary state licenses, as required to operate its lotteries.

The Complainant’s trading network consists of approximately 6,500 sales points, mainly petrol stations, newsstands, Czech Post branches, outlets of major supermarket chains etc. The Complainant actively promotes SPORTKA online, on television in print and advertising campaigns.

According to the WHOIS provided by Public Interest Registry, the top level registry for the .org domain, the registrant organization is Lottoland Limited, of Gibraltar –the Respondent here. At its website, at www.lottoland.com, a Mr. Nigel Birrell, is described as CEO. The Disputed Domain Name, sportka.org, was registered on 27 August 2014 by the Respondent. That resolves to a site where the Respondent offers "the chance to bet on the outcome of the world's biggest lotteries" and explains the rules of SPORTKA, provides the Complainant’s latest lottery results and information about its jackpot –and other information about the Complainant's lottery game SPORTKA. The website is provided exclusively in Czech and it is targeted at Czech consumers. All pages are dominated by large bright red rectangular button, containing the text "Hrat nyni!" (translated as “Play now!”) which creates the impression that through the website, the SPORTKA lottery can be played online. However, the red button redirects the user to www.lottoland.com, where the Respondent proposes an alternative to SPORTKA—its own online game of "Sportovka."

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

THE COMPLAINANT'S CASE:

The Complainant says as follows.

Identical
The Complainant says the Disputed Domain Name is identical with Complainant's Trade Marks. As a top level domain name does not have any significance in distinguishing a domain name from a trade mark; only "sportka" of the Disputed Domain Name has to be considered while evaluating confusing similarity or identity. See Playboy Enterprises International, Inc. v. John Taxiarchos, WIPO Case No. D2006-0561; Burberry Limited v. Carlos Lim, WIPO Case No. D2011-0344; or Boursorama v. PD Host Inc – Ken Thomas, CAC Case No. 101131).

The Disputed Domain Name incorporates the Complainant's word mark SPORTKA in its entirety and is identical to "SPORTKA" (CTM 003527678) valid in all European Union member states, including the United Kingdom and its territory Gibraltar, where the Respondent is incorporated pursuant to the Council Regulation (EC) No. 40/94 ("CTM Regulation").

The Complainant says the Disputed Domain Name is identical with Complainant's Trade Marks and that the Complainant

has proved the first element according to the paragraph 4(a)(i) of the Policy.

Rights and Legitimate interests

The Complainant contends that the Respondent lacks any right or legitimate interest in the Domain.

The Respondent does not have any rights in the mark "SPORTKA" and is not commonly known by the Domain name. The Respondent is neither affiliated with nor authorized or licensed by the Complainant to use its marks.

The Respondent cannot be perceived as making a bona fide offering of goods or services as it knowingly free-rides upon the reputation of the SPORTKA lottery to draw in and bait the public and then switches an offer of its own unlicensed and illegal services. The Respondent targets Czech consumers but does not comply with the requirements of Czech law. Section 1(7) of Act No. 202/1990 Coll., on Lotteries and Other Like Games, as amended, states that only a legal entity, which has its registered address in the territory of the Czech Republic, and which was granted a license to operate a lottery or other like game by the competent authority, may run a lottery or other like game. The Respondent's activity via the Disputed Domain Name consists of the intermediation of bets, or respectively the collection of bets on the Complainant's lottery product "SPORTKA". This activity is illegal in the Czech Republic which does not allow the placing of bets on lotteries over the internet. Placing bets over the internet is currently allowed only for sports betting and card games and only when under a license granted by the Czech Ministry of Finance; such licenses being conditional on adequate measures for protection against under-age gambling. These measures include face-to-face verification of the player's legal age by reference to his ID Card and anti- money laundering checks. The Respondent does not comply with any of these measures and its targeting the Czech public. This is illegal according to Czech law. By its very nature, an illegal offering cannot be bona fide.

The Respondent engages in unfair competition with the Complainant's SPORTKA lottery. The Respondent does not make legitimate non-commercial or fair use of the Domain. The use cannot be fair or legitimate as it is illegal betting and unauthorized (by the Ministry of Finance, the Czech regulatory body for lotteries) but aimed at the Czech public and bets on the results of SPORTKA lottery run by the Complainant.

The Respondent is not making legitimate non-commercial or fair use of the Disputed Domain Name. The Respondent is using the Disputed Domain Name for commercial gain to attract and then divert consumers to its inferior and illegal offering. The Respondent creates a likelihood of confusion and also tarnishes the marks of the Complainant. This free-rides on the Complainant's reputation and goodwill. The Complainant relies upon CAC Case No. 101038 – TEVA Respiratory, LLC v. JC.

It is not fair or descriptive use as "Sportka" does not have any meaning in Czech except to the Complainant's lottery game. It has acquired a secondary meaning in Czech and serves to distinguish the Complainant's lottery game. Further, the Respondent's use references the Complainant's lottery and not the English word "Sport" in any descriptive or generic sense.

Bad Faith

The Complainant says the Respondent registered the Disputed Domain Name --identical to the Complainant's well-known marks for its lottery game --in relation to activity in the same field of commercial endeavour, namely bets and lotteries, including third party lotteries.

There can be no other conclusion than that the Respondent was aware at the time of the registration of the Disputed Domain Name of the rights and interests of the Complainant to the mark SPORTKA.

As such, the Respondent registered the said domain to free ride on the reputation of the Complainant.
Registration of a domain name that is confusingly similar to a well-known trademark by any entity that has no relationship to that mark is sufficient evidence of bad faith registration and use. See Allianz, Compañia de Seguros y Reaseguros S.A. v. John Michael, WIPO Case No. D2009-0942.

The Respondent has failed to come forward with an explanation or a defence.

The purpose of the Disputed Domain Name site is to attract and then redirect the visitor and sell its own derivative "Sportovka" and other lotteries –all by free-riding on the Complainant’s mark SPORTKA.
This likelihood of confusion is further enforced by Respondent’s use of former SPORTKA lottery presenter. Mr. Vladimír Vlach, on its website, as well as other elements of its trade dress or get-up and branding, including a logo with confusingly similar elements to the figurative elements of the Complainant's figurative marks.

RIGHTS

There is an obvious issue here in English as the marks and the Disputed Domain Name are mainly comprised of the common descriptive word SPORT. Third parties can have legitimate interests in the use of such words.

Although the Respondent has not come forward, the burden of proof rests with the Complainant, which is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such a prima facie case is made out, the burden of production shifts to the Respondent.

However, a panel weighs all the evidence, with the burden of proof always remaining on the Complainant.

There is no question that the Complainant's marks have acquired distinctiveness after almost 50 years of weekly use and distinguish its national lottery to the Czech public.

The form and manner of use of the domain name in issue is often determinative in these cases and the Respondent's use clearly references and leverages the Complainant's marks and services--with their acquired secondary meaning. They don't reference the ordinary English term.

The Complainant has, to the satisfaction of the Panel, shown the Domain Name is 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

There is an obvious issue here in English as the marks and the Disputed Domain Name are mainly comprised of the common word SPORT. Third parties have legitimate interests in the use of such common words. Given that English is an international language this can be an issue even when the Czech Republic is targeted by the use in question, as here.

Although the Respondent has not come forward, the burden of proof rests with the Complainant, which is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such a prima facie case is made out, the burden of production shifts to the Respondent. However a panel weighs all the evidence, with the burden of proof always remaining on the Complainant.

The form and manner of use of the domain name in issue is often determinative in these cases and the Respondent's use clearly references and leverages the Complainant's marks and services--with their acquired secondary meaning.

They don't reference the ordinary English term 'Sport' in a general sense. As such there is no issue as to descriptive or generic use in this case and the Respondent's use cannot be justified on that basis.

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

BAD FAITH

On the balance of probabilities, the Panel is satisfied that the Respondent’s conduct falls within paragraph 4(b)(iv) of the Policy. The Panel finds - that given the way the Disputed Domain Name is used- the purpose of the website on the Disputed Domain Name is to attract and then redirect consumers in order to sell them Respondent’s own derivative "Sportovka" and

other lotteries – all by free-riding on the Complainant's mark SPORTKA. Therefore, by using the Disputed Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its website, by creating a likelihood of confusion with the Complainant's trade mark as to the source, sponsorship, affiliation, or endorsement of its website or of a product or service on its website.

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).

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.

There is no question that the Respondent has been properly served under the rules. A hard copy notice was sent by post to the Technical contact of the Respondent and delivered on 12/02/2016 (the Panel viewed the record of the advice of delivery from the Post Office). This notice was also sent by fax to the Respondent and was delivered –as confirmed by the transmission report. E-mails sent to admin@lottoland.com and to support@lottoland.com were relayed although it is not clear whether the e-mail notice sent to the technical contact of the Respondent - hostmaster@eurodns.com - was delivered or not. No further e-mail address could be found on the website. The Respondent never accessed the online platform. The Panel is satisfied that the Respondent had due and proper notice.

PRINCIPAL REASONS FOR THE DECISION

This is a very clear cut case. The Complainant's marks have been in use for almost 50 years. They distinguish the Complainant's national popular lottery to the Czech public. The Respondent targeted this same public by registering the Disputed Domain Name, which is identical, in order to free-ride on the Complainant's Rights, in order to draw in and bait the Czech public and then, at a related site, in Czech, switches an offer for its own derivative "Sportovka" which is illegal under Czech law, and also offers services of other lottery operators. This is not legitimate or fair use and the Respondent did not come forward to claim otherwise. Bad faith is clear and the Complainant has made out its case.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **SPORTKA.ORG**: Transferred

PANELLISTS

Name	**Victoria McEvedy**

DATE OF PANEL DECISION 2016-03-21

Publish the Decision